SIR C. SANKARAN NAIR C. I. E.

SIR NAIR, C. I. E.

(Fighter for India's Freedom)

MEMBER OF THE VICEROY'S EXECUTIVE COUNCIL

BY

THE RIGHT HONOURABLE

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PREFACE

THE present generation knows very little about Sir Sankaran Nair; some have heard of him as a well known lawyer, some as a famous Judge whilst others may have heard of him as a Member of the Viceroy's Council; but, very few know of the fight that he put up in the Viceroy's Council in support of India's freedom, which was his greatest achievement as a Politician. Eminent men like Gokhale for instance, fought the Government outside the Council; but Sir Sankaran Nair fought it with rare courage in the 'HOLY of HOLIES' *—the Viceroy's Council.

The story of the fight is enshrined in the pages of his two "masterly" dissenting minutes "for which and for the courageous attitude he took up on the Punjab question"—in the language of no less a person than Sri Pandit Motilal Nehru – "the country will ever remain grateful".†

My chief aim in writing this book is to present these Minutes to the public, so that it may have some notion of Sir Sankaran Nair's political work in the Viceroy's Council. The two 'Dissenting Minutes' are not by any means easy reading, especially the first. I have analysed these and extracted important paragraphs from them so that the reader may form his own opinion about this particular work of Sir Sankaran Nair. To form a background for these Minutes, I have stated briefly the salient features of his life to give a complete picture of the Man and his work. To undertake this task when the writer has passed the age of 80 may appear to be a stroke of temerity. The work has been somewhat arduous, but it would have been more so had I not collected the materials before I commenced it.

" .....Tasks in hours of insight willed
can through gloom be fulfilled....."

I could have enlarged the chapters of the book by giving fuller details of Sir Sankaran Nair's life, and made the volume a larger and more fitting memorial to his greatness; if I had done so the

* See "The India I Knew" 1897–1947 by Sir Stanley Reed, Page 75.

† See (unnumbered) para 90 of the Presidential Session of the Indian National Congress held at Amritsar.

two "Dissenting Minutes" would not have formed the centre-piec of the book and my chief aim would not have been realised. Th book, therefore, remains in its present form as I first conceive it, but none of the main activities of Sir Sankaran Nair has bee omitted.

As son-in-law and nephew of Sir Sankaran Nair I had discusse with him, on various occasions, the events of his life and othe related matters detailed in this book.

ACKNOWLEDGEMENTS

OF those who helped me in writing this book, I should first and foremost thank my friend Mr. Reeve Wallace, a retired high official of the Privy Council. But for his help I would not have been able to get the materials I wanted from England. Not only did he obtain whatever books and papers I asked him to get, he secured permission for me from the Editor of "The Contemporary Review" to publish the articles that Sir Sankaran Nair had written to that journal. Sri Lakshmanaswamy Mudaliar, the Vice Chancellor of the Madras University supplied me with facts from the University records relating to Sir Sankaran Nair's connection with the University. I offer the Vice Chancellor my warmest thanks for his help. It is unfortunate that Sir Sankaran Nair's Convocation Address of the year 1909 is missing from the Senate Library and is not 'traceable' there.

Next amongst the people who helped me come three Shorthand Writers, Messrs. Subramanian Nair, Gopalakrishnan and Venkataramani who gave me invaluable and unstinted help for which I am grateful.

I have also to thank Sri S. T. Srinivasa Gopalachari, an old friend of mine and a much respected and Senior Advocate of the Madras High Court. He was kind enough to supply me with references to certain decisions of Sir Sankaran Nair on Water Rights which anticipated the 'Urlam' decision of the Privy Council and also gave me a short note about the ASHE MURDER CASE. He appeared for some of the accused in the High Court when it came on appeal.

In all cases where I have extracted from journals, papers, etc. I have taken special care to give references to them in the body of the book. If I have inadvertently omitted to give references to books, etc., from which I have received information, I beg to offer my apologies to their Editors and Publishers. Of course, my chief authority, as mentioned already, is my personal knowledge of Sir Sankaran Nair and the most important events of his career.

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BOOK I

ERRATA

The following errors are regretted :—

Page	6	— Line 1	— Read	'Bhuchanan' as 'Buchanan'
,,		Foot Note	,,	'Phyrsis' as 'Thyrsis'
,,	8	— Line 5	,,	'Munisiff' as 'Munsiff'
,,		,, 11	,,	'Exellency' as 'Excellency'
,,	11	,, 7	,,	'compilor' as 'compiler'
,,	13	Last Line	,,	'facitiously' as 'facetiously'
,,	14	— Line 15	,,	'were' as 'was'
,,		,, 20	,,	'Justic' as 'Justice'
,,	18	,, 10	,,	'belive' as 'believe'
,,		,, 12	,,	lawers' as 'lawyers'
,,	19	,, 16	,,	'Comittees' as 'Committees'
,,		,, 22	,,	'as new' as 'as of the new'
,,		,, 26	,,	'Univesity' as 'University'
,,	22	,, 7	,,	'and our end' as 'as our end'
,,	23	,, 10	,,	'mischivous' as 'mischievous'
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,,	36	,, 1	,,	'advocate himself' as 'advocate should himself'
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CHAPTER I

INTRODUCTORY

Sir SANKARAN NAIR

(A fighter for India's Freedom)

"I have appointed the ablest man I could find" said the Secretary of State for India when he was asked by the 'Opposition' why Mr. Sankaran Nair, a Congressman, was appointed Advocate General. An ardent Congressman from his early days Sir Sankaran Nair, presided at the age of 40 over the 13th Session of the Indian National Congress held at Amaroti in 1897. He was the youngest President that the Congress had till then. In the same year, he presided over the first 'Madras Provincial Conference'. As the author of the 'Malabar Marriage Act' (Act IV of 1896) he was the first non-official member who ever got enacted a piece of legislation by the Legislative Council. He served in the University Senate for many years, and also in its 'Syndicate'. A successful and sound lawyer, a model advocate, he was the first Indian appointed permanently to the high office of the Advocate-General which he held with conspicuous ability. An able Judge, absolutely impartial, he was respected by the Brahmins and the non-Brahmins alike and by all those who came in contact with him. He was the third Indian appointed to the Viceroy's Executive Council the 'Holy of Holies'[1] to use the language of Sir Stanley Reed.

He presided over the All India Social Conference in 1924 which event marked him out as the foremost Social Reform leader of his time in all India. An ardent freemason, he was one of the principal founders of the first Scottish Lodge in Madras. Fearless courage, and absolute independence were his marked characteristics.

1. See 'The India I Knew' by Sir Stanley Reed, Page 75.

> "Sir Sankaran Nair was the most prominent malabari of his day and as Jurist, Journalist, Legislator, Social Reformer, Administrator and Politician, played no small part in the development of Indian life of the last century"[2].

His activities were many-sided; above all, he was a front-rank fighter for India's freedom. The story of such a great man is a rich heritage to his countrymen to be ever cherished. Unquestionably his was a dedicated life in the cause of India's social and political uplift.

2. See 'The Times' 1934. 25-4-1934).

CHAPTER II

CHETTUR TARWAD—ITS ORIGIN—VILLAGE OF MANKARA—MANGERI KOTTAH—THE BATTLE OF MANKARA—BUCHANAN'S DESCRIPTION OF THE VILLAGE—THE VILLAGE THEN AND NOW

THE 'Chettur Tarwad'[1] to which Sir Sankaran Nair belonged was a well-to-do upper middle class 'Nair Tarwad'. It has various branches in different villages of the Palghat Taluk; some well-to-do, some poor, each living in its own 'Tarwad' house under its own 'Karanavan'.[2]

The home village of the 'Tarwad' is Mankara, one of the villages of the Palghat Taluq, in South Malabar. At this distance of time, it is difficult to say when the 'Tarwad' first settled in Mankara. It is, however, clear that the people of a 'Tarwad' called 'Chettur' lived in the village of 'Mankara' in 1782 at the time of 'Tippu's invasion, for in that year the army of Tippu passed through Mankara and fought a battle near the ancient 'Chettur House' (See below 'The Battle of Mankara'). By that time the family must have built its house and acquired lands in the village. The 'Ancient Tarwad House' no longer exists; but the compound and the adjoining lands are still in our family's possession.

Sir Sankaran Nair was born on the 11th July 1857. The 'Tarwad' house (Chettur Puthiya Veedu) (New House) stands near the 'Mankara' Railway station on the Southern Railway. The village is near Bharatha Puzha'—strictly the 'Ponnani River'—(locally called the 'Kalikavu River' as it flows by the village 'Kali'

1. Tarwad is a joint matriarchal family descented from a common ancestor.

2. 'Karanavan' is the seniormost male member who manages the 'Tarwad' and its property.

temple). This river, 416 miles long, rises in the 'Walayar Hills' in the adjoining Coimbatore District, flows through Malabar, and empties itself in the Arabian sea near 'Ponnani'.

At a 'ford' nearby the 'Kalikavu Temple', a much travelled road from Palghat to Calicut—shorter than the main trunk road—crosses the river, and proceeds for about a mile on its way to join the trunk road at Kootupatha' (Junction Road). On this road (called 'Pazhaya Patha' to distinguish it from the trunk road 'Puthiya Patha') about half a mile from the river and a few yards away from it and towards the South, stood the 'Ancient Tarwad House' of the 'Chettur' people. On the right side of the road, there was a mud-built fort called 'Mangeri Kottah' (fort) which Hyder Ali had built along with other 'Kottahs' in other places, in a chain, to keep control over Malabar. Along the 'Pazhaya Patha' during the Mysorean wars, Mohammdan Soldiers used to pass to and fro frequently, from Palghat to Calicut.

The village is of some historical importance, as the scene of a very stiff battle between the remnants of the army of Col. Humberstone hurriedly fleeing from Palghat, where he had gone to take the 'Palghat' fort by surprise and the soldiers of Tippu following closely on their heels. The rival forces crossed the river and clashed in battle on the 2nd November 1782, on a vast field near the 'Ancient Tarwad House' of the Chettur people, from where, the tradition says, bullets were often found in olden days. The details of the battle are unknown. The inmates of the Chettur house panicked and fled, to a village about two miles distant from Mankara called 'Kalloor', not far from the 'Parli' Railway Station. The right flank of Col. Humberstone army was protected by the 'Mangeri Kottah', which he had occupied when he passed through Mankara on his way from Ponnani to Palghat in late September 1782. Col. Humberstone repelled the attack 'with judgement and spirit'.[3]

During the flight the Col. retired to the fort, remained in it for two or three weeks, and left it precipitately on receiving urgent orders from the head-quarters 'to return to the coast.[4] On the

3 & 4. 'Wilk's Historical sketches.

12th November, (the dates are uncertain) before he left the place he demolished 'Mangeri Kottah'. Tippu, who had pursued, Col. Humberstone in a hurricane march from Palghat, rushed through Mankara; but his quarry had escaped, and he was unable to catch him. When the 'Kottah' was destroyed, the village gained its old name 'Mankara'.

The 'Kottah' has completely disappeared and in its place now stands a free school started by Sir Sankaran Nair. Some years ago before his death he gifted it to the Malabar District Board. The 'Chunnam' (slaked lime) column which he had built to mark the place where the 'Kottah' had originally stood has also disappeared. In my boyhood days, I have seen the ruins of the towers and turrets of the 'Kottah'. For a long time, the place was believed to be haunted by ghosts of the dead soldiers.

Some years later, in 1800, 'Buchanan' the famous traveller passed through the village on his way to 'Mysore, Malabar and Canara'. He also went through the neighbouring village of Laccadi Kottah'. He gives the following short, but interesting description of the two villages.

"The fort is at 'Mangada' called by Major Rennel 'Mangeri Kottay'. The fort that was there has gone entirely to ruins, and there is no market in the place. The country is very beautiful, a mixture of little hills, swelling grounds and rice fields, which seems to bear a small proportion to the 'high land'. These are in a very bad state of culture. 'Seasum' is the most common crop and it looks very well. 'Laccadi Kottah' is the territory formerly belonging to the 'Tamuri Raj'. The remains of the fort are now scarcely discernible. There is in the place a small market chiefly inhabited by Tamils, for the original natives of the Malayala seems rarely, if ever, to have kept shops.[5]

The village has now changed much. A railway line runs through its extreme Southern fringe (parallel to the river) and on it stands the Mankara Railway station, which had been built on the ground gifted to the Railway by Sir Sankaran Nair, years ago. The other changes may not interest the general reader. The 'Old

5. 'Buchanan' volume II—page 387-388.

world look' which was its main charm has gone. If Bhuchanan were now to visit his beautiful village and look around, he may well wonder and exclaim:

" How changed here is each spot man makes or fills,"
" Nothing in (Mankara) remains the same "
" the village ground, its ancient fortress lacks,"
" and from the fields has gone the 'sesame's name "[6]

6. Adapted from Phyrsis by Mathew Arnold.

CHAPTER III

THE 'KALLOOR' FAMILY—KARANAVAN SANKARAMMAN—CHETTUR PUTHIYA VEEDU — SANKARAN NAIR'S PARENTS

THE members of the old 'Chettur House' who had fled to 'Kalloor' on the approach of the rival armies, settled in the new village, where they lived and prospered, under a famous 'Karanavan' affectionately known in the locality as 'Sankaramman' (uncle 'Sankaran'). Able and efficient, he became quite a power in the village, tradition says that when he went out inspecting 'tarwad properties' and visiting branch 'tarwads' he used to go riding on an elephant. About 150 years ago, when the family became too big for efficient management, because of increasing members, Sir Sankaran Nair's mother's branch (tavazhi) with its 'Branch Karanavan' left the main house-as people often do in Malabar-returned to Mankara and settled down in an already existing house of the family called 'Pazhaya Veedu' (old house). It was in this house Sir Sankaran Nair was born. A few years later 'Chettur Puthia Veedu' was built exclusively for Sankaran Nair's mother Parvathy Amma and her children, by her husband, the Tahsildar. This house, close to the Pazhaya Veedu, was built near the remains of 'Mangeri Kottah'.

Sir Sankaran Nair's father Ramunni Panicker belonged to a caste which trained men for the army. His family used to train 'Nair' youths who came to its 'Kalari', (Gymnasium); and taught them the art of war. The 'Mammayil' family to which he belonged is well known in the 'Ponnani' taluk. Its 'tarwad' house is situated in 'Guruvayoor' very near the celebrated 'Guruvayoor' temple. In front of the temple, a 'Deepasthambham' has been erected by Sir Sankaran Nair in memory of his beloved father. One of Ramuni Panicker's brother was a Sheristhadar in the Malabar

Collectorate, and another brother was a Tahsildar like himself. The family enjoyed much prized-prerogatives in the locality. At that time, the offices held by Sankaran Nair's father and his brother were the highest in the Executive Department which Indians could hold under the British Government. The village Munisiffship-the lowest executive post-under the British Government was hereditarily held by the Chettur family. These facts recall to my mind an after dinner conversation which Sir Sankaran Nair told me he had once with Lord Hardinge when he was a member of his Government. In the course of the conversation Sir Sankaran Nair had occasion to tell His Exellency that his family had on two occasions held the highest and the lowest executive posts under the British Government. When the Viceroy asked him to explain what he meant by the statement, he told him that his father and his father's brother held in their time the highest executive post then open to the Indians and the Village munsiffship, the lowest executive post, was hereditarily held by the Chettur family and that at the moment he himself was holding the highest executive place open to an Indian under the British Government at the time. His Excellency complimented Sir Sankaran Nair and his family. To proceed, both the Tahsildar and his brothers were well known throughout the district, especially Ramunni Panicker, who was esteemed by everybody in the district as a great official of immense power and influence.

I have vivid recollections of my grandfather in his old age. He was tall, and broad chested, majestic looking, always kind and affectionate, to his grand children. In his prime of life he must have been a striking personality. He did not know 'English', but he spoke 'Hindusthani' fluently, and could read and write in that language.

The knowledge of 'English' had not become prevalent in the district at that time, since the country had been ceded to the English by Tippu, only in 1792, and Civil Administration had been transferred from the Bombay Presidency to that of Madras with effect (only) from the 1st July 1800.[1]

Parvathi Amma, was the nucleus of the 'Chettur Puthiya Veedu' family. She died leaving surviving her, seven children-three sons,

1. Logan's Malabar Manual, Vol. 1 page 71 and 532.

and four daughters. The first two, were daughters and Parvathi Amma was anxious to have a son. She went to the Guruvayoor Temple where she fasted and prayed for months and months for the gift of a male child. Lord Guruvayoorappan answered her prayer and the boy Sankaran was born. He was a fine child, and as he grew older, he developed into a remarkably good looking man. A contemporary of his, who knew him well from 1887, onwards, wrote "he has a majestic personality and is a tall and strong man."[2]

The property received from the main 'Kalloor' tarwad for the maintenance of this branch was barely sufficient to meet the expenses of the members of the family which were fast increasing. The extra needs of the tarwad, the expenses for the education of the boys, etc. had to be met from the modest pension of my grandfather. Hopes for the betterment of the family were all fixed upon young Sankaran, the eldest son, and the 'karanavan' of the tarwad. On the rice giving day[3] the old and infirm 'karanavan' – the famous 'Sankaramman' came all the way from 'Kalloor' to attend the ceremony. The doting parents invited him to name the child. In order to perpetuate his own name in the Chettur tarwad,—as he afterwards said—'Sankaramman' christened him 'Sankaran.'

2. Madras Weekly Notes 1927—Page 81.

3. 'Rice-giving' means the occasion on which a child is fed with rice for the first time and is generally the time when he is given a name.

II

CHAPTER IV

SIR SANKARAN NAIR'S EDUCATION—MOTHER'S DEATH—HE ASSUMES 'KARANAVANSHIP'

SANKARAN Nair's early education began at 'Angadipuram' from where he went to 'Cannanore' and later, joined the Provincial School at 'Calicut'. In these schools he came early under the influence of excellent European teachers from whom he learned to speak and write 'English' correctly and well. Here, he also imbibed his great love for the English language. I believe that Cecil M. Barrow, M.A. Oxon—the Compilor of the once well known book 'Barrow's Readings in Prose and Poetry' and later, Principal of the Victoria College, Palghat, and of the Doveton College, Madras, was one of his teachers. I have heard Sankaran Nair speak of him with great respect and affection. I have two books with me which show the wide range of Sankaran Nair's reading in 'English' during his provincial school days. One is Chamber's miscellaney', a well-thumbed prize book which contains copious extracts in prose and poetry from well known English writers, and the other is a well-worn out six penny edition of Sir Walter Scott's famous novel 'Ivanhoe'. An early friend of Sankaran Nair, who knew him well writing his reminiscences in a legal journal mentions the fact that Sankaran Nair first came across 'nil desperandum' in 'Ivanhoe' an expression which readers of his presidential address at Amaroti know how aptly he used in the last paragraph of his speech. The writer also says this is an instance of the tenacious memory which Sankaran Nair had.[1] From the Provincial School he passed the 'First in Arts' Examination obtaining a first class. You can still see his name in gilt characters on the walls of the Government Training College (then the Provincial School). Before his schooling began, he was taught 'Sanskrit' at home, in which he obtained a certain

1. See Madras Weekly Notes.

amount of proficiency, but he discontinued the study of it when he came to Madras—though in later days, he had a 'pandit' at home to guide him in studying 'Hindu Law Books' and Vedic literature. He left Calicut for Madras to prosecute his studies in 1876 (the year before Kerala Vidya Sala was started). At Madras he joined the 'Presidency College' where he received education at the hands of the well known educationists Edmund Thompson and W.A. Porter. Here, he gained many prizes, and won the much coveted 'Elphinstone' Essay Prize. The late Mr. V. C. Seshachari, Editor of the 'Madras Law Weekly' used to say with glowing pride to his friends in the High Court that Sankaran Nair as a student used to be sent occasionally to the lower classes to teach the students, and that he had the credit of having come under his influence from those days. He graduated in due course in 1878 obtaining high distinction in 'Mathematics and Natural Philosophy' and gaining prizes in English and History. In his college days, he took great interest in the study of 'History',- both European and Indian—and 'Economics', which became later, his favourite subjects.

After graduation, he joined the Madras Law College. While his mother was lying seriously ill Sankaran Nair received the glad news from Madras, that he passed the B. L. Examination in 1879. This gave great pleasure to his parents, and the family was jubilant. Later, it was learnt that he stood **first** in the list of the successful candidates of the year obtaining the maximum marks in Hindu Law and very high marks in Jurisprudence. Before his mother's death which happened soon after the examination result was known his mother advised him to practise as a High Court Vakil in Madras and desired him not to enter Government service.

On the death of his mother Sankaran Nair assumed full responsibilities as the 'Karanavan' of the 'Puthiya Veedu Tarwad, and this tarwad prospered under his Karanavanship. The love and respect in which he was held in the tarwad was so great that even today 'mothers' in the family are not happy if, when they have sons, they do not name one of them 'Sankaran'.

CHAPTER V

SANKARAN NAIR'S APPRENTICESHIP DAYS— A UNIQUE EXPERIENCE

AFTER taking his B. L. Degree, Sankaran Nair took steps to become a High Court Vakil. There were at the time, well known and efficient European Barristers, practising in the High Court. Mr. (later, Sir) Horatio Shepherd, one of the best known of them was then the Advocate General. He later became also a Judge of the High Court. Sankaran Nair arranged to serve his one year's term of apprenticeship under him in 1879.

Sankaran Nair often spoke of his apprenticeship days as a happy period of his life. Mr. Shepherd lived in 'Spring Gardens', Mount Road in those days, and Sankaran Nair used to go there every morning from Mylapore where he lived, to work in his Library. The 'Master' and the 'apprentice' got on very well together. Mr. Shepherd was satisfied with Sankaran Nair's work in his 'chambers'. Sankaran Nair went to the High Court regularly, sat by Mr. Shepherd's side attending to his cases and taking 'notes' for him. He followed his 'master's arguments carefully, and we may presume that he studied the 'art of advocacy' as practised by the English barristers. He must have developed his practical knowledge of law also, following all his 'master's' cases carefully. Gradually, Mr. Shepherd's faith in Sankaran Nair's knowledge of law and general capacity for legal work increased to such an extent that as time went on, Sankaran Nair used to write 'opinions' sometimes on matters relating to Government, which Mr. Shepherd always accepted with but few corrections, here and there. He told me that Mr. Shepherd fell ill once and legal opinions on various matters were due to the government; and he wrote them all, and Mr. Shepherd signed them, and sent them to government remarking facitiously when he recovered, "I don't know Sankaran into what

pits, you have led me", to which Sankaran Nair answered, there was no need to apprehend any trouble. It was in this way that 'apprentices' in those days received training in their masters' chambers.

On Saturdays and Sundays when the court was not sitting, Sankaran Nair used to go to the 'Spring Gardens', and read with Mr. Shepherd the latest general books published in England, a good number of which Mr. Shepherd used to get from there regularly. At that time—to mention one of the books - Mr. Kitchin's History of France had been published in England and when Mr. Shepherd's volumes arrived in India, Sankaran Nair read the entire book with Mr. Shepherd with the latter's illuminating criticisms here and there as they went along reading. In this way Sankaran Nair's general knowledge of English literature and history and allied subjects were also improved during his apprenticeship days. The knowledge thus gained was greatly helpful to him when he began later to take interest in public life.

Englishmen of those days took a kind of 'paternal' interest in young men of promise who came under their notice. The famous High Court Judge Mr. Justic Holloway was one of such men. I have heard my uncle say that Justice Holloway was always fond of inviting groups of them to his house on holidays for reading with him books on law, literature and history. Sankaran Nair was one of his favourites. On one such occasion, impressed with his fine style of reading and powers of quick understanding, he (Justice Holloway) predicted a brilliant future for him at the Bar.

Ever since his apprenticeship days, Sankaran Nair never had money sent to him for his maintenance from home. He said that Mr. Shepherd's clients used to press him with money for instructing Mr. Shepherd in their cases, and when he refused them, as he always did, they used to leave the money on the table and go away. He brought such matters to Mr. Shepherd's notice, who had no objection to his accepting the money. Though only an apprentice, practically in all the cases he acted as if he was Mr. Shepherd's paid junior. All those showed the ample confidence the clients had in him. The money so received was amply sufficient for his expenses.

Before I conclude this account of Sankaran Nair's apprenticeship days, I must not forget to mention that he had the unique chance of arguing a case before a Bench, even while he was undergoing apprenticeship. Sir Horatio was arguing a case before a Bench, and as apprentices and juniors generally do, Sankaran Nair was sitting by his side helping him looking up references and giving him "authorities" etc. The case involved a question of Hindu Law. Sankaran Nair was an expert in Hindu Law, having obtained as already stated, maximum marks in that subject in the University Examination. After Sir Horatio had finished his argument, one of the judges observed that his apprentice seemed to take a good deal of interest in the case and if he had no objection, the Bench would like to hear the young man, if he had anything to say. This was an unexpected situation. Of course, Sankaran Nair never expected that he would be asked to argue the case. However, he respectfully thanked the Judge for asking him to argue, and argued the case in his own way. All the while, Sir Horatio had been sitting by his side. The Judges were very much pleased with the argument, and complimented him on his performance. I do not think that any lawyer in Madras can boast of having had such an experience which, indeed, must be considered unique.

III

CHAPTER VI

SANKARAN NAIR'S CAREER AS A LAWYER UPTO 1897

SANKARAN Nair was enrolled as a High Court Vakil on 24th of March 1880 in his 23rd year. At that time with a galaxy of eminent Judges on the Bench and efficient lawyers—English and Indian—at the Bar, the Madras High Court had almost reached the zenith of its reputation. Most of the law appointments under the Government were held by European barristers, but the Indians were slowly making their headway displacing them. Amongst the Indian Lawyers, the leading men were Mr. (later Sir) Subramania Iyer and Mr. (later Sir) Bashyam Iyengar, but younger men were working their way up and taking recognised places for themselves at the Bar; amongst the most leading of them was Sankaran Nair. After his enrolment, he accepted the position of a District Munsiff for some time, but within a few months left it and reverted to the Bar.

Early in his career an important incident occured which showed the independent spirit of Sankaran Nair. When he joined the Bar, most of the valuable practice of the High Court, on its Original, as well as Appellate side, was in the hands of the European Barristers, who were generally helped in their work by High Court Vakils, working under them as their 'juniors'. With a view to wrest the practice from the hands of European Barristers, the Vakil's Association brought a resolution at one of its meetings, that no Indian lawyer should, from, thenceforward, act as a junior to an English Barrister; in other words, no High Court Vakil should engage a European Barrister as his senior in any case, however much his client may want him to do so. All the Members of the Association, except Sankaran Nair, supported it. He opposed it on principle and as against the etiquette of the Bar. He protested that he must have the right to select the senior lawyer whom he and his clients liked. Of course, he was overruled, and the

resolution was unanimously passed by the rest of the Members. At this time, Sankaran Nair was only a 'Junior' of 4 or 5 years standing, and was just beginning to have a rising practice. Few people of his standing would have acted as boldly as he did and risked their position at the Bar. Thus he began to show from his very early days his fearless independence and courage which became one of his marked characteristics. He became a marked man in the eyes of all the Indian lawyers. But, he did not mind it. He stuck to his guns, and went on with his practice as if nothing detrimental to his interests had happened. He suffered a little, I belive, in the early days, because of the opposition from the rest of the Indian lawers, but he was able to maintain his position and forge his way ahead. After Mr. (later Sir) Subramania Iyer's elevation to the Bench, there was no Indian practitioner who had larger practice than he had, except Sir Bashyam Iyengar, who, of course, was the admitted leader of the Indian Bar and also his senior in standing. His practice grew up very rapidly. Sankaran Nair had to work his own way up, independently and unaided by any one. By his own ability and efficiency, he was able to maintain his position, and he soon became one of the leaders of the Bar, next only to Sir Bashyam Iyengar. I have heard from him that on one occasion he was engaged on one side or other in all the cases before a Bench and that Bench had practically to retire as he was actually engaged in arguing a case in another court at the time. On this occasion, Sir Muthuswami Iyer sent for him to his Chambers and gave him friendly advice that he should try to cut down his work raising his fee, which advice he followed coming as it did from a judge who was interested in him and his work at the Bar.

His practice, which originally was mainly from the West Coast, became gradually an all-Presidency one. He was much respected in the mofussil. In one of the recent small books, written in Malayalam, published a year or two ago, called "Randu Maha Resikanmar", the writer, a clerk in one of the District Munsiff's court, narrates a story, how the District Munsiff himself went to the Railway Station to receive Sankaran Nair, when he went to argue a case before him; certainly, a very unusual procedure. Such was the reputation that Sankaran Nair, had in Malabar.

A unique feature of his career was that he was able to combine successfully activities in public life, outside the court, along with his busy practice at the Bar and attain success and high eminence in both spheres of activities. A few of these important activities have already been mentioned in the introductory chapter but to get a complete picture of him as a successful lawyer, it is necessary that I should draw attention to some of these and a few others which enhanced his reputation amongst the public and also helped his professional success. His practice in no way suffered on account of his activities outside the court; on the other hand they helped him to enhance his general reputation.

A few of these activities not mentioned in the introductory chapter may now be mentioned. In 1884 - only 5 years after his enrolment-he was appointed a member of a Committee appointed by the Government of Madras to enquire into the state of Malabar. He became a member of many other Comittees also, the chief of which was the Committee to enquire into the management of temples. It is well known that he helped the Government in getting the Malabar Tenants Improvements Bill passed through the Legislative Council even before he was nominated to that body, which took place in 1890. It may be mentioned that he was a member of the Old Legislative Council as well as new Legislative Council under Lord Cross's Act. In 1889 he was nominated a Fellow of the Madras University and became a member of the 'Syndicate' for many years. When Lord Raleigh's Commission visited Madras with a view to popularise Lord Curzon's Univesity Act, Sir Sankaran Nair acted as its Honorary Secretary and prepared the questionnaire for examining witnesses. The questionnaire was so framed that it exposed the defects of Lord Curzon's Act; ultimately, the commission was not able to achieve its objects. He was also a Member of the First Education Commission that later visited Madras. In these capacities, he must have gained much valuable insight into the educational problems which must have stood him in good stead in his work as Education Member of the Government of India. In the very early days of his career, at the instance of Sir William Hunter, he wrote an account of the social customs in Malabar[2] which because of its intrinsic value was utilized by West

2. See the (Cyclopedia of India—Vol. III)

and Buhler in their book 'Digest of Hindu Law'. I have already referred to the Malabar Marriage Act, of which he was the author. By this time he had obtained high eminence as a social reformer. Later he became the President of the Madras Social Reform Association. His literary and social reform activities will be dealt with separately as I proceed with the story of his life.

His early political activities culminated in his becoming the President of the First Provincial Conference held in Madras in 1897 and the President of the Indian National Congress. This will be dealt with separately in the next chapter. In summarising his outside activities, I must not forget to mention that he was a Freemason and took part in its proceedings and became later one of the founders of the Scottish Lodge [3] of Freemasons in Madras.

One wonders how Sankaran Nair managed to combine all these activities along with his practice at the Bar, which was becoming heavier year by year. By 1897 he had obtained a distinguished position at the Madras Bar. This was an important year in the history of his life. In that year he was called upon to preside over the first Provincial Conference in Madras and was also chosen by the Committee of the Indian National Congress to preside over its session held at Amraoti.

3. This was called Ashoka Lodge as mentioned to me by Sri Srinivasagopalachariar.

CHAPTER VII

SANKARAN NAIR—CONGRESS PRESIDENT

IN 1885, Allan Octavian Hume, a retird I.C.S. Anglo-Indian official, 'a man of great vision', founded the Indian National Congress. Its first open session was held at Bombay under the presidentship of the 'Grand Old Man of India' Dadhabhai Naoroji. Sessions of the Congress were held every year, December, under Presidents of great ability and renown. The Congress proceeded from strength to strength. Its 13th session held at Amraoti in December 1897, was presided over by Sir Sankaran Nair.

The contemporary newspapers of the day were full of glowing accounts of the President's speech. After expressing gratitude to the Government for what it has done to the country, as usual, the speech dealt with the 'notable events' of the day, and pointed out to the Government how people were expecting great reforms in administration. The year 1897 was full of troubles for India. In consequence of the outbreak of the 'plague' in Bombay and the measures taken by the Government to suppress it, serious troubles broke out, especially in Poona. The well known 'Natu brothers' were deported without trial under Act XXV of 1827 (Bombay). Balagangadhar Tilak, the most respected Maharatta leader, was convicted and punished. The law of sedition was sought to be amended; the Government behaved as if there was 'conspiracy' and 'sedition' all over the country. These events were severely condemned by Sankaran Nair in his powerful speech. Besides these, the speech dealt with the poverty of the people, the demand for permanent settlement, trial by jury, etc. He made clear to the Government that the educated people were hoping for political reforms and self-government. The concluding paragraph of the speech dealt with India's political future. He told his fellow citizens that they have no need to despair, but they should be alive to their duties and responsiblities and the glorious future

which awaited them could be attained only by the zealous efforts of their educated and enlightened sons. In ringing language he concluded his oration ;

> " Let **nil desperandum** be our motto ; let not 'insidious smile or angry frown' deter us from following the straight path of duty ; and with the welfare and progress of our land and our end and aim, let us endeavour under a solemn sense of responsibility, as well as loyalty to our country, to bring about the glorious future which must inevitably crown our efforts".

At this distance of time, it is difficult to get the contemporary records of the proceedings, but luckily Sir Surendranath Banerjee has left the following short description of the same in his book 'A NATION IN MAKING' : —

> "I was asked to move the Resoltution proposing Mr. Sankaran Nair as President of the Congress, a duty that I have often since performed. I said that times were critical and we needed the guidance and leadership of such a man as he. Mr. Sankaran Nair was then an advocate of the Madras High Court, and he had already attained a distinguished position at the Bar. Subsequently he became a Judge of the High Court and a Member of the Viceroy's Executive Council. His Presidential speech was a strong and masculine utterance, worthy of the man and suited to the times when the forces of reaction were so strongly in evidence. "It is impossible to argue a man into slavery in the English language" said he; and his was a vigorous plea for free institutions as the true cure for degradation and misery, and racial and credal conflicts." (Page 153–154)

Sir Sankaran Nair once told me that Mr. W. S. Caine, M. P. Wrote to him that his was the ablest speech that had ever been delivered from the Presidential Chair.

By now Sir Sankaran Nair had established his position as a veteran Congressman. His advice was always sought by Congress. He attended many of its annual sessions till he became a Judge of the High Court in 1904.

CHAPTER VIII

SANKARAN NAIR—GOVERNMENT PLEADER AND PUBLIC PROSECUTOR—SIVAKASI RIOTS CASE—PROBLEM OF MILITARY SERVICE

TO resume, at the beginnig of his career, Sankaran Nair lived in Mylapore. Later, sometime in 1890, he removed himself to Egmore and lived in a palatial house, with a vast compound all around, known in the olden days, as 'The Palms', on the Poonamallee High Road. Around him, clustered a few well-known lawyers, Messrs. Seshagiri Iyer (later Justice), K Narayana Rao, Krishnan (later Justice) who for sometime acted as Public Prosecutor and Government Pleader, Rangachari (later Diwan Bahadur) and a few others-all of whom he helped to come into prominence. In the corridors of the High Court, young and mischivous lawyers referred to this *coterie* of lawyers as the 'Egmore clique' (of course neither used by them nor understood by others, in any offensive sense, but used only jocularly) as opposed to the 'Mylapore clique', composed of the Mylapore Lawyers.

In his 'Reminiscences of the Bench and Bar'[1] written in 1927, by one who, according to him, knew Sankaran Nair from 1887 rather intimately, the writer says that there were three associations of lawyers. The first was headed by Sankaran Nair, who lived in Egmore, the second by Messrs. Mani Iyer and Bashyam Iyengar, who lived in Mylapore and the third by Messrs. Rama Rao and Parthasarathi Iyengar, who lived in Triplicane. I must confess that I never heard of the third association referred to, though I knew Parthasarathy Iyengar and Rama Rao, who were distinguished lawyers of the time nor did I hear that these associations were called by the names of the three 'Inns of court' 'Inner Temple', 'Middle Temple' and 'Gray's Inn' as mentioned by the writer.

1. The Madras Weekly Notes — 1927 Page 81-83.

Mr. Parthasarathy Iyengar was a great friend of Sankaran Nair and ultimately became a District Judge. I have heard it from Sankaran Nair that Parthasarathy Iyengar, who stood below him in the list of successful candidates in the B. L. Examination told him he wanted to beat him and asked him to study for M. L. Examination. Sankaran Nair undertook the study, but had to give it up on account of his mother's death and the responsibilities that developed on him in consequence. Parthasarathy Iyengar passed his M. L., a very difficult examination in those days and became an advocate. After retiring from the District Judgeship, he practised at the Bar for some years. The Hon'ble Mr. Rama Rao was once one of the leaders of the Bar but gradually faded away. There was another well known lawyer at the time, Mr. Ramachandra Rao Sahib, who was very much respected, as a great jurist.

To proceed, during the absence of Mr. Powell, in 1899, Sankaran Nair was selected to act as Government Pleader and Public Prosecutor of Madras. It was a greatly coveted post, and if the incumbent did his work well, it led to the Bench. The place was always held by European Barristers. Sir Subramania Iyer was the first Indian appointed as Government Pleader and Public Prosecutor and Sankaran Nair was the second. The story how he managed to get the appointment is very interesting and I believe is narrated in his autobiography. I would record here what I have heard about it myself. It was represented to the appointing authorities by some eminent men-that by his position and standing at the Bar, Sankaran Nair was the best man for the place, but that he would not care for it, as it would interfere with his huge practice. Then, the names of two or three men were mentioned as the next best for the place. It would seem that, when this story reached the ears of Sankaran Nair he thought it was time that he should do something to help himself. Accordingly, he called on the Governor and told him that he would like to get the place and that he was the seniormost amongst the men, whom the Government might think of in connection with that place. He added that, as regards his position and standing at the Bar, of course, the Chief Justice and other Judges, when consulted would give a correct opinion. Lastly, he said that he saw no reason why should he be 'over looked', and that he should be appointed to the vacant place. "That settles it", the Governor

observed humourously and the conversation ended. Later, the Madras Legal world heard that Sankaran Nair was appointed as Government Pleader and Public Prosecutor. The writer in 'The Madras Law Journal', Vol XXIX, 1915 (Page 101-103) says..... ....." with such a distinguished record behind him it was no wonder that he was selected to act as Government Pleader....." I, for my part, am somewhat surprised at this statement as I happen to know that had he not moved in the matter at the right time, probably Sankaran Nair with all his 'distinguished record' would not have got the coveted place.

As the Government Public Prosecutor, he was called upon to conduct the 'Sivakasi Riots Case', in which the Shanars and Maravars were involved, and many lives on either side were lost. The military were called in to suppress the riots. Several people were tried. "Nineteen hundred and fifty eight persons were arrested; special Magistrates and three additional Sessions Judges were appointed for the trial of the offenders at Tinnevelly; These cases were conducted by the local Public Prosecutors. Sir Sankaran Nair was sent from Madras to conduct the more important of the cases and to give advice to the local Government Pleaders whenever necessary. He took Mr. (later Diwan Bahadur) Rangachari as his junior from Madras. The trial lasted for about six months. The fairness with which he conducted the prosecution gained for Sankaran Nair great praise from both the Government and the public. By his conduct in this case, he earned the name of an ideal Public Prosecutor.

In those days, the two offices of Government Pleadership and Public Prosecutorship were held by one and the same individual, and the income was very substantial. Special fees were claimed for big cases. I know that Sankaran Nair was paid Rs. 50,000/- as a special fee for conducting the 'Sivakasi Riots Case' and he used to tell laughingly, that the officer who drew the cheque in his favour told him, that he had never drawn a cheque for such a huge amount in his life. Later the joint office was divided into Government Pleadership and Public Prosecutorship, as the work of the Department became very heavy, and separate incumbents were appointed to the two places. I believe, this happened about 1915 or so. Ramesam (later Mr. Justice) was the first Government

Pleader, so appointed, and Mr. Osborn, Barrister-at-Law, was the first Public Prosecutor. When Mr. Ramesam was elevated to the Bench I had the honour of succeeding him as the Government Pleader.

During his time as Government Pleader and Public Prosecutor, two incidents happened, neither of which had anything to do with law or lawyers. I have stated before that Sankaran Nair's father belonged to the military caste and his family trained soldiers for the local militia. Nairs are soldiers; Sankaran Nair had the making of a soldier in him. He was tall and strong and his general physique was magnificient. He was a good horseman, also. He applied to become a member in the Madras Artillery Volunteer Corps. His application was accepted and he was duly enrolled as a member. Being an Indian, he knew that the members of the corps, who were Europeans, resented his admission. He could have enforced his membership if he desired to do so, but to avoid all troubles, he withdrew his application and there the matter ended. The other incident was a very amusing one. The British were during this period involved in the Boer war. The Anglo-Indians of India wanted to organise a force to be sent to Africa to help the British and for this purpose asked the various European officials if they would join the enterprise. Evidently thinking that Sankaran Nair was not an Indian, as all the Government Pleaders in India, here and elsewhere were Europeans, they asked him also if he would join; but, when they came to know that he was an Indian they began to create difficulties in his way. They intimated to him that he would have to live the life of an ordinary soldier in the field, groom his horse and do other menial duties. Nothing daunted, Sankaran Nair agreed to comply with all the rules. A long time elapsed and nothing further was heard from the authorities.[1]

1. This incident is mentioned in some of the legal journals.

CHAPTER IX

GOVERNMENT PLEADERSHIP CONTINUED— C. I. E.—APPOINTED ACTING JUDGE—SUPERSEDED— REVERTS TO THE BAR—BECOMES PERMANENT ADVOCATE GENERAL—PERMANENT JUDGE.

WHILE he was the Government Pleader and Public Prosecutor, Sankaran Nair presided over the Madras Industrial Exhibition opened by His Highness the Maharaja of Mysore in January 1904. It was a great success. He presided over the Social Conference also held at the time. He had by now become a leading Social Reformer in the country. In the same year he was made a C.I.E. On the 11 th July 1904, he was elevated to the Bench-the first Non-Brahmin in Madras to be appointed a Judge of the High Court. Sankaran Nair had to officiate three times as a Judge before he was confirmed-first in 1904 in the place of Mr. Justice Benson, second in 1905 in the place of Sir Subramania Iyer and the third in December 1905 in the place of Justice Davis.

When he had reverted to the Bar after the termination of one acting vacancy, and was waiting for the next vacancy, which should have been his in due course, an article from his pen appeard in the 'CONTEMPORARY REVIEW' of May 1906 headed 'A Native Council for India'. It was really a thesis on social legislation. The writer suggested the formation of a 'native council for India' composed exclusively of Indian Social Reformers to consider the passing of measures of social legislation, subject to a veto by the Viceroy. His arguments expressed in plain strong language was this: that owing to the declared neutral policy of the Government in religious and social matters, it was not possible to carry out any social legislation in the country. He therefore suggested the formation of a 'Native Council for India'. To use his own language..... ....."The proclaimed neutrality of the Government in matters

religious had led them to withdraw from all interference with temples and mutts (associations of ascetics) and has produced a state of affairs which is a perfect disgrace to any civilized Government and for which the Government alone seem to be responsible." As another instance in support of his arguments, he cited the administration of Hindu Law by the British Judges. In the course of the discussion, the writer said ".....the so-called Hindu Law which is administered to Hindus is indissolubly bound up with the Hindu religion, or rather with what somebody fancied somebody else had thought or written several hundred years ago about the Hindu religion. In the words of one of the best living authorities on the subject,

> "The consequence was a state of arrested progress, in which no voices were heard unless they came from the tomb. It was as if a German were to administer English Law from the resources of a library furnished with Fleta, Glanville and Bracton and terminating with Lord Coke."

"*It would be nearest the truth to read "Turk" or "Chinaman" for "German" in this oftquoted passage.*"

The italicized passage-though there was nothing offensive in it-irritated the high placed Europeans of the Government and the Anglo-Indians generally, whose attitude towards Indians Sankaran Nair had condemned strongly in a previous paragraph of the article. Purposely misunderstanding the illustration, which was obviously merely "figurative," the question was asked by the Anglo-Indians "does Sankaran Nair take us to be "Turk" or "Chinaman?"[1]. This question reverberated through the corridors of the High Court. It was insisted by his enemies that such language from an Indian however highly placed he may be, should not go unpunished and that a person with such a view should not be appointed a Judge of

1. A somewhat similar incident is mentioned in connection with a speech delivered by Lord Salisbury against the Irish. The incident is thus narrated by Mr. Phillip Magnus in his biography of Gladstone, (954)

> "The liberals made play with an unhappy phrase used by Lord Salisbury on 15th May at St. Jame's Hall The Conservative leader had suggested that some peoples - Hottentots, for example, and Hindoos were incapable of self-government. Liberal speakers everywhere reminded the people that the Tories set Irishmen and Hottentots on a level."

the High Court. The result was Sankaran Nair was over looked when the next vacancy arose and it was given, if I remember rightly, to Mr. J. E. P. Wallis, who was the Advocate-General and who later became the Chief Justice of the High Court and a member of the Privy Council. Sankaran Nair's capacity for judgeship was never questioned, but the condemnation was directed against his general attitude towards the Anglo-Indians.

CHAPTER X

SANKARAN NAIR APPOINTED ADVOCATE GENERAL 1907—TERMINATION OF HIS CAREER AS LAWYER—HIS ROUTINE WORK—METHOD OF ADVOCACY

SANKARAN Nair's supercession caused great excitement in the High Court and concern amongst the public. Everyone wondered what would be his future. Will he be appointed to another vacancy when it occurs or will he have to continue all his life as an ordinary lawyer and fade away in the end? Sankaran Nair himself treated the matter coolly. He went about doing his work in court as usual and never showed any disappointment or distress at the misfortune that befell him.

The High Court's Vakils' Association, which he had offended at the commencement of his career, forgot all differences and acted nobly without delay. It sent strongly worded telegrams to the Secretary of State protesting against the unjust supercession of Sankaran Nair. Various associations in the city with which he was concerned also protested against the Government action. What was going to be the upshot of it all? Many knew that Sankaran Nair had strong friends in England among the politicians and Cabinet members. It was known that amongst his powerful friends were Mr. John Morley (later Lord Morley) the Secretary of State for India, Mr. Asquith, Lord Haldane, to name a few of them. Time passed. I remember one afternoon Sankaran Nair went to Guindy on being asked by His Excellency the Governor, Sir Arthur Lawley to visit him. I learned from him some days later that he did not know what the interview was going to be about though he suspected it might have something to do about the Advocate-Generalship. It would seem that the interview lasted a long time and just when Sankaran Nair was about to leave the Government House, the Governor intimated to him that the

Secretary of State had asked him to offer Sankaran Nair the Advocate-Generalship, which, of course, he accepted. Sankaran Nair told him that he knew about it sometime ago. This was indeed a slap on the face of the Government. Usually the Government makes the recommendation and afterwards announces the appointment. In the case of Sankaran Nair the process was reversed. The offer was first made to him directly by the Secretary of State and then came the interview with the Governor. The protests made by the Vakils' Association and the public must also have had their effect. As observed in the Madras Law Journal [1] in a not over-laudatory article..."".....It only remains to add that official preferments one after another, are believed to have come to him, not by the favour of the men in power on the spot, but sometimes in spite of them and always in due recognition of his position in Indian public life, his intimate knowledge of Indian affairs and his fearless independence". A truer and juster statement was never made.

Sankaran Nair was the first Indian and High Court Vakil to be appointed permanent Advocate-General in India. It was of this appointment-mentioned in the Introductory chapter-the Secretary of State stated that he has appointed the ablest man he could find for the place. His tenure of Advocate-Generalship was very short. It lasted from 18-7-1907 to 8-10-1907 and from 1-11-1907 to 21-11-1907, when he was appointed a permanent Judge of the High Court in the vacancy caused by the retirement of Sir Subramania Iyer. Besides conducting cases on behalf of the Government, which were not many, he had to give opinions in certain cases in which the Government wanted to proceed against certain well-known persons for "sedition". The country was at that time in a state of political unrest. It is difficult to apprise his work as Advocate-General unless one has access to those opinions which, of course, are confidential and now lying buried in the Law Secretariat. Everybody knows that his opinions saved some persons of importance from the charges of "sedition". I have heard that when the Government wanted to proceed against his opinion in certain cases, he told them that they were quite free to do so, but at the last stage of the cases he would exercise the privilege of the Advocate-General to enter

1. See the Madras Law Journal, 1934 Vol. LXVI—Page 109-110.

'nolle prosequi'. It is well-known that during the nights his house was watched by the police officers in mufti, of course, just to see who was coming in and going out. Evidently the Advocate-General was a 'thorn' on the Government's side.

As his appointment as judge marked the termination of his career as a practising lawyer, we may pause a while and examine the causes of his clients. His work for the day during term time began between 3 a.m. and 4 a.m. in the morning. Sankaran Nair was an early riser. Till about 7 a.m. he studied the cases, which he expected to be taken up for disposal that day. Then began interviews with his clients, his own juniors, juniors of other lawyers' who had come to give him instructions and with other people, who had various kinds of business with him, such as members of the Senate and other educational authorities, literary men, people who had come to see him from the mofussil with cases. To instruct him was quite an easy matter because he himself would study the cases and ask the juniors only a few questions, if any, for clarification. When he had no work in the office, he would be engaged in reading books, journals, English and Indian newspapers, One often heard sounds of hearty laughter and discussion from inside the office room. Then came breakfast at about 10-00 a.m. I am mentioning these details to refute the lie of those who have circulated the story that he was an idle man and not much interested in law or the work of his clients. The truth from what I have said may be inferred is quite otherwise. After work in the court, which on busy days went on from 11-00 a.m. to 5-00 p.m. with a short interval for lunch, he would go to the Cosmopolitan Club (of which later he became the President and remained so till he left for Delhi) and read newspapers of the day and after a walk on the beach, go home and have his oil bath, about which he was very particular. and take his dinner between 8-00 and 8-30 p.m. and go to bed with the 'Madras Mail' in his hand. Sir Alladi Krishnaswamy Iyer, the Advocate-General spoke only the bare truth when he said that,

> " By temperament he could never be idle. His life in many respects is a great object-lesson to many of us who are young at the Bar. I used to see him at the club and not a minute would he be idle. He would be busy poring over every conceivable journal, literary political and

> sociological. After finishing his work in the club he would go to the beach and have his walks. Both in point of maintaining his physique and sustaining his literary energy and work, he is a great lesson to most of us."[1]

As we have said before, his work involved not only work in court, but "public activities" outside the court also. He gave full attention to all of them alike without in any way injuring his health or skipping over his work. He never wore the usual care-worn look of a busy lawyer or politician and was ready to give his time to those who desired conversation with him on matters of interest and importance. It was perhaps this free and easy way of moving through the working hours of the day which gave handle to the interested story of the rumour-mongers that Sankaran Nair was an idle man who never attended to the work of his clients.

Sir Alladi Krishnaswamy Iyer, one of the ablest advocate of his time in his obituary speech in the High Court thus refers to Sir Sankaran Nair's advocacy ;

> "I knew well Sir C. Sankaran Nair when he was at the bar and on the Bench. For some time he was acting Judge and he was permanent Advocate-General, and I have seen him arguing his cases in Court. The other day when I went to England, I was reminded of the advocacy of Sir Sankaran Nair and his clearness and forcible manner. There was no ostentation about it. There was no unnecessary periphrasis for he went straight to the case and never took more time than was necessary. His style was a model in many respects though different from the type of advocacy to which we were accustomed from Mr. Krishnaswamy Aiyar and Mr. Sundaram Aiyar" (P. 109 'The Madras Law Journal', Vol. LXVI, 1934).

Lex in the M. W. Notes writes of Sankaran Nair's advocacy thus. The quotation is a long one, but as in my opinion every word of it is true especially of the lawyer class, I quote it fully for the benefit of my readers,

> "... ..his advocacy was quite unique. Not overfond of quoting precedents and case-law as the new fangled custom of the Vakils of today, he did not require the

1. See The Madras Law Journal, 1934. Vol. LXVI—Page 109-110.

medium or help of a digest for precedents he wanted. He would remember invariably their head-notes, the lawyers who appeared in them and the judges who decided them, with a brief summary of the arguments of the Counsel and of the reasoning of the judgements and would also often be able to say even the Court from which the matter came up to the High Court and the year of the decision and then it would be so easy to pick it out."

"There are some other characteristics of him as a lawyer which claim special recognition at our hands. There was absolutely no attempt, not even the least endeavour on his part to play to the gallery or to create an impression on the clients. There was no identification of himself with the client or his cause, however big his client or however important or serious the case he pleaded. There was an air of absolute detachment about him when he argued his cases and of course, this added greater strength to his utterances and carried greater conviction to the Judges. It also enabled him to keep an unruffled temper, and to posses a calm and a dignified reserve, when his adversary argued his case. The present fashion of interrupting the opponent-brought into existence, it is said by some great lawyers and developed almost into a fine art by some of the advocates of today-and of bandying words with him was absolutely absent in Sankaran Nair's advocacy. It would be difficult, indeed for a spectator to find out that Sankaran Nair was opposing a case, when his adversary was on his legs. He would sit without emotion, so patiently and silently for his turn, showing all regard and courtesy to his opponent. But old manners are now changed and alas; this virtue is considered by some "legal luminaries" of today as a great defect unworthy of a truly great advocate.

Sankaran Nair's style of advocacy also deserves more than a passing notice. It was remarkable and matchless for its clearness, cogency, lucidity and brevity; and in its manner also it was equally unrivalled. Unruffled and unostentatious, his words came out of his mouth in a

stream of steady sequence with a sonorousness and dignity and vigour never matched, much less rivalled, in the annals of forensic oratory at the Madras Bar. He was and is no orator and did not attempt the high flights wherein one got oneself lost coming to the ground with a thud, exhausted and confused and often completely shattered. His sentences ware always correct, short, and crisp and the cumulative effect of these, coming one after another in quick succession was really tremendous. He spoke always with deliberation, weighed his words before he uttered them and did not leave any sentence unfinished; and best of all, he knew when to stop.

"Be brief, be pointed; let your matter stand,
Lucid in order, solid and at hand
Spend with the mass of thoughts, not drops of sense,
Press to the close with vigour once begun
And leave-how hard the task-leave off when done"

This was the advice which a great jurist and lawyer gave to his younger brethren at the Bar some years ago and it would seem that every word of the advice was in Sankaran Nair's mind in every one of his forensic performances" (P. 256–257 The Madras Weekly Notes, 1915)

I regret I am not in a position to say who the 'Lex' is, but opinion at the Bar assigned the authorship to Mr. Eardley Norton, the famous Barrister-one of the best friends of Sir Sankaran Nair.

It is not necessary to burden the description of his advocacy by other references. I think sufficient has been said to support my judgement that he was perhaps the ablest advocate of his time in Madras. Only those who had seen him in action, as Sir Alladi Krishnaswamy Aiyar and others have done, can appreciate the excellence of his method. Queit advocacy like his has sometimes this disadvantage that interruptions from the opponent, if left alone, may create a wrong impression on the minds of a week judge that the opponent's case on this point may be true and if replied to then and there, quite as often as the interruptions are made, the judge may think that you are tiring the court unnecessarily and that you have a bad case. This, as I had found myself in my career, is a very difficult situation, to surmount which

each advocate himself cultivate his own method, and for which no rules can be prescribed. On one occasion Sankaran Nair lost his temper by the constant interruptions, so much that he said facing the opponents in loud deliberate and downright tones "I can be as emphatic and dogmatic as you and reply to all your interruptions, but I don't want to do so, lest I should distrub the court". The effect was electric. One of the Judges who heard the case looked at the other side and said 'don't interrupt'. There were no further interruptions till the case was over and it went on its smooth course. I am mentioning this so that young advocates who may happen to read this may avoid this bad trait of advocacy. In the long run, it will be found that quiet type, of which Sankaran Nair was the best exponent at Madras, is the better method to follow.

IV

CHAPTER XI

SIR SANKARAN NAIR AS JUDGE OF THE HIGH COURT

AS already stated Sir Sankaran Nair had to officiate three times before he was made a permanent Judge. In 1908 Sir Subramania Iyer resigned his place on the Bench and Sir Sankaran Nair succeeded him.

Readers will recall what I have stated before that Sir Sankaran Nair was the first non-brahmin Judge that graced the Madras High Court Bench. His predecessors - the great Muthuswami Iyer, Subramania Iyer and Bashyam Iyengar (JJ) - were all brahmins. To write of Sir Sankaran Nair as a judge is not so difficult as to write of him as an advocate. To appreciate an advocate properly he must be heard and seen in action in court. As years roll on his reputation fades away. The personality of a Judge also counts, but his judgements are his best 'memorials' and in them he remains alive for ever.

GENERAL CHARACTERISTICS

Sir Sankaran Nair was a great success as a Judge. Sitting on the Bench in his Judge's garb with spotless white turban on his head, Sir Sankaran Nair looked very impressive and commanding. On the Bench he did not talk for the more pleasure of impressing the people. Both as an advocate and as a Judge, he never played to the gallery. A great jurist an eminent Law-Lord once observed said that a good judge must have judicial instinct that he should know the law and have sufficient experience. Sir Sankaran Nair possessed all these qualities in abundance. Besides these, he showed-what is remarkable and rare in those days - fearless independence in the discharge of his duties. This gives him a distinct place amongst the Judges with whom he worked. Even in small matters he brooked no interference with his dignity as a Judge. To mention a small matter, it is supposed to be customary for a new Judge when appointed, to call on his senior

colleagues. The European Judges (I suppose they thought they belonged to a superior class) very seldom complied with this custom. On one occasion when a new Judge from England came to take charge, the Chief Justice with whom Sir Sankaran Nair was sitting sent round the Registrar to request all the Judges to come to his room to introduce the new comer to them, so that there was no further need for him to call on the Indian colleagues. All the judges obeyed the orders of the Chief Justice, but Sir Sankaran Niar remained in his room doing work which he had in hand and when it was time for him to join the Chief Justice, he went to his room as if nothing special had happened. All the other Judges inculding the new comer had by this time left the Chief Justice's room and there was an end of the introduction to Sir Sankaran Nair. The story soon got circulated in the corridors of the court and people made their own comments.

He was quick in the disposal of cases. I remember on one occasion he happened to sit with Krishnaswamy Iyer (J). They had an 'hastily made up' list of ten or twelve second appeals before them to dispose of. Both the Judges were quick and they finished the work just an hour or so before they rose for the day. This was quick work indeed as was commented upon at the time by the lawyers and no one complained that the work was not properly done. He was always cool and collected on the Bench and usually did not lose his temper, but woe to him who appeared before him 'unprepared' in his case. 'Unpreparedness' was a sin in the eyes of Sir Sankaran Nair. He treated both the seniors and the juniors alike, and showed no favouritism to any body. He was never accused of nepotism. When hearing an appeal he did not take sides but heard it with an open mind. He had no mannerisms of any kind either as an advocate or as a judge. Sitting erect, as he always did, people noticed that when writing judgements he heavily leaned on the table before him.

He was an eminent Judge both in civil as well as in criminal law. His work in court mainly consisted in hearing heavy First Appeals and Criminal appeals. His judgements were written in what the Privy Council characterised as 'terse' in one of the cases that went up before Their Lordships. It was easy to understand what he had written. His judgements were well reasoned, logical and not

prolix. One reading was enough for anybody to understand them. There was 'erudition' enough in his judgements where erudition was called for. He never indulged in showing his erudition unless it was necessary to show the wealth of information he had at his command.

I have heard it said by some 'law critics' that Sir Sankaran Nair was deficient-unlike some of his compeers-in his knowledge of case-law, the reason being he did not quote strings of cases in his judgements. On perusing his important judgements it will be found that this criticism is baseless. It is true that he does not fill his judgements with case-law. But on examination it can be seen that wherever necessary cases and extracts from texts are quoted. It is the principle that counts and only a few leading cases need be cited to support it. If it is a defect not to burden your judgements with case-law, Sir Sankaran Nair shares that defect with Their Lordships of the Privy Council who are very spare in the citation of cases.

He often spoke with pride about his judgements in 'Muthuswamy v Masilamony' where he held sitting with Rahim (J) that there was no prohibition against marriages between the several castes of the Sudras.[1] In essence the judgement was a plea for social reform. Lord Haldane, the Lord Chancellor spoke of it in glowing terms to Sir Sankaran Nair and his friends. He loved that judgement to such an extent that in one of the leaves of his diary which he kept in his later days, I found a note that he wanted to copy it in its entirety and have it with him for ready reference. This decision is only one of the many instances where he tried to 'liberalise' the Hindu Law. Many other similar instances may be found scattered in his judgements.

SIR SANKARAN NAIR AS A 'CIVIL JUDGE'

Sir Sankaran Nair was a great authority on questions of 'land tenure' and 'water cess cases'. His dissenting judgements,[2] clearly

1. See I.L.R. 33, Madras, Page 342

2. See 28 M.L.J, 51 - Spencer and Sir Sankaran Nair (JJ). See page 46 - Sankaran Nair J. I L.R. 37 Madras - 322 - Miller & Sankaran Nair JJ. See page 325-Sankaran Nair J. Case in small type - Sankaran Nair & Sadasiva Iyer, JJ - See page 355 - Sankaran Nair, Another case in small type See page 369 - Sankaran Nair.

anticipated the decision of the Privy Council in the Urlam case. He held that the zemindars were not to be charged for the additional cultivation they had carried on with the water to which they were freely entitled under arrangement with the government. But this was a novel decision in Madras in those days. Later in the Urlam case, the Privy Council came to the same conclusion. Mr. Justice Napier told me once that he prided himself on his knowledge of the Indian land tenures, but he always found that Sir Sankaran Nair knew something more than himself. I have drawn attention only to a few of his outstanding judgements in Civil law. I must refer those who desire to know more about his knowledge of civil law to the judgements published in the I.L.R. Reports (Madras Series) themselves.

In the realm of Malabar law, Sir Sankaran Nair tried to introduce certain changes to ameliorate the conditions of the people subject to that law. But I regret to note that his efforts were not always attended with the full success they deserved. Malabar law is mainly customary law, custom as developed by European Judges (as they understood it) Holloway, Wigram, Moore and others. The system had three main defects, viz. (i) the absolute and uncontrolled supremacy of the 'karanavan' in tarwad affairs, (ii) the descent of private property not willed away by the deceased members of the family, and (iii) the absence of the right to partition. Of these, the first defect was to a certain extent remedied by the right in the members to ask the 'karanavan' for accounts. But assertion of this right involved much trouble and expense. As regards the second, the 'karanavan' never dared to interfere-though he could in law do so-with the descent of the deceased female's property. It was always allowed to descend to her 'tavazhi'; but the 'karanavan' always grabbed at the property belonging to a deceased male and the corpus of the tarwad property thus became increased to his advantage. Sundaram Iyer (J) put on a legal basis the descent of the deceased female's property, but there were certain decisions to be over-ruled before arriving at the conclusion they wanted which they thought was the correct law. But the Full Bench, of which Abdur Rahim (J) was one of the judges refused to accept the opinion expressed in the reference. The

exertion of the referring judges was thus foiled. As regards the right of partition, Sir Sankaran Nair in a Second Appeal called for a finding on the question, giving liberty to the lower court to call fresh evidence if necessary. But before the finding arrived Sir Sankaran Nair had been taken away from the Court as a Member of the Viceroy's Executive Council. Later the case was decided by another judge according to the law as it was then understood.

All the above mentioned defects were remedied by the legislature which has now given the right to the individual members to claim 'partition'. As a result of this legislation 'marumakkathayam' system has been broken up. The old days when the 'Karanavans' reigned supreme as the 'Grand Monarque' or as mighty as the 'Czar of all the Russias' when all the members of the family worked to maintain his position are now over. The family now exists for the individuals and not the individuals for the family. But this is not the place to discuss whether the legislative changes introduced have proved good for the people at large or not. For one thing the problem of 'poverty' has become very intense in the district.

SIR SANKARAN NAIR AS AN ORIGINAL SIDE JUDGE

For a long time, he sat on the Original Side of the High Court. He was quite at home on that side also. He was shrewd in judging the witnesses that appeared before him, and I understand that he produced a good impression on the lawyers and the litigants, who had worked on that side. I have heard him say that sitting alone he could arrive at his own conclusion without any hindrance from his colleagues. His large experience in conducting heavy suits in the mofussil must have stood him in good stead when he sat on the Original Side.

SIR SANKARAN NAIR AS A 'CRIMINAL JUDGE'

It is nesessary to speak specially about Sir Sankaran Nair as a 'Criminal' Judge. In my opinion he was indeed the ablest Criminal Judge that sat on the Bench in my time, though Rahim (J) ran him very close. These two learned judges always gave the 'benefit of

doubt' to the accused and whenever they sat together to hear criminal appeals, there were more acquittals than convictions. The lawyers were always pleased to appear before them. Sir Sankaran Nair - unlike his brahmin colleagues - very often sat as Sessions Judge. His handling of the Sessions Court and of the jury were very satisfactory. The accused received just treatment at his hands. He could by no means be called a lenient judge.

The criminal appeals heard by Sir Sankaran Nair (J), one sitting with other judges and the other sitting alone should now be mentioned; one, the Ashe Murder Appeal and the other, the Pondi Murder Appeal:

(i) **THE ASHE MURDER APPEAL**: In February 1912, the three Judges, the Chief Justice, Sir Sankaran Nair (J) and Ayling (J) who heard the appeal delivered their judgements in what was known as the Ashe Murder Case. The case was a sensational one. It is not now worthwhile to state its full facts. On 17-6-1911, Mr. Ashe, Collector of Tinnevelly was shot and killed, I think on the platform of the Maniachi railway station. 14 accused were involved in the case. They were charged with two offences, (i) conspiring amongst themselves and with others to wage war against the King and (ii) having abetted the offence of murder of Mr. Ashe. The learned Judges who heard the appeal acquitted the accused on the second count. The majority of the judges found the first charge was proved and the accused concerned were sentenced to various terms of imprisonment. Two of the accused - 2 and 4 for whom Sri Srinivasa Gopalachary appeard - were acquitted in the Appellate Court. When the case began it was sought to be proved that the murder was a political one but when it was found that the evidence did not support it, the popular interest in the case faded away. The appeal was heard for about 2 months in the High Court and learned Judges delivered ponderous judgement. The judgement of Sir Sankaran Nair (J) constitutes a small volume by itself. It affords interesting reading. The case is reported in the I. L. R. series.

(ii) **THE PONDI MURDER APPEAL** In 1912 the then sensational Pondi Murder case appeal came before Sir Sankaran Nair on reference sitting as a single Judge. The two judges, Bakewell and Sadasiva Iyer (JJ) who heard the appeal differed in their

opinion as regards the guilt of the accused. Sadasiva Iyer (J) held that the accused was not guilty, while Bakewell (J) was of the contrary opinion. The case is interestingly narrated by Sri Ranganadha Iyer, Advocate, in the biography of his brother Dr. Swaminathan.[1] One Vaidhianadha Tevan, a rich mirasdar of Tanjore, was convicted by the Sessions Court for abetting the murder of his son's wife and sentenced to death. The others charged with him were all acquitted. On appeal Dr. Swaminathan appeard for the Tevan. Sir Sankaran Nair (J) held that he was guilty. The result was that the original sentence passed on the accused by the Sessions judge stood good. An appeal was preferred to the Privy Council. The Privy Council very rarely accepts appeal in criminal cases from the courts in India. But in this case Their Lordships admitted the appeal and quashed the conviction as they thought that inadmissible evidence had been admitted; in consequence the accused was set free. (Some people felt surprised that Sir Sankaran Nair (J) did not acquit the accused).

SIR SANKARAN NAIR'S INFLUENCE ON 'ADMINISTRATION'

I should not forget to mention that Sir Sankaran Nair exercised great influence in the general administration of the High Court. To mention one noteworthy instance, he got changed the then existing method of appointing District Munsiffs. According to the method that till then prevailed, candidates for appointment were selected by the Senior Civilian Judge who had the portfolio of making appointments in his charge. It was supposed that having had more experience of the mofussil than the non-Civilian Judges, the Civilian Judges were better equipped with general information to choose the candidates from the mofussil. This may or may not be true. Numerous amusing stories as to how the applicants used to impose upon the selecting judge to secure appiontments used to be narrated in the Bar rooms to the enjoyment of many of its members. Sir Sankaran Nair pointed out that the appointment must be by the entire High Court sitting as a body and not by a particular Judge

1. See 'Dr. Swaminadhan - A Memoir by his brother Ranganadha Iyer page 65

though the appointments may be approved by others later. He pointed out that the Judges sitting in deliberation in their meetings should make the choice so that the candidates and the public may have a square deal. This meant amongst other things loss of influence and prestige for the Senior Civilian Judge. The civilians and other European Judges took great exception to this proposal. Sir Sankaran Nair clinched the matter by saying that he will not consider a judgement written by a munsiff not appointed by all the Judges of the High Court sitting as a body as a proper judgement and will not look into it. Sir Sankaran Nair was the only Indian amongst the Judges. It is easy to see that great courage was needed to force this situation on his European colleagues, but he was not the man to flinch from the attack. (We will see later that in the Viceroy's Council also he had to face a similar situation). However before the matter came to a crisis, Mr. Krishnaswamy Iyer was appointed a Judge and there were two Indians amongst the Judges to support this proposition. The latter also boldly and fearlessly supported Sir Sankaran Nair and with their combined endeavours the rule suggested by Sir Sankaran Nair was accepted by all the Judges of the High Court. This was a great triumph indeed, as all the candidates for District Munsiffship had from that day onwards an equal and fair chance for getting the appointments.

Before concluding my review of his career as a Judge, the opinions expressed by the leading law journals on his judgeship when he was appointed as a Member of the Viceroy's Executive Council in 1915 may be recalled.

The Law Weekly wrote [1]

> ".....Sir Sankaran Nair was a distinguished and able Judge for nearly 11 years. During his long career he was independent and discharged his onerous duties without fear or favour. He was quick at facts and sound in law and proved a varitable tower of strength to the High Court Bench. While his loss to the High Court will be keenly felt alike by his colleagues and the members of all branches of the profession, the compensating advantage by his elevation to the Viceroy's Council is a

See 1. The Law Weekly, Vol. II, July 1915, page 43.

source of universal satisfaction to all his countrymen who know how to appreciate his work and worth....."

I will now conclude the sketch of Sir Sankaran Nair's life as a Judge by drawing attention to the "obituary speech" of the learned Advocate-General made before Their Lordships, the Chief Justice, Justice Sir Vepa Ramesam, Jackson and Sundaram Chetti in the forenoon of Thursday, the 26th April 1934 [2]

" ....Then, when he became a Judge, unlike some other judges, he would suffer fools gladly, though one noticed a touch of irony and satire in his face. On the Bench, brought up as he was in the mid-Victorial tradition of liberalism, because he was a great student of politics himself, he felt that the guardians of the liberty of the people were the courts, and he always stood between the Executive and the liberty of the subject. He felt that the Courts, true to the tradition of British Justice, are the guardians of the liberty of person and property. Any person who reads through his Judgements will note that peculiar feature which marked his career on the Bench. It was felt a very great loss to the Bench when he left it and when he was called upon to discharge the duties of the high office of a Member of the Viceroy's Executive Council. If he was a Judge, he was also a lawyer who was able to think in terms of society. He was not wedded to the law in the manner in which some of us are wedded– burying ourselves amidst law books without thinking of the society of which we are members. So, when he was called upon to the high office as member of the Viceregal Council, he discharged his duties with conspicuous ability and distinction. But when the time came, when for public or political reasons he felt he could not, consistently with his views on public questions, be a member of the Viceroy's Council, he did not hesitate to lay down the reins of office .. .."

On the same occasion, the Madras 'Law Weekly' wrote about his work as follows : [1]

2. The Madras Law Journal, Vol. LXVI—page 109 (1915)

See 1. The Law Weekly, 1934, Vol. XXXIX, Page 73.

"..... He was able to build a large and lucrative practice and was successively appointed the Government Pleader and Public prosecutor and the Advocate-General of our High Court. Having held these posts with credit and distinction he was elevated to the High Court Bench in 1907 where he served for 8 years with honour to himself and to the entire satisfaction of the legal public. He no doubt "never allowed fools to play with law", and this might have provoked a comment in some quarters that he was rather a strict Judge. But that he upheld the integrity of the law and administered it without fear or favour is abundantly clear from the several decisions reported in the official and non-official reports. The remarkable independence which he displayed on the Bench coupled with his broad outlook in socio-legal matters and his judgement in Muthusami V. Masilamani, is only one of the numerous instances where he struck straight and boldly towards the liberalisation of the Hindu Law..."

CHAPTER XII

JUDGESHIP CONTINUED, 1908 — 1915
THE MADRAS UNIVERSITY CONVOCATION ADDRESS — SOCIAL REFORM ARTICLES — EVIDENCE BEFORE THE PUBLIC SERVICE COMMISSION.

BESIDES being an able lawyer and an eminent judge, Sir Sankaran Nair became well known as a Social Reformer, and also as a Journalist. To anticipate, his Judgeship ended in 1915, when he was appointed as a Member of Viceroy's Council during the course of his judgeship.

Between 1908 and 1915, besides doing work as a Judge, (i) in 1908 he delivered the Convocation Address to University graduates of the year (see appendix in which he stressed among other things, the need on Social Reform and Female education), (ii) in the August and the September numbers of the year 1911, he wrote two articles to the Contemporary Review on 'Indian Law and English Legislation' which strongly advocated legislation to advance social reform amongst the Hindus (See appendices III & IV). It will be remembered that in 1904, he had written the article in the same Review advocating the establishment of a 'Native Council' for advancing social reform. This article as was well known at that time, temporarily cost him his judgeship. (iii) In Jan. 1913 he gave remarkable evidence before the Islington Public Service Commission.

As I am dealing with the life of Sir Sankaran Nair chronologically, I will deal with the matters just mentioned before continuing his further official career as a Member of the Viceroy's Council, which followed his judgeship.

SIR SANKARAN NAIR'S ARTICLES ON SOCIAL REFORM

Sir Sankaran Nair began to take interest in Social reform from his very early days. He spoke and wrote much about social

reform. He soon began to be known as a Social Reformer of the first rank. His main object was "to break down the isolation of the Hindu Religion, to remove the barriers which now prevent free social intercourse and unity of action, to extend the blessings of education to the lower classes and to improve the position of women to one of equality to men." He became President of the Social Reforms Association and advocated social reform amongst the Hindus, whenever he got an opportunity to do so.

The gist of his idea in the articles, which he wrote, was that Hindu society was in a degraded condition because of the old and Sastraik laws which it followed from the very ancient days. Neutrality in matters of religion was the strict policy followed by the British Government. This meant that the laws, which the Hindus followed, remained unchanged without being interfered with by the Government and as a result there was no social progress amongst the Hindus. As the articles are printed in the appendices, I will refer to the matter contained in them here only very briefly.

Though Sir Sankaran Nair found that the British Government's attitude towards these laws did not help progress, he was conscious that, in spite of their declared policy, they did much to help the progress of the people by annulling the laws and regulations which shocked the feelings of the people and hindered their progress. In this connection, I would draw special attention to the portion of the article where he gives a list of the laws and regulations annulled by the British Government and the new laws passed by the Legislature to improve the social conditions of the people. It is worth reading not only for its contents but also for its pungent style. Not content with the laws till then passed by the British Government, he suggested, as already stated, the establishment of a 'Native Council..... for effecting reforms. But, he found, as he has stated in the first article written in 1911 (See Appendix I) that this was not liked by the people. He therefore discussed other ways of effecting reforms. 'Judicial Legislation' he said, might be of some use, but so long as Indian Judges were on the Bench, he pointed out that this would not help because, being brought up under the existing laws, they were averse to the introduction of new ideas. If they were not obstructive much could have been done in social reform matters. He said it was clear, from some of the Privy Council Judgements

that, the Learned Judges would have brushed away the old social laws which degraded the community. The Privy Council was not able to do much, as the cases before them, on this matter, were few and far between. Judicial Legislation, being out of the question, Sir Sankaran Nair considered in his third article (See Appendix II) some other means of effecting reforms.

He said that by changing one's religion the evils of the then existing Marriage Law and the Inheritance Law might be removed, but changing one's religion was difficult and undesirable, and therefore he would not advocate it. He finally came to the conculsion, that the only satisfactory way to root out social evils by legislation, would be by singling out what particular laws should be annulled and, in their places, what laws should be introduced by legislation. This lead him to the full consideration of the Civil Marriage Bill, which was then pending before the 'Imperial Legislative Council' - the Bill introduced by Hon. Mr. Basu. Sir Sankaran Nair was all out for the Bill and pointed out its various advantages. Then, he proceeded to consider the Child Marriage Bill. His remarks on these two Bills are worth full consideration, though the evils dealt with by them have now been all removed. In the topics, with which we have been dealing, Sir Sankaran Nair pays deserving tributes to the various social reformers, - Malabari and others - who have been working in the field, both here and in England. Finally, he deals with the question of polygamy, which is still subjected to much discussion without arriving at any satisfactory conclusion. As the article is fully printed in the Appendix 'C', I will invite the readers attention to it, without quoting extracts. I may also point out that the same subject occurs in other portions of his writings and speeches and I may have to refer to it again, as I proceed. These three articles in the Contemporary Review, viz. (i) Appointment of a Native Council (April 1904,) (ii) Indian Law and English Legislation (1911) and (iii) Indian Law and English Legislation (1911) constitute the main topics of Social Reform, to which he paid great attention.

In considering the work done by Sir Sankaran Nair, as a Social Reformer, during this period, special attention should be drawn to the decision in Masilamani v Muthusamy, published in I.L.R. pages 342 - 356, Madras, to which we have already referred previously, in

which he established that Inter-Marriage between the different sub-castes of Shudras is permitted by the Hindu Law. This will close the period 1908 - 1915 now under discussion. But to complete the subject, we will have to refer to the year 1924, when, on his return from England, he presided over the All India National Social Reform League at Bombay, which makes him out as the head of the Social Reform Movement of All India, but about it, later.

SIR SANKARAN NAIR AS WITNESS BEFORE THE ISLINGTON PUBLIC SERVICE COMMISSION

Towards the close of the year 1912, a Royal Commission headed by Lord Islington came to Madras and began to take evidence on the 8th of January 1913. It will interest the general reader to know that, on this Commission there were three Indians, one of whom was Mr. Gokhale, the foremost political leader of his time in India. On his early death, Justice Rahim was appointed in his place. The Commission came to India to take evidence regarding the administrative system-especially Revenue and Judicial-prevailing in the country, and was expected to submit its report to the Home authorities with its suggestions to cure the defects of the system and to improve it in various ways.

It is not possible now to say whether Sir Sankaran Nair's name was included in the list of witnesses to be examined before the Commission. He had not submitted any memorandum nor had he volunteered to give evidence. It seems to have been represented to the Commission that without examining Sir Sankaran Nair, the Madras evidence would be incomplete and worthless, especially so, as he was the foremost political leader in Madras and also an eminent judge. Summons was issued to him to appear before the Commission; but he failed to respond to it. He was informed that the Commission being a Royal one, it would be an affront to His Majesty the King, if he did not appear before it. He accepted the advice and expressed his willingness to be examined. He was in a difficult position. He had hardly time to prepare a satisfactory Memorandum of what he was going to say. However he hurriedly wrote one and sent it to the Commission. When it was published, its language and contents were very much appreciated by the public, and by those who understood the needs of the

country. I regret I am unable to publish it to the enlightment of the readers, as I have not been able to get it, inspite of all my best efforts. Sis Sankaran Nair could coin virile English phrases and expressions; this was probably what made Sir Surendranath Banerji call his English "masculine English". Two of the phrases "THE HINDU OF THE PUNDIT TYPE OF MIND" and "THE MUSLIM OF THE MOULVI CASTE OF MIND" which appeared in the Memorandum attracted much public attention. I was glad to find from the circular dated 11th July 1960 issued by Guruvayoorappan College for funds that even today those phrases "were floating" in the "writer's memory". The evidence was taken in public and it was well known that in his evidence, he exposed the absolute ignorance of some of its members of the Judicial and Administrative system of the country. The 'Memorandum' and evidence before the Commission raised him high in the estimation of the people.

CHAPTER XIII

A SHORT NOTE ON SIR SANKARAN NAIR AS A JOURNALIST

AS everyone knows Sir Sankaran Nair was not a journalist by profession; I do not think he himself ever thought that he was a journalist, though he dabbled in journalism. However, as all those who have written about him consider him as a journalist, I will devote a few lines to that aspect. As most of the writings of Sir Sankaran Nair now extant relate to Social Reform Movement, I think it will be convenient to consider him as a journalist, here, immediately after what I have said about his articles on Social Reform.

From his very early days as a lawyer, he began to write to the newspapers in India and also in England on 'current topics and political problems'. Unfortunately, none of these contributions is now available. He was a great supporter of the 'Hindu' paper whose proprietor Mr. Kasturi Ranga Iyengar he knew very well. We have already noticed that he wrote three articles to the 'Contemporary Review'. He was Senior co-editor of the Madras Law Journal, the others being Sri P. R. Sundaram Iyer and Sri V. Krishnasamy Iyer, both of whom attained eminence in the legal profession. Later Sir Sankaran Nair severed his connection with the journal. Sir Sankaran Nair was the Founder-Editor of the 'Madras Review' a very high class journal which he conducted with great ability till he became a Judge. Articles appeared in it from eminent men in England and India. If I remember rightly the first number contained an article by Mr. Mark Hunter of the Indian Education Service who wrote on 'MAX NARDOU'S REGENERATION'. It was considered a very original contribution. Mr. Krishnan (later Mr. Justice Krishnan of the Madras High Court) wrote on 'POISON AND POISONERS IN INDIA', Mr. John Adam, M. A. (later Crown Prosecutor of the Madras

High Court) a well known political economist, wrote on a subject connected with political economy, the name of which I cannot remember at this distance of time. Mr. Sattianathan, Professor of Philosophy in the Presidency College was another contributor. He wrote on a subject of Philosophy. Sir Sankaran Nair himself wrote on the Land Revenue Policy of the Madras Government. The Review is now defunct, and I am not able to secure any copies anywhere in Madras.

He wrote in a terse, and incisive style which became argumentative when the subject matter was controversial or the articles were written for a special purpose. He never wasted words by way of introduction, but plunged right into the subject. He was not oblivious of the graces of style or the beauties of charming diction. His language was not flowery. Whatever he had to say he stated shortly and without circumlocution. Once, talking about the minutes of Lord Curzon which he had to peruse in his official capacity he said they were written in the 'grand manner' and were loaded with amazing amount of information, even those notes written at random on official files. Sir Sankaran Nair did not imitate any particular kind of style, but wrote in his own individual way. The Madras University Vice Chancellor [1] Sir K. Ramunni Menon, described in apt language the quality of Sir Sankaran Nair's writing....."His writings and speeches have always been marked by directness and vigour and have introduced an atmosphere of candour, independence, and impartiality into the treatment of political and social questions....."

About his Amraoti speech, Sir Surrendranath Banerjee said Sir Sankaran Nair wrote 'masculine English'. He coined the phrase 'none can be argued into slavery in the English language'. The Circular on Female Education which he issued as the Member for Education in the Viceroy's Executive Council (see infra) was praised by the educationists of the day for its style and contents. I have already drawn attention to the memorandum he submitted to the Islington Public Service Commission in 1913, which ranks as one of his best productions. Though these, appearing as they do in his speeches, official memoranda etc., would

1. His speech on the special Convocation when L. L. D was conferred on Sir Sankaran Nair on 3-8-1934.

hardly fall within the province of journalism, they afford excellent specimen of Sir Sankaran Nair's virile English which may be used in effective journalism. My account of Sir Sankaran Nair as a journalist will not be complete if I do not mention that very controversial book 'Gandhi and Anarchy' (1922) written in his characteristic and vigorous style.

On the whole, there is justification enough to call him a journalist, and also grounds to think that if he had taken to journalism, he would have done well in that field also.

CHAPTER XIV

CHANGES IN THE CONGRESS'S POLICY— SIR SANKARAN NAIR'S CONNECTION WITH IT CEASES

BEFORE proceeding with the next stage in Sir Sankaran Nair's career, I may briefly refer to his connection with the Congress in which he took so much interest from his early days.

It was the declared aim of the Congress to secure from the British Government, self-government to India on the model of the Colonial Governments, i.e. (very shortly stated) Government by Ministers in the parliamentary form under a British Viceroy. This objective - which later came to be known as "Dominion Status" - was being sedulously pressed by the Congress from its early days. But, rumblings of dissatisfaction with this policy were being heard now and again from certain sections of the Congress. Politicians were frequently using the terms "Home Rule" and "Swaraj" without strictly defining the scope of their significance. This term "Poorna Swaraj" had not yet come into use.

In the Congress held at Calcutta in 1906, under the Presidency of Dadha Bai Naoroji there was much heated discussion in the Subjects Committee as regards the policy which should be followed by the Congress. It had already been decided that "Swadeshi" should be followed to bring pressure on the Government. The younger section of the Congress vociferously declared that this should be adopted in the new resolution of the Congress and that "Boycott" should also form another item of pressure to re-inforce the request of the Congress for attaining Self-Government. The leaders of this section were Bepin Chandra Paul, Arvinda Ghosh, etc. I am not quite sure whether "Non-Cooperation" as an element of its policy was also not suggested by the younger section. The elder statesmen, including Sir Sankaran Nair who wanted to steer the Congress clear of all difficulties, fought hard to maintain the

old policy of the Congress in tact so that Lord Morley who had become the Secretary of State should not be faced with untold difficulties in granting self-government to India, as much was expected from the Liberal Government which had come into power. The struggle between the Members of the Congress holding divergent views ultimately resulted in a policy of compromise which, while laying down the old policy as its real policy added "Swadeshi" and "Boycott" as objects which may be followed. I was also present as a delegate from Madras. The Congress Session ended to the general satisfaction of everybody; but there were misgivings amongst the leaders as to what was going to happen in the future.

The crisis which was apprehended came very soon. In the Congress of 1907 held under the Presidency of Dr. Rash Behari Ghose, the parties holding different views as to what the aim of the Congress should be, came to actual clash. It was said that even blows were exchanged. I do not know if anyting definite was decided The session ended in a fiasco. I do not remember if Sir Sankaran Nair was also present at the Meeting with the other eminent congressmen. It may be said that from that date Sir Sankaran Nair's official connection as an elder statesman of the Congress came to an end. His open rupture with the Congress was to come later (see chapter XXIV). Though he did not agree with the doings of the Congress from that date, he always remained an ardent Congressman and fought to the utmost extent of his ability to obtain 'Dominion Status' for the country. If this Status was obtained, he along with a majority of the congressmen was convinced that absolute independence for which all of them were fighting, would follow in its wake though it might take sometime.

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CHAPTER XV

MORLEY—MINTO REFORM—APPOINTMENT OF AN INDIAN MEMBER—SIR SANKARAN NAIR APPOINTED—HIS PREDECESSORS—JOINS DUTY AT DELHI—OCTOBER 1915

IN 1905, Lord Morley became the Secretary of State for India. Lord Minto was the Viceroy in India during his Secretaryship. As one of the results of the popularly called 'MORLEY MINTO REFORMS' introduced then in the Administration of India, one Indian was appointed to the Viceroy's Executive Council. Sir S. P. Sinha, Barrister-at-Law (afterwards Lord Sinha) was the first Indian to be appointed Member. He was a brilliant lawyer. He held the place for only 18 months. He was succeeded by Sir Ali Imam, a Mohammaden Puisne Judge of the Patna High Court. Sir Sankaran Nair, till then a Senior Puisne Judge of the Madras High Court, was the third Indian to be appointed to the Council. The appointment was made in 1915.

About the fitness of Sir Sankaran Nair for the office, there was no question. In a farewell article in the Madras Law Journal, of which Sir Sankaran Nair was once a Joint Editor, it was written that "*if the Indian Member has yet to make himself felt in the moulding of the general policy of the Indian administration, none more fitting can be found* (the italics are mine) to help towards the attainment of that end. As to the special charge assigned to him, his task will be by no means easy, but it is worthy of, and will surely call forth, his best efforts....."[1]

Both the predecessors of Sir Sankaran Nair were Barristers-at-law and held the portfolio of law. A convention, as rigid as a rule of law, had grown up that "Law Membership" could be held

1. See M. L. J. 1915, pages 101 and 103

only by Barristers-at-law. Sir Sankaran Nair was not a Barrister-at-law, though he had eaten his dinners at Grey's Inn. The difficulty was got over by appointing him as "Education Member", in the place of Sir Harcourt Butler-the first holder of the Education portfolio in the Government of India-who had been appointed as Lieutenant Governor of Burma.[2] Considering the circumstances prevailing in India at that time, Sir Sankaran Nair's appointment as "Education Member" rather than as "Law Member" was undoubtedly more useful to the country.

All communities in Madras, irrespective of caste or creed, put forth their best efforts to congratulate the new Member. As he was then on leave, the lawyers and the judges could not, in the open court, express their appreciation. However, a public dinner was organised by the Bar in the Town Hall, at which Judges were also present, where his services to the country, and his admittedly foremost position at the Bar as the first permanent Advocate General, were applauded with great enthusiasm by those present. Various other associations also feasted him. On one of those occasions, the new Member took the opportunity to answer those who had objected to his rumoured appointment to the Local Executive Council, some time ago when his name was known to have been recommended to the Secretary of State. It was then stated by the critics that Judicial independence would be sacrificed if Judges were appointed as Members of the Executive Council. Sir Sankaran Nair expressed the view that whatever might be said of the possible sacrifice of judicial independence, when appointments are made to the local Council, the same cannot be said of appointments made to the Viceroy's Council as such appointments did not often happen, and could not, therefore, be in the normal expectation of the Judges of the Local High Court. He himself—he said—did not believe that any appointment either to the Local Council or the Viceroy's Council would involve any sacrifice of the Judicial independence. He added that he was only answering the criticisms that were made much of by some persons at that time.

One incident about this time brings out his bold independence. A meeting was arranged at the Senate House. I believe, in aid of

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the War, over which His Excellency the Governor, Lord Pentland, presided and at which Sir Sankaran Nair was the principal speaker. Admission was by tickets. Sir Sankaran Nair failed to bring his ticket. The entrances were guarded by soldiers and his entreaties with them to get admittance proved futile. He thereafter went away in his car and be-took himself to the beach to an out of the way place. When the meeting commenced, Sir Sankaran Nair was missed and emissaries were sent to his usual haunts, the club and his house, but he was not to be found. Finally, I believe a sort of apology was tendered to him by the military men. When the emissary came to his house, Sir Sankaran Nair had already smeard his body with oil preparatory to his usual oil bath in the evening. The emissary told him that the meeting had been waiting for him and the members present would be very glad if he came atleast to wind up the proceedings, to which he rejoined, "you see, I cannot come without taking my bath, and further, I was expected to open the proceedings of the meeting and not to wind them up. So, I am sorry I cannot come". This conversation ended the interview. The entire incident, just quoted, is fresh in my mind. Recently, during the course of a conversation Dr. A. Lakshmanaswamy Mudaliar, the Vice-Chancellor of the Madras University supplemented this information by saying that it was at the Western entrance of the Senate Hall that this incident took place. In the circumstances, I would ask if any Indian of the Day would have thus acted fearlessly, and with the same courage.

In those days, there was no direct railway connections between Madras and Delhi. Sir Sankaran Nair travelled to Delhi via Calcutta.

About his journey, I have heard his P. A. say, that he had, travelled with Members of the Viceroy's Council, newly appointed, but on no occasion had he seen such enthusiasm on the part of the people as he witnessed when he travelled with Sir Sankaran Nair. He told me that the platforms of the stations, where the train stopped for a few minutes, were crowded with hundreds of people, who had come, as he understood from far and near, to see the new Member. As many as could reach him garlanded him doing obeissance with hands folded, and all wished him good luck

and success as the train moved. He marvelled at the popularity of the new Member.

Arriving at Calcutta, where he had a grand reception from the public, he stayed for two days with his friend, Lord Carmichael, who was the predecessor of Lord Pentland in Madras, and then proceeded to Delhi to take charge of his Office, which he did in October 1915.

CHAPTER XVI

SIR SANKARAN NAIR—LORD HARDINGE

SIR Sankaran Nair as Education Member of the Government of India held office during the Viceroyalty of (i) Lord Hardinge of Penshurst (1910—1916) and (ii) his successor Lord Chelmsford (1916—1921). Lord Hardinge having retired on 4—4—1916, he was in his cabinet only for about 6 months. The rest of his tenure as the Education Member till he resigned on the 23rd of July 1919, was under Lord Chelmsford, i.e. for about 3 years and 9 months. Thus, in all, his tenure of service as an Education Member of the Government of India was just little less than 4 years.

Lord Hardinge was the grandson of Sir Henry Hardinge, Governor General of India (1844—48) and the victor of Moudkee and Feroshahor (Battles of the First Sikh war). He was a very popular Viceroy. Lord Hardinge was popular with the Members of his Council also and his relationship with Sir Sankaran Nair was extremely cordial. In one of his early interviews with the Viceroy, after taking his appointment, the latter told him that he expected him to represent to him correctly the Indian opinion and that if anything went wrong in any of his measures affecting Indians particularly, he would hold him responsible. Sir Sankaran Nair was very happy to feel that the Viceroy reposed such confidence in him. All his friends knew of his friendly relations with the Viceroy. In one of his meetings with Montagu, who had come to Delhi in connection with the constitutional reforms, then pending, Sir Sankaran Nair himself mentioned this matter to him. He told Montagu "that Hardinge had told him when he was appointed as Education Member, he should tell Hardinge what Indians thought. Hardinge used to send him all his proposed speeches, and told him that, if he passed anything which afterwards brought Hardinge into trouble, with the Indians, Hardinge would

hold him responsible; whereas, if Hardinge disregarded his advice, the responsibility would be Hardinge's own".[1] Quite the reverse was his relationship with Lord Chelmsford, which was not as he told Montagu "good"; about this later.

No sooner had Sir Sankaran Nair taken charge of his Department, than he began to make measure to give effect to his cherished ideas of reforms. His great work in connection with Sadler's Commission and its Report was to begin later. He first began with measures affecting Womens' Education. In one of the conversations I had with him, at the time of his appointment, he had told me "his two great objects were, to advance female education in all possible ways and to generally spread education throughout the country, so that every village should have an Elementary school in its midst, which every village boy could reach without difficulty". He must have carried out these objects by administrative measures without giving them much publicity. One of the measures regarding female education did attract public attention. That was a circular which he issued to all the provincial Governments, and Institutions demanding information on various points relating to the female education. This circular was appreciated and commented upon favourably by the educationists of the day. People applauded him for taking this step so early.

It is said that Sankaran Nair was in touch with Lord Pentland, the Governor of Madras, on various educational matters.[2]

I will now pass on to Sir Sankaran Nair's great work in connection with the Sadler's Commission and its Report.

1. See Montigu's Diary, page 198.
2. See 'Memoirs of Lord Pentlands' by Lady Pentland, Page 143.

CHAPTER XVII

UNIVERSITIES IN INDIA—THE UNIVERSITY ACT OF 1904 SADLER COMMISSION—ITS RECOMMENDATIONS— MODERN UNIVERSITY EDUCATION— SIR SANKARAN NAIR'S PLACE IN IT

PRIOR to 1854, the study of English had taken deep root in the country; but there were no facilities for higher education. In 1854, the famous despatch of Sir Charles Wood, the President of the Board of Control, which outlined a new educational policy came into operation. Amongst other things, it promised the establishment of Universities to meet the growing demand for higher education; and, as a result in 1858, Universities were established in Calcutta, Madras and Bombay. These were modelled upon the London University which was an examining body and not a teaching University. At or about this time, the Government adopted the policy of giving "Grants-in-aid" to schools and colleges to further the spread of English education, and the people were also allowed to start colleges of their own. As a result of these measures, schools and colleges sprang up like mushrooms in the country, but the quality of education began to deteriorate, because of the want of effective supervision by the Government. Some branches of education (primary education, for instance) were also neglected. To cure the then existing defects, the Government appointed commissions of inquiry; but none of these had for its object, the reform of University education, except the commission appointed in 1902 during the Viceroyalty of Lord Curzon, the report of which led to the University Act of 1904. This Act, no doubt, made the Universities efficient but it officialised them converting them more or less into Government Departments. Further "it did not deal with the problems of education as a whole".[1]

1. See selected Chapters—Sadler Commission Report page 118

It was left to the Sadler Commission to examine the question from this stand point.

In his interesting book "MY INDIAN YEARS" (Page 22) Lord Hardinge, the exofficio Chancellor of the Calcutta University gives a vivid account of a surpise visit, which he paid one morning at 7. a.m. to the dwelling places of the University students residing in Calcutta. They lived in "great discomfort". The Viceroy was struck with the fact that even 'Failed B.A.' was put forward as a qualification for minor appointments and of having had University education. A bare perusal of his experience noted in the book is enough to show that the then existing system of University education could be made useful to the students by a drastic reform of the Universities imparting it.

To remedy the obove state of affairs, Lord Chelmsford's Government, of which Sir Sankaran Nair was the Education Member, appointed a Commission in 1917, under the Presidentship of Sir Michael Sadler, the well known Vice Chancellor of Leeds University in England. Amongst its Members, who were experts, one was Sir Asutosh Mukherjee, a Puisne Judge of the Calcutta High Court—a famous Indian Educationist. The Commission was asked to enquire into the constitution of the Calcutta University which was taken as typical of the Universities in India, so that, in short, the Commission was concerned with an examination of the entire University education prevailing in India. After a long and arduous work for two years (1917—1919), it issued a ponderous report of five volumes containing the evidence and its recommendations. As the suggestions made by the Commission have been more or less followed by the Universities in India, and work is carried out at the present day in accordance with those suggestions, it is not necessary for us to consider them in detail. It is sufficient to say that the older Universities came to be thoroughly overhauled; their scope of studies was widened, and new Universities were established. Besides holding examinations, some of the Universities took to teaching also. Shortly stated, as a result of the Sadler Commission, the entire University education in India took a new turn.

In his book 'A NATION IN THE MAKING' Sir Surrenderanath Benerji says that Sir Sankaran Nair's work as Education

Member was a success. He speaks greatfully of the Bihar University, which he was able, through his efforts, to establish. Later, more new Universities followed in its wake. It will be remembered that Sir Sankaran Nair was a Member of the Madras University Senate and also a Member of its Syndicate for many years. The experience gained in these capacities and also as a Publicist of many years' standing, must have contributed greatly to his success. To have piloted the Sadler Commission Report through the Government against many difficulties which he had to encounter was by itself a creditable achievement. Sir Sankaran Nair can well claim to have laid deep the foundation of modern University education in India on which his successors have built. In this respect, he is one of the 'Makers' of modern India.

Before I conclude, I may draw attention to Sir Sankaran Nair's Second Dissenting Minute, where he reviews the policy of the Government of India, towards higher education and amongst other things, points out that education, to be successful, should be national and that the 'teaching' of Indians should be done by Indian Professors. (See the separate heading 'Education' in the Second Dissenting Minute)

CHAPTER XVIII

MONTAGU—CHELMSFORD REPORT—SIR SANKARAN NAIR'S TWO DISSENTING MINUTES—THE ACT OF 1919

THE First World War broke out in August 1914. Indians helped England in her hour of need with men and money without any stint. This was much appreciated by all the Britons, and they deeply pondered over the question, what should be done to show their gratitude in a practical form. The educated Indians had long been asking for another instalment of self-government. The demand for it was answered by the historic pronouncement made by Mr. E. S. Montagu, the Secretary of State for India on August 20, 1917. He announced that :

> " The policy of His Majesty's Government, with which the Government of India was in complete accord, is that of the increasing association of Indians in every branch of the Administration, and the gradual development of self-governing institutions, with a view to the progressive realisation of responsible Government in India, as an integral part of the British Empire."

To give practical effect to this announcement, Mr. Montagu himself, with a team of experienced men, came to India in the cold weather of 1917 and toured the country, consulting various Governments, important persons, the Government of India, and all other people, who it was thought, would help him in his mission with suggestions. He then returned to England and published a voluminous report on "Indian Constitutional Reforms" popularly called the "Montagu-Chelmsford Report", referred to often as the "Reforms Report". This was written by Mr. Marris, I.C.S. who later became a Governor. The proposals of this Report, which formed the basis of the Government known as "dyarchy" are described exhaustively in Sir Sankaran Nair's 'Dissenting Minutes' as follows :—

"The proposal in the Report may be divided into three broad divisions:

(i) Certain departments of Government, say local self-Government, etc., are to be placed under the control of Indian 'Ministers' who will be responsible to Legislative Councils in the provinces composed of a large majority of members elected by the people and therefore, entitled to be called themselves their representatives. Those departments are to be administered by the Minister under the general supervision of the Governor of the Province.

(Here I may add that these subjects include what may generally be called "nation building subjects" and those subjects with which the Indian Ministers are admittedly familiar, such as education, social service etc.)

(ii) Other departments, which will consist of what are called 'Reserved' subjects are to be administered by an Executive Council composed of one official, preferably an English Civilian, and one Indian appointed on the recommendation of the Governor. The Minister and the Legislative Council are to exercise considerable influence in the administration of the 'Reserved' subjects as the entire body consisting of the Executive Council and the Ministers are to form one united Government deliberating jointly in all important matters. Though the decisions are to be taken only by the Executive authorities in each Department, there is to be only one common budget for both in the settlement of which, in cases of difference of opinion between the Minister and the Executive Council, the Governor is to have the deciding voice.

The budget so settled may be modified by the Legislative Council in any way they like, subject to the power of the Governor to restore any provision in the budget which he might think it necessary to do in the interests of the 'Reserved' subjects. And finally

no taxation in any instance is to be imposed without the consent of the Minister.....

(iii) There is a third class of subjects which are under the control of the Government of India, who are to be responsible only to Parliament. They have no responsibility in any sense to the Legislative Council; but the Indian element is to be materially increased both in the Executive and the Legislative Councils so that they might materially influence the decisions of the Indian Government.

It is also a feature of the report that the Government of India are to retain within their control as few subjects as possible, i.e. those which are necessary for peace, order and good government of the country. Therefore as large a devolution to the provincial governments, as is compatible with this obligation of the Government of India is to be carried out. It will be seen that this follows necessarily from one of the main condition of the problem i.e. that under the existing system reforms are difficult, if not impossible."[1]

The Reforms Report was sent to the Government of India for it to express its opinion on the above scheme. It approved it, with certain alterations, in its Despatch dated March 5th 1919. To this Despatch called the 'First Despatch on Indian Constitutional Reforms', Sir Sankaran Nair added a Minute of Dissent.

Later, two Committees, viz., 'The Franchise Committee and the Committee on the Division of Functions' to settle the electorates and to decide which subjects fell within the 'Transferred' half and which within the 'Reserved' half were sent to India. These Committees submitted their reports. The opinion of the Government of India on the 'Division of Functions' sent to the Secretary of State for India formed the Fourth Despatch of the Government of India. To this Despatch, called the 'Fourth Despatch' on Indian Constitutional Reforms' (Division of Functions), a Minute of Dissent was added by Sir Sankaran Nair. Thus, on the 'Constitu-

1. See 'Minutes of Dissent' by Sir Sankaran Nair—pages 90 and 91.

tional Reforms'—First Despatch—and on the 'Division of Functions'—Fourth Despatch—Sir Sankaran Nair added his Minutes of Dissent. These, I will deal with in the succeeding chapters. The Minutes of Dissent became the talk of the day throughout India, when they were published.

To complete the picture, the abovementioned documents were considered by Parliament, and in the result, the Act of 1919 was passed, which came into force in 1921.

Having already indicated which subjects fell under the jurisdiction of the 'Reserved' half and which under the 'Transferred half, it is not necessary for purposes of this book, to examine the provisions of the Act, as these formed its basis.

CHAPTER XIX

SIR SANKARAN NAIR'S FIRST MINUTE OF DISSENT

PRELIMINARY REMARKS

TOWARDS the end of the last chapter, I have indicated the exact place of Sir Sankaran Nair's two Minutes of Dissent in relation to the Despatches of the Government of India. In this chapter, I propose to deal with the Dissenting Minutes in some detail. *In doing so, I do not wish to enter into the heated discussions in the Viceroy's Council - (where Mr. Montagu also was present) - which had preceded the framing of these Minutes.* I am extracting some paragraphs from the Minutes of Dissent, which are of lasting importance, being in the nature of rules helpful to good administration, leaving out others, which have no permanent value.

THE CONTENTS OF THE FIRST DISSENTING MINUTE

This Dissenting Minute, covers pages 87 to 112 (i. e. paras 1 to 37) of the Government publication. It consists of what I may call (a) a General preliminary survey of the political reforms leading to the Dissenting Minutes, (b) Scheme of the Government in the Provinces; (c) Congress-Reforms asked by it-attitude of the Indian Civil Services (d) Answer to the criticism that Congress does not represent the entire India; (e) Measures introduced by the Government; (f) Additional reasons why reform is imperative; (g) Deviations made in the Despatch respecting the Transferred and Reserved subjects, and the writers' objection thereon; (h) modifications proposed by India Government of (i) Appointment of one more official to the Government; (j) Important question of Peace and Order; (k) Sir Sankaran Nair's view of Administration by the I.C.S. (l) Grand Committees; (m) The Council of State; (n) The Government of India; (o) Budget.

Two threads of thought run through this Dissenting Minute. These may be briefly stated as (i) The Indian National Congress

represents the entire Indian people; the political power of the people has grown up on account of the Congress and its achievements. The intention of those responsible for the Montagu-Chelmsford report is to increase the political power of the people by the effective co-operation of the Legislative Councils, and the Ministers, who represent the peoples' will and (ii) Any measure - as against the proposal of the Reforms Scheme - to lessen or diminish the control of the policy of the Reserved Subjects by the Legislature through the unified Budget, is strongly condemned by Sir Sankaran Nair.

If these threads of thought are kept in view, the arguments advanced in the Minutes can be followed easily. (In passing, it may be stated that Sir Sankaran Nair gives what he calls 'additional reasons' for Reforms which, perhaps by an oversight, does not find a place in the original Report, and are hence called here as 'additional reasons').

At the end of my examination of the Dissenting Minute, I will invite the readers' attention to the tribute paid by Shri Motilal Nehru to Sir Sankaran Nair in connection with what he calls as Sir Sankaran Nairs' masterly Dissenting Minutes.

To proceed,

(a) **General Preliminary survey of the political reforms leading to the Dissenting Minute (paras 1 to 5)**

This portion of the Dissenting Minute is substantially a panegyric on the Congress and its achievements. India, even before the advent of the British, was familiar with the democratic system of Government. This is mentioned by Magasthenes, Portugese and other writers who have dealt with it. In the South, the administration by village communities was based on notions of democracy. In the North, the Jirgahs etc. were accustomed to democratic ways of administration. The Indians inherited notions of democratic Government from the British also.

(b) **Scheme of the Government in the Provinces (paras 6 and 7)**

After the survey, the Dissenting Minute deals with the Scheme of the Government in the Provinces and the details of the dyarchic system, which, Sir Sankaran Nair, says, he is willing to accept

"in so far as it relates to the provinces". He further says his colleagues have considerably modified the scheme which, so far as the transferred and reserved departments are concerned, eliminate the influence of the Ministers and Legislative Councils."

(c) **Congress - Reforms asked by it - attitude of the Indian Civil Services (see paras 8 and 9)**

Here, the writer combats the view "that the demand for the reform emanates only from a small and insignificant class". This gives the writer an opportunity to put before the Government the view that the Congress represents the masses, and has all along advocated their cause and pointed out that it is only by the gift of responsible Government, that the miseries of the people can be relieved. In this connection; the Dissenting Minute gives the history of the Congress from its beginning in 1885, and shows, by a reference to its resolutions, how it has advocated the cause of the people. The following paragraph draws attention to some of the reforms for which the Congress, from the beginning upto the present, has been pressing.

> ".....compulsory primary education in the interests of the masses, technical education for industrial development, local-self-government, mainly in the interest of sanitation, etc. separation of judicial and executive functions for better administration of justice, reform of the land revenue system, abandonment of the theory that land forms the private property of the Crown to be dealt with by the executive at its pleasure and the recognition of national ownership of land by bringing what are called the Revenue settlements under the control of representative Legislative Councils, a far larger admission of Indians into the public services without racial distinction. These are some of the most important of the reforms which have been put forward."

In this connection, it is interesting to note Sir Sankaran Nair's view of the attitude of the Indian Civil Services towards the Reform passed for by the Congress.

> " *There was agitation not only on the Congress platform but elsewhere also. Subsequently, in the Legislative Councils*

the elected Members continued the process but all this was scarcely of any avail. The result on the other hand was a stiffening of the Civil Services opposition to the Indian progress mainly on the ground that English ideals are not suited to India. The Indian politician who has taken any part in the public life or who has any experience of the real Government of the country, came to the conclusion that under the Indian Civil Services, who form and carry on the real government, no real progress which in the present circumstances of the country is indispensable, can be expected. Reform was at first regarded simply as a means to improve administration according to English ideals and is even now so held by a considerable section. Matters have now, however, assumed a different aspect and the association of Indians in every branch of Government and self-government is regarded as an end in itself and the only panacea for the evils complained of."

(d) **Answer to the criticism that Congress does not represent the entire India (para 10)**

It is stated that all India does not follow the Congress. The Governmet tried its best to keep the Mahrathas and Mohammedans away from the Congress, but, they did not succeed. Anti-Congress politicians said that races like the Sikhs and other Punjabis at least are bound to be opposed to Home Rule. In fact, they were as keen as real congressmen to support the Congress. They really pressed for more reforms. It is doubtful whether there are stronger adherents to Home Rule than these people. The Non-Brahmins and the depressed classes have also lent their support to the Congress movement as the Government did not do anything to improve their position. The paragraph dealing with this question ends with the remarks "The demands for a large measure of reform varying from Home Rule to the demands of the depressed classes have now become general."

(e) **Measures introduced by the Government (para 11)**

After the above remarks, the writer proceeds to examine how far the Self-Government measures introduced by the Government due to the pressure from the Congress, have been successful. In

this connection (see para 11) measures taken by Lord Landsdowne and Lord Morley are examined and the conclusion is reached "that not only the Congress and the popular leaders of the country, but all thinking men in India have come to the conclusion that the existing machinery is insufficient for the peaceful and good Government of the country." Here, Sir Sankaran Nair examines the measures introduced by Lord Morley and says :—

> *" He (Lord Morley) also provided what is actually important, for the appointment of Indians to the Executive Council so that they might press acceptance of the popular views upon their colleagues.*

I am drawing particular attention to the duty that is expected of the Indians appointed to the Executive Councils (to this I should refer later). It was because of the failure of these Reforms, already granted, to bring peace to the country, Sir Sankaran Nair says that the "Montagu-Chelmsford Report" has referred to the political conciousness of the people, which has demanded great political reforms.

(f) **Additional reasons why Reform is imperative :**

In paragraph 12 of the Dissenting Minute Sir Sankaran Nair gives additional reasons, not advanced in the Report, in support of the Reform. It refers to (a) the various troubles the country has undergone due to the want of popular self-government and the failure of the Government in carrying out the various promises made by it to the people and (b) the demands for responsible Government on account of reasons given in (a) above.

(a) "I have referred to the reasons for reform which have been advanced in the Report and they make out a case for a great change, but in the opinion of the political leaders reform is imperative for another reason. It is required in the interests of peace, order and good government; i.e. efficient Government, according to English ideals. The present system has proved inefficient. The plague disturbance in the Bombay Presidency would not have been allowed to take place under any demacratic or popular Government. The Tinnevelly riots and the murder of

Mr. Ashe in the Madras Presidency were due to the latter's interference with Chidambaram Pillai's efforts to improve the lot of the mill hands and with the Swadeshi Steam Navigation Company. This again would not have been possible under the ordinary conditions of good Government. The occurrences in East Bengal which were the immediate cause of seditious and revolutionary movements also would have been practically impossible under a popular Government. The Punjab unrest in 1907 had its origin in a Legislative measure which was vetoed by the Imperial Government on account of the opposition of the sepoys and the military classes. The bills now before the Legislative Council tend to deprive a person of the protection of the ordinary courts of law and of the safeguards which, in civilised countries have been found necessary to protect the innocent, and to place personal liberty, freedom of the press and speech under the control of the executive, and this is proof of the necessity of radical reform of a system responsible for a situation which has, in the opinion of Government, rendered such legislation necessary.

" The troubles consequent upon the division of society by races, castes and creeds, far from being any impediment in the way of reform, calls imperatively for great political reforms; and there is very good reason to believe that if the leaders of the various communities are left to compose the difference themselves, such conflicts will be far rarer, if they will not entirely disappear.

" Great constitutional reforms are also essential in the interests of the masses of this country. The educated classes have failed in their endeavours to bring about any substantial amelioration in their condition.

" Further, the various reforms that are long overdue also call for a change in the constitution that would

render their realization probable. Promises made as regards admission of Indians into the Public Services without racial distinction have not been kept. Reforms in the land revenue and administration which are indispensable were promised by the Government, and the promise has been withdrawn. The separation of judicial and executive functions was promised by the Government of India. It has not been yet effected. The orders of Lord Ripon and of Lord Morley about local self-government have been practically disregarded. The wishes of the King Emperor as regards education have not been carried out. Steps necessary for the revival of industries have not been taken. In all these, we have now passed beyond the stage of promise and without actual performance no weight would be given to our declaration."

(b) "It is under these conditions that the Congress and the Muslim League and the non-official representatives of the Legislative Councils formulated their demands for representative Legislative Councils, for responsible Government by the subordination of the executive to such councils and for a far larger infusion of the Indian element into the Executive Councils, so that the latter might not be in a position to entirely disregard the popular demand, and it was in reply to this demand that the British Government have promised self-Government by instalments, substantial steps being taken at once to carry out that promise.

"Thus, it is not true that the reforms advocated will result in the transference of powers to persons who are not interested in the welfare of the masses; and it is also quite feasible to transfer power to the masses themselves. The demand for reforms is universal; and such reforms will only result in the application of the British standards and ideals to the Governments in India. With reference to the masses and that the transfer of power to the educated classes may result to the detriment of the masses, I would draw

attention to the recent events in Champeran Kaira, see appendix (A). They are also instructive for other reasons."

The general survey, which is of vital importance to his arguments having thus ended, (paras 1 to 11), and the additional reasons why reform is imperative having already been stated (para 12), Sir Sankaran Nair proceeds with his main criticism of the Despatch under two heads, Transferred Departments and Reserved Subjects.

(g) **Deviations made in the Despatch respecting the Transferred and Reserved Subjects and the writers objections thereon (paras 13 to 20)**

Transferred Departments (paras 13 to 20)

The Dissenting Minute says that the cumulative effect of certain provisions in the Despatch is "to place the Minister in the Legislative Council in relation to 'Transferred Departments' in subordination to the Executive Council." This scheme in the Despatch is, therefore, "directly against the announcement of the 20th August, as it means altogether a negation of responsibility and should not therefore be accepted." Some of these provisions may be mentioned :

(i) It is not clear from the Despatch whether a Minister, if he so desires, can dismiss an Officer now doing work in the department, and appoint another in his place to do the work with the permission of the Secretary of State. In Sir Sankaran Nair's opinion it should be open to a Minister to appoint, with the sanction of the Secretary of State or request the Secretary of State to appoint any person outside the Service for any post under him. The intervention of the Secretary of State should be a sufficient safeguard in such cases."

(ii) "According to the Despatch" permanent heads of the Departments and the Secretaries under a Minister have access to the Governor to bring to his notice any case which they consider that the Governor should see. This, says the Dissenting Minute would weaken considerably the position of the Minister,

in relation to his subordinates and would reduce him 'to a figurehead by the Governor and Secretary.' This is not contemplated by the authors of the Reforms Report. No one, says Sir Sankaran Nair "should come between the Governor and the Minister." It is one thing for a Governor to tell the Member himself that he would like to be consulted on cases of a certain type, and it is a very different thing to allow a Secretary to bring to him such cases for decision in appeal against a Minister."

(iii) Another drastic change proposed in the Despatch is the right given to the Governor "to refer a Bill dealing with transferred subjects if it affects the peace, tranquility, etc. of a province or of the interests of a 'specified reserved subject' to a "Grand Committee." This is objectionable because in actual practice, this might practically eliminate the control of the Legislative Council over even the Transferred Subjects.

(iv) The Despatch gives 'power to the Governor and the Secretary in certain events to transfer all the Departments from the Minister to the Executive Council'. This is striking at the root of the reform scheme and is opposed both to the latter and the spirit of the Reforms Report.

(v) In certain circumstances, power is given in the Despatch to the Government of India to interfere in the case of Transferred subjects. Such power is objectionable.

(vi) The new proposal of the Government of India as regards the 'power of allocation' of the resources available for the purpose of the Executive Council and available for the purpose of Ministers, says, the Dissenting Minute "completes the subordination of the Ministers to the Executiv Council". Then, the Minute deals minutely with the power of 'allocation' in detail, which is not necessary for us to consider, as I am only pointing out the 'deviations' in outline.

Reserved Subjects (para 21)

Under this heading, Sir Sankaran Nair takes up for consideration certain modifications proposed by the India Government, to which he cannot agree; "the question of appointment of one more official in the Executive Council", "the important question of peace and order", "the appointment, as Heads of Provinces," "Governors instead of Lieutenant Governors", and such subjects as "Grand Committees", "the Council of State", Government of India", "Budget" etc.

I propose to deal with each of the above subjects shortly, discussing it in detail, wherever possible, in the words of the author himself, the subjects, which I consider will interest the general reader. I may say at the outset, as I have said before, that most of these subjects have now lost their importance; but, the remarks made by Sir Sankaran Nair in criticising some of them are very much worth recalling.

(h) **Modification proposed by India Government (para 22)**

The "modifications in the Despatch of the Government" to which he cannot agree, are intended to be 'Administrative Conveniences', but Sir Sankaran Nair says, that "assuming that they will improve the Administration, they will bring about the loss of the influence of the Ministers and the Legislative Council on the 'Reserved' half, in the settlement of the Budget, in the direction of "thrift" and expenditure etc., the establishment of which was one of the objects of the Reform proposals. It is not necessary to pursue these subjects further, as they have now lost their importance.

(i) **Appointment of one more official to the Government**

"The Government of India is of opinion that one more official who will ordinarily be a civilian, should be appointed to the Executive Council". As the work of the "Reserved" half was reduced by the transfer of some subjects to the "Transferred" half, the Reform proposals reduced the number of the Members from 3 to 2, i. e. to one Indian and one European. The India Government would now add one European to the Executive Council, thus making the number again 3, saying that the new Governor–a new man from England–would be left with the advice of only one European in the

discharge of his work. Sir Sankaran Nair points out that, besides the fact that there is no work for the additional member, the "stronger reason" against such an appointment is "if the appointment is made, one Indian Member will have no chance against two English Official members (see para 26) (I need not expatiate upon the bluntness and the truth of this statement–a real slap on the face of the Government. Few, I think, amongst those who believe in this truth, will dare to express it so bluntly, especially when it is remembered that some of the highest civilians in the land were his colleagues in the Council). Sir Sankaran Nair further points out, the new Governor can get ample advice from the Secretaries of the Department and other officials.

(j) **The important-question of Peace and Order (para 28)**

The above subject is so important that, instead of giving a precis of Sir Sankaran Nair's view on it, in my own words, I shall quote the entire paragraph containing it, as otherwise, much of the force of his observations will be lost.

> "Leaving now the question of the budget, let me take the equally important question of peace and order. If sedition had its origin in Bombay, it would be noticed that this was due to the harsh administration of the plague regulations by a Collector, which would have been impossible if the Indian element was powerful in the government of the country. Similarly the course of mal-administration by the Government of Eastern Bengal, which was responsible for the growth of real Bengal sedition, would also have been practically difficult. Under the law which we have recently passed and under certain regulations which were passed at the commencement of the last century, to meet certain exceptional classes of cases, it would be open to an executive government in a province to deprive a man of his liberty and of his freedom of speech without the orders of the magistrate or any other judicial tribunal. The press may also be deprived of its freedom by executive action, the ordinary courts being deprived of their jurisdiction. The Governor of a province has the power of depriving a person who attacks him of his liberty of person

and of his property without affording him a public opportunity of disproving his allegations before the ordinary tribunals of the country. Under this law no Indian paper would venture to indulge in criticism distasteful to the head of a province. Any agitation against the civil service or bureaucratic form of government would scarcely be possible under the civilian head of a province. The Home Rule agitation, or in fact any constitutional agitation, may be suppressed without the interference of a judicial tribunal solely at the instance of an executive government. In these circumstances it seems to me to be imperative that the Indian element and the popular element should be powerful in the government of a province. Otherwise we will certainly perpetuate all those evils due to the inutility of the Councils which as forcibly pointed out in the report are responsible for the widening gulf between officials and non-officials.

(k) **Sir Sankaran Nair's view of Administration by the I C S (para 30)**

Sir Sankaran Nair says that "We are all agreed that the heads of provinces should, in future, be Governors instead of Lieutenant Governors but my colleagues are of opinion that the existing practice of appointing only civilians in accordance with the rule which requires twelve years service in India for a Lt. Governorship must be or will be followed for a long time to come. I regret I cannot share in this view. The primary consideration that should weigh with the Secretary of State in making the appointment is the fitness of the person to carry out the duties not, as hitherto, of an autocratic head of a province, but of a constitutional ruler. The Civil Service generally have shown their hostility to the proposed reforms. They have expressed their strong opinion of the unfitness of Indians to hold high appointments or to carry out the duties which will devolve upon them as parlamentary leaders. There will be many persons therefore among them who are not likely to work in harmony with Indians

or to view with sympathy their political progress, which must curtail the privileges hitherto enjoyed by their own service. The Secretary of State should certainly therefore take this question into consideration when he makes the appointment. "It may indeed, be questioned whether the life spent in the Indian Civil service is calculated, except in rare cases, to stimulate that part of political talent which consists in the study of the large legislative proposals which are from time to time needed in actively thinking political communities." Those Civilians who are in sympathy with Indian progress or who can be trusted to work smoothly with the political machinery of the future under the altered conditions and who are not prejudiced by the feelings of hostility to the proposed reforms evinced by many of them may be appointed as heads of provinces. I do not think, therefore that the confident expression of opinion by my colleagues as to the continuance of the practice hitherto existing is justified.

The same question arises with reference to the qualifications of a member of the executive council. It is intented, according to the Reforms Report, that one member should be an Indian and the other an official with qualifications of 12 years' service under the Crown, which is now required by law. I do not understand the Report to lay down that this should be retained as a statutory qualification, though, no doubt in practice, the qualification will be insisted upon. At present, the appointment is in practice limited to the Civil Service. One can easily conceive cases where a Governor might require the presence in his Executive Council of a person of outstanding abilities in some particular line either in India or in England. There is no reason why the Secretary of State should be debarred from nominating him. My colleagues are of opinion that there must be a statutory provision that one member should be an Indian and that the other should have the existing qualification. I doubt whether this is necessary."

(l) **Grand Committees (para 29)**

"The Government of India proposed to constitute Grand Committees out of the members of the 'Legislative Council' in order to legislate on 'Reserved' subjects, when the Governor considers such legislation is essential to the discharge of his responsibility for the peace or tranquility of the province". It is said that such legislation may be necessary on account of poverty, ignorance and helplessness of the great majority of the population. Amongst the reasons mentioned, "it is also said, that such power is necessary also to defend British Commercial interests and other questions concerning industries etc." In Sir Sankaran Nair's view, "Grand Committees, as constituted, is intended to be a check on a popular assembly, and is in itself therefore an undesirable institution." He further says that the difficulties contemplated can be met by various other means, and, if necessary, the Governor and the Viceroy may negative the acts of the Imperial Legislative Council and pass ordinances. Legislation by the Grand Committees will practically be an end to legislation in the Imperial Council. Sir Sankaran Nair, is, therefore, against this proposal.

(m) **The Council of State (para 34)**

Sir Sankaran Nair is against the institution of the "Council of State" if its purpose is to give the Executive Government laws without a previous discussion in the Legislative Assembly. In short, it may be said, that he is against those institutions which will cut at the root of the Reform proposals by destroying the influence of the Ministers and the Legislative Council. Apparently, the latter, in his view, form the basis of responsible Government. Maintaining them and, at the same time, introducing methods to destroy their influence is not a desirable procedure, which he will accept; but, he will accept the suggestion, if it is intended to be a Second Chamber, reviewing the laws passed by the Legislative Assembly.

(n) **The Government of India (para 33)**

Though it has been laid down in the Report that there should be no responsibility in the Government of India as in provincial Governments, Sir Sankaran Nair, in his Minute, gives special reasons why in certain classes of cases, responsibility should be introduced in the centre also. In his view, "if necessary, he says, an Indian

Member of the Executive Council may be an Indian Minister for this purpose", in charge of the subjects specified in the paragraph. His reasons are fully dealt with, which I quote below :

> "The first question has reference to responsible Government. I recognize that it has been laid down in the Report that there should be no responsibility in the Government of India as in provisional Governments, that is to say, that there should be no Indian Minister responsible to the legislature. This can be defended only on the ground that many of the departments of administration have been transferred to the provincial Governments, and that those retained by the Government of India are far too important to be handed over to responsible Indian Ministers before the experiments have justified themselves in the provinces. These, of course, are subjects which concern peace and order and the good government of the country, foreign states, Army and Navy, and also questions in which the interests of England or her people are greatly involved. There are, however, questions which only concern the internal administration of the country and which have been recognised as fit for transfer to a Minister and the Legislative Council. In all these cases, therefore, in which the Government of India, retain a right to interfere with the transferred subjects there should be no objection to introducing responsibility in the central government. Indeed, responsible government seems to be necessary in order to carry out the principles indicated in the report. It is proposed to allow powers of interference to the Government of India in the transferred departments of the provinces, for instance, to secure uniformity of legislation where such legislation is considered desirable in the interests of India or of more than one province. It is also desired to retain in the Government of India power to decide question which affect more than one province. *Ex hypothesi* these are subjects which ordinarily should be dealt with by Ministers in accordance with the will of the local legislature; and if it is proposed to remove these from the jurisdiction of the local Minister and of

the Legislative Council for reasons which have nothing to do with their capacity to deal with questions of that character, it is but reasonable that in the Government of India also the decision of such questions should be left to the legislature and an Indian Minister. If necessary, an Indian Member of the Executive Council may be an Indian Minister for this purpose. Supposing there are certain subjects which are not now transferred, for temporary reasons, and of which we contemplate transference in the course of three or four years, I cannot see any reason why in such cases also responsible government should not be introduced so far as such subjects are concerned. Responsible government in the provinces demands responsible government in the Government of India in the same subjects, as otherwise provincial responsibility will be diluted."

(c) **Budget (para 38)**

Under above heading, Sir Sankaran Nair emphasises the importance of giving effect to the resolutions of the Council, as regards the Budget, wherever possible. This will amount to a control by the Legislative Council of the policy of the 'Reserved half' and then he deals with two other topics relating to (a) appointment of Under Secretaries and Standing committees and (b) appointment of more Indians to the Executive Council, in respect of both of which, for reasons given, he takes a different view from that of the Government of India.

"It is now proposed to delegate larger powers to the Government of India. It is obvious that if hitherto the interference of the Secretary of State has been necessary in the interests of the Indian taxpayer - and that it has been necessary will appear from the various orders which restrict the Government of India's power of expenditure - then the Secretary of State should be allowed to forego the exercise of his own power only with the development of popular control. Otherwise, there is no justification. That the powers hitherto exercised by the Secretary of State were necessary in the interests of the tax payer will appear from an examination of the instances in which such

power has been exercised. It will also appear from a consideration of the rules themselves and occasions and the reasons which lead to the passing of such rules. It appears to me therefore that all resolutions on the budget by the legislative assembly should be given effect to in all those instances in which it would not now be within the competence of the Government of India to incur any outlay without the sanction of the Secretary of State; at any rate, if full effect is not to be given to it, the power to over-rule the legislative council in that respect should not be given to the executive government in India but should rest only with the Secretary of State."

(a) **Under-Secretaryships and Standing Committees :**

"I do not agree with my colleagues in discarding the provision about appointing members of the assembly to positions analogous to that of Parliamentary Under Secretaries or the Standing Committees. At present, or under the new scheme, there is no means for non-official Members acquiring that knowledge which can be acquired only by holding an office. The knowledge of Indians in the public services will not be available to non officials for criticism of Government proposals. The Ministers will have intimate knowledge only of the transferred departments and that also only in the provinces. These under-secretaryships and standing committee will enable the non officials to acquire that information which they would otherwise lack. In the earlier stages of discussion, it was generally admitted that these would form a good training ground for future administration. It is undesirable, therefore, to drop them.

In the Imperial Council, also, as in the provincial councils, I think, it would be left to the Council to frame their own rules."

(b) **Appointment of more Indians to the Executive Council**

"If there is any demand in which the associations who have addressed the Secretary of State and the Viceroy

and all classes are unanimous, it is in the request they make that half the members of the Executive Councils, both Provincial and Imperial, should be Indians. The Congres and the Moslem League as well as the Sikhs and the non-Brahmin classes of Madras want it. The reasons are obvious. Everybody feels that without the infusion of an adequate Indian element into the Executive Councils, the reforms that are essential for the better government of the country, will not be carried out. Again there are various questions, particularly those affecting finance, that are settled by the Government of India and by the Secretary of State in consultation with one another which require a strong Indian element in the Executive Council. In all those questions without adequate Indian influence the Government of India will easily yield to the Secretary of State. Various influences will act upon the Government of India which require adequate Indian influence to counteract. Indian influence is also required to prevent the Executive Government of India from being unduly autocratic or unsympathetic towards popular movements. I would, therefore, propose the addition of one more Indian member to the two members proposed by the Govenment of India. If this is not accepted, I would suggest the appoinment of an Indian Minister to exercise the Government of India control over the transferred departments in the provinces. He may be called in for consultation but not for decision."

It is surprising that a dissenting minute of such vast importance was summarily rejected by the Government of India in their despatch with the remark that "*Time is important and we have not discussed his* (*Sir Sankaran Nair's*) *arguments although it is clear that we have fully considered them* (italics are mine). There is nothing in the Despatch to show that they had considered or even understood Sir Sankaran Nair's arguments. By way or contrast it is refreshing to note the following Tribute paid to Sir Sankaran Nair's Dissenting Minute by Shri Motilal Nehru in his presidential address at the

34th Congress, held at Amritsar in 1919. Speaking about the Budget, amongst other things, he said :—

> "It will be remembered that it is the power not to 'direct' but to influence, and eventually to control the policy of Reserved Subjects, through the Budget, that was all along demanded by us, and was believed to have been conceded by the Reform Scheme. In this matter, there existed no difference of opinion whatever between the several sections of progressive Indians....."

The Government of India were alarmed at this possibility, and in consequence propounded their separate Purses Scheme, which has now been abandoned. It was at this time that Sir Sankaran Nair wrote his masterly Dissenting Minutes, for which, and for the courageous attitude he took up on the Punjab question, the country will ever remain grateful. In the course of one of those Minutes, he accurately described the popular attitude towards the Budget proposals in the following words :

> " Notwithstanding much that could be said against the Reforms Report Scheme, a number of critics rallied to its support for the reasons, among others, that it provided for a unified budget and for its being voted by the legislature.....The control by the legislature must, in any event, be regarded an indispensable, if the Reforms are to be worth anything in the eye of even the supporters of the Scheme."

The approval of no less a person than Shri Motilal Nehru gives a special value to Sir Sankaran Nair's Dissenting Minutes.

CHAPTER XX

SIR SANKARAN NAIR'S SECOND MINUTE OF DISSENT

AS already mentioned, this Minute of Dissent deals with the Government of India's Despatch, dated April 16, 1919, on the report of the "Division of Functions Committee" presided over by Lord Southborough. This Committee was called upon to advise "Demarcation of the field of provincial administration and the matters within that field which should be transferred to the control of the Minister." It is pleasant to read Sir Sankaran Nair's Dissenting Minute as the Functions Committee's report on the various matters which it had to decide upon agrees in almost every respect with his views except on a few matters which are not of much importance. This means that both Sir Sankaran Nair and the Functions Committee differ from the opinions expressed by the Government of India in its Despatch. On a perusal of the Despatch, in view of the Dissenting Minute, it becomes clear that the Government of India wanted to stultify the Montagu-Chelmsford Reform proposals. This was what Sir Sankaran Nair resented and wanted to prevent. It is necessary here to point out to the reader, that most of the decisions arrived at in the Dissenting Minute have now become obsolete or valueless in veiw of the independence which India has gained. We now have an entirely new set up in the administration of Governmental matters, and we have our own Ministers to administer them. Therefore, the opinions of the Government of India and of the Functions Committee are not of much help, but in Sir Sankaran Nair's Minute' there will be found opinions, which have a value of their own. I propose to refer to them briefly, quoting wherever necessary, valuable portions of his Minute.

To proceed, the Minute deals with the Functions Committee's Report under various heads, except in the earlier paragraphs, where the subject matter of the paragraphs is not designated by any special

heading. In these paragraphs, the writer deals mainly with the "appointment of Officers by the Ministers" the transfer of a subject "from the Transferred to the Reserved list", taxation, budget, financial proposals etc. The Functions Committee agrees that the Ministers should have the power to appoint their own officers whenever necessary, which may form a separate cadre and will be subject to the control of the Secretary of State. This view is agreeable to Sir Sankaran Nair (para 1 to 3 and 5 to 19).

The transfer of a subject from the "Transferred to the Reserved list" is a matter of great importance, for such matters, if freely allowed, will obviously cut at the root of the Reform Scheme. The Government of India despatch stated that the Governor, when any conflict arises between the Ministers and the Legislative Council on the one side, and the Executive Council on the other, will administer the subject until the conflict disappears, and if the conflict continues long without any effort on the part of the Ministers to solve it, he can refer the matter to the Secretary of State advising him to transfer the subject from the "Transferred List to the Reserved List". This proposal is of course, against the Reforms Report. The Functions Committee differs from the Government of India's view and solves the difficulty stating that, if necessary, the Governor while administering the subject himself, can dismiss a Minister who is recalcitrant and give the administration of the subject to another Minister, who will carry it on. "Emergency is thus provided for and the Transferred Departments will always continue as such." Sir Sankaran Nair says "this is reasonable, but it may be doubted whether the simpler method in the Reforms Report under which the Governor's decision is declared to be the order in the case is not preferable (see para 3)

As the matter of Transfer of a subject is one of great importance in the Reform Scheme, Sir Sankaran Nair says that he cannot allow the Governor to recommend to the Secretary of State, the re-transfer of it to the reserved list and, for this view he gives reasons, which show his opinion about the administration of Government by the Indian Civil Service. His view of the Government by the I. C. S. is expressed in his Dissenting Minute, is worth recalling.

SIR SANKARAN NAIR'S VIEW OF ADMINISTRATION BY THE INDIAN CIVIL SERVICE

(see para 4)

"I cannot too strongly protest against this proposal to allow the Governor to resume the portfolio of any transferred subject and to empower the Secretary of State on the motion of the Local Government and the Government of India to re-transfer any subject from the Transferred to the Reserved list. As I have said before, it cuts at the root of the whole scheme. Let us see what this implies. The Reforms Scheme is intended to release the duly elected representatives of the people, in part, at any rate, from the control of the Civil Service. The Indian opinion is unanimous that this step is necessary in the interests of good administration and is due to the failure of the Civil Service to carry out the intention of the Parliament and of the people of England. The Governor in some provinces is likely to be a civilian for some time to come. In others he will be greatly under civilian influence. In these circumstances, the provision of re-transfer is, and will be received as, a warning to the Legislative Council not to indulge in a course of action, which will lead the Civil Service to take that step. In fact, my colleagues practically say so in clear terms. The Civil Service have also openly declared their hostility to any real reform. It is absurd in these circumstances to place the future of Indian Constitutional Reform in their hands. The reforms are a gift of Parliament, not of the Civil Service. The parliament may take it away at any future time if they choose. The future Legislative Councils have to perform their duty to the people of India and to Parliament. But to place this weapon in the hands of the Civil Service is in all probability to ensure the failure of Reform. They should not be allowed in future, as they have done in the past, to nullify the policy of the people of England. The scheme put forward by my colleagues is calculated to produce that result. It creates possibilities of frequent dead-locks if

the Minister and Legislative Councils perform their duty to the country and to Parliament, and makes that a reason for getting rid of responsible Government.

The interposition of the Secretary of State is no safeguard as in all that I have said above, the Secretary of State has allowed himself to be merely a passive instrument in the hands of the Civil Service. I can only say that if I had felt such a standing threat necessary, I should not have asked for any substantial reform in the direction indicated and I would not have regarded it as a loyal acceptance on my part of the principle of responsible Government which must now be taken to have been laid down by Parliament for application to India. I am glad therefore the Committee do not endorse this proposal".

I wonder if any contemporary Indian of his time would have dared to express his opinion against the I. C. S. so boldly and bluntly; we must not forget that some of the reactionary I. C. S. people to whom his observation would apply were his own colleagues. It is not strange that the Viceroy and his colleagues including Montagu found Sir Sankaran Nair a difficult person to deal with; but Sir Sankaran Nair remembered that he was there to fight India's cause in the matter of reform and had determined to follow his views, which really was the Congress view. This attitude appears again and again in his Dissenting Minute.

The Budget proposals and the proposals relating to finance, on which Sir Sankaran Nair generally agrees with the opinion of the Functions Committee, are not now of much importance, neither is the "classification of the subjects" for, our Government prepares its own budget according to its needs, and no subject is reserved for administration by a special department, as each department is administered by an independent Minister subject to the directions of the Prime minister and the President.

In passing, attention may be drawn to the fact that the Government of India expresses the view that the resolutions of the Legislative Council should be treated as mere "recommendations" which really means that the Legislative Council should be treated as it was in early days as a mere training ground for politicians, which,

of course, was absurd. Putting the clock of reform back will certainly not be agreed to by Sir Sankaran Nair.

I will now deal with some of those subjects which are arranged and dealt with by the writer under various separate headings.

LAND REVENUE

(see para 20)

Sir Sankaran Nair's view on Land Revenue will be read with interest. He was an expert on the Indian Land Revenue system. On this question, the views of the Functions Committee and of Sir Sankaran Nair would seem to clash a little, but the reasonings show that the latter's views should be preferred. The Committee recommend that the taxation for imposing cesses on land and duties on the unearned increment should be treated as provincial subjects and Sir Sankaran Nair agrees with this view.

The periodical settlement of the Land Revenue by the Government was a matter, which was much resented by the people in those days. The Committee stated that, as the assessment on land revenue is left to Executive action, the periodical settlement must be treated as a "reserved" subject within the jurisdiction of the Executive Council only. Sir Sankaran Nair disagrees with this view and gives his reasons as follows:

> ".....It appears to me that these two propositions are incompatible. Cesses and duties cannot be imposed on land by the Legislature without regard to the revenue imposed thereon, by the Executive Council and *vice versa*. The one is dependent on the other; and if the Committee's views are to be maintained, they will have to be treated as a mixed subject in which the Governor's opinion should prevail in case of any difference of opinion between the Executive Council and the Minister. In my opinion, however, there should be no increase of revenue merely by executive action.
>
> The land revenue or land rent should be treated as revenue pure and simple to be imposed only by the Legislative Council. At present, outside the permanently settled zemindaries, the theory maintained by the

Executive Government is that land is the private property of the Crown, the land holder being bound to pay any assessment that may be fixed by the Executive Government at their discretion. India is the only country in the world where *neither law, nor custom nor competition determines the revenue or rent.* This has been responsible to a great extent for the increasing poverty of the country. It has certainly tended to keep away labour and capital from land. It appears to me to be therefore essential that the proposal of the Functions Committee that the entry "Duties upon the un-earned increment on land should be so framed as to make the provincial powers of land taxation as wide as possible" should be accepted so as to cover the case of land revenue assessment referred to in paragraph 79. This may be done by altering the entry into "all demands upon land" and by making the imposition of any revenue on land either by legislation or periodical settlements a transferred subject. In the alternative, I would urge that it should be at least be laid down that (1) the general principles of land revenue assessment be embodied in provincial legislation as recommended ten years ago by the Royal Commission on Decentralisation and (2) every proposal of re-settlement of a district be embodied in a bill that should be passed by the Legislative Council like any other taxation bill".

INDUSTRIES

(see para 21)

"The proposal of the Committee to transfer the question of industrial development" says Sir Sankaran Nair, "should be accepted", but the Government of India's view is opposed to this proposal of the Committee.

In assigning reasons for not accepting the Government of India's view, Sir Sankaran Nair, reviews, in the first place, "the industrial" policy of exploitation of India's resources, followed by the British from the ancient days to the present day. It was, as a result of this policy, he says, that India's industries were crippled and the country was reduced to a pure agricultural country. The

question is historically treated by the writer in the following paragraphs, in which he explains in detail the ground of his view.

> ".....it is desirable to state the present situation. India, we know, was a great manufacturing country whose wealth attracted the East India Company. Before the Mutiny, here, industries were by deliberate policy of active discouragement in India and by prohibitive duties in England, destroyed. She was thus reduced from a manufacturing to an agricultural country. The general policy of the subordination of Indian to English commercial interests has since continued to the present day. India has been utilised for the exploitation of her natural resources, for the investment of English capital and for the dumping of English goods. Instead, therefore, of the Indian industries relieving the pressure on land, their ruin has thrown millions of workmen out of employ to compete with the agriculturists. This attitude of the Government has materially contributed to the unrest and disaffection in the land. It is therefore essential that we should adopt a course which would place us beyond suspicion."

The next reason assigned is that if only the industries are in the hands of the Indian Ministers, "investment of English capital in India" could be regulated, to the advantage of our country. Sir Sankaran Nair's view on the question of investment of English capital in India is extracted below :—

> "Similarly, as to the investment of English capital, we know that we cannot do without English capital, but we must obtain it on the same terms generally on which it would be lent to the colonies and other countries. The terms must be those agreed upon between the English capitalists and competent Indians who will protect Indian interests. The English officials in India and the India office have interests. The English officials in India and the India office have not in the past protected India. They have submitted to English capitalists and I have no doubt will do so in future. We want also Englishmen to start industries in India, but not to the detriment of

indigenous industries. It is quite clear to me that unless there is an Indian to protect Indian industries, we will have English firms starting industries on a large scale in India in which the Indians will have very little share to the detriment of Indian industries."

After giving the above primary reasons for leaving the industries in the hands of Indians, the writer continues.

".....There is no objection whatever to the Government of India themselves starting any industries. But their further proposals as to advice to be tendered to Local Governments will repeat all the evils which have been condemned in paragraphs 117 to 119 of the Reforms Report. These proposals of my colleagues to diminish popular responsibility and reverting to the old practice would appear to go against that part of the Reforms Report. The efforts of Provincial Government in the past, meagre as they have been, have been hampered and not stimulated by the necessity under which they lay of obtaining the sanction of the Government of India and the Secretary of State at nearly every turn. More progress in the desired direction would have been made if they had had greater freedom of action."

After the above review of the policy followed by the Government towards the Industries, Sir Sankaran Nair proceeds to examine "some of the reasons" assigned by the Government of India for not giving the management of the industries into the hands of the Indians, and in meeting those objections, he gives further reasons as to why the indutries should be left in the hands of the Indian Ministers. It is said that the Central Research Institute, Zoological Survey are all Indian subjects. Sir Sankaran Nair points out that this may remain so, but what he desires is, to further industrial progress of India, Indians should be employed and trained in those departments so that they might have sufficient knowledge to manage them themselves. He points out that, if they are left to the management of foreign companies etc., Indians will be deprived of employment in those departments, as for instance, in the Railway Department. The suggestion is that this department was exclusively reserved for Europeans and Eurasians.

The policy of the Government of India is against the current view of nationalisation, and will, if followed, "bring about labour troubles and increase racial friction." It is clear to Sankaran Nair that the Functions Committee has not ignored this aspect of the matter.

The second reason alleged by the Government of India to keep this subject in the hands of the "Reserved half" is that there is no competent Indian with sufficient industrial knowledge to manage the industries. This is met with the answer that "there is little doubt that Indian Ministers can be found who will be competent to do the work". The view of the Indian publicists, that this branch should be given into the hands of the Indians to manage, has been accepted in England, and by the Industrial Commission.

The last objection by the Government of India for keeping the Industrial management in the hands of the "Reserved half" is that their view "involves a racial question" and "considerable influence would be exercised on Ministers to refuse any form of aid or countenance to British enterprise and to favour Indian undertakings." This charge, Sir Sankaran Nair says, is absolutety "unfounded". If there is truth in this belief of the Government of India, safeguards if necessary, might be devised to prevent the happenings of such dangers as has been done in other departments. But, Sir Sankaran Nair says that "I assert without hesitation from experience, that so far as the Government are concerned, the fear that they will unduly favour foreign enterprise to the prejudice of Indian enterprise is well founded. It is true enough that the Industrial Commission makes recommendations themselves unsatisfactory, which in some respects may assist the Indians, but here again, we know from experience how little we can rely on such recommendations, when they have to be carried out in practice."

TRAMWAYS, LIGHT AND FEEDER RAILWAYS

(see para 21)

"The Functions Committee have recommended that Light and Feeder Railways and Tramways should be in the list of Transferred subjects under the control of the Indian Minister." Sir Sankaran

Nair agrees with this view. As against this view, the Government of India expressed the opinion that these subjects should be transferred to the "Reserved" list. For the reason that the Minister and the Legislative Council might interfere with the scheme of Railway Department, Sir Sankaran Nair controverts the view of the Government of India, and gives his reason for agreeing with the opinion of the Functions Committee in the following paragraph :

> "Indian opinion is unanimous that District Boards should, in the interests of national progress, be allowed to build light railways, and the decision of my colleagues is calculated to subordinate national interests to the interests of capitalists, railway companies. Existing contracts, and guarantees will, of course, be protected, and further means can be easily provided for that purpose if the Governor's control is not sufficient. I would accordingly accept the recommendations of the Functions Committee."

EDUCATION

(see para 22)

After stating that the real question to be discussed is "who should exercise control over education? The Government or the Ministers? and, if it is the Ministers, who should control the subject? What powers should be left in the hands of the Government of India to control them?" Sir Sankaran Nair says, "that the Functions Committee have proposed that Education as a whole should be transferred." He agrees with this view. On the other hand, the Government says that the "Reserved half" should keep the University Education and that only Primary Education should be transferred.

"It appears", says the writer, "that Government's view to divide the subject of education like this is impracticable. Hitherto, no such division has been made anywhere in India". Then, he considers the question, "assuming, however, such a distinction can be made, whether it should be carried out?" and assigns reasons for not carrying out such a policy. In this connection, the remarks he makes in support of national education are worth stating in his own words, which I extract below :—

Sir Sankaran Nair's view of National Education

"A foreign service with different ideals might be able to impart education to the leaders of the people leaving it to them afterwards to take the necessary steps to impart education to the people of the country. But, it appears to me, with all respect, that it is absurd to expect them to impart national education to a foreign race. The Reforms Report leaves educational progress to the popular assemblies, and there is very little doubt the Ministers alone can obtain the money required for its expansion and improvement. Further, political progress is said to be dependent upon the expansion of sound education, and such expansion should not be left in the hands of classes which have hitherto opposed political and sound educational progress. Indians are deeply interested in it."

He further points out that from his experience as an Education Member for three years, "he is satisfied that future educational progress depends upon Indian direction", and this view is supported by Sir Claude Hill, the only other Education Member, who, for a short time of three months, managed the Department before him.

The views of the various Governments on the question discussed in this Minute are referred to and criticized in the following paragraph:

"The Government of Bombay, the Punjab and the United Provinces would transfer education as a whole. The *Madras Government would not transfer any branch of Education.* Bengal and Assam would not transfer collegiate education, but my colleagues, like myself, are of opinion that this cannot be done if secondary education is transferred. Bihar and Orissa alone is opposed to the transfer of secondary, technical and collegiate education. My Colleagues would transfer primary education, while the reasons given in their report, if they are correct, tend inevitably to the conclusion that it is primary education that should be kept in the hands of the Government and

that higher education may safely be transferred. Those who would keep education a "Reserved" subject, do so I fear not in the interests of educational progress, but for political reasons. They have themselves no scheme of education in view and their predecessors have been going on making experiment after experiment, all in the face of Indian protest, which they themselves have now to acknowledge had ended in failure. I should like briefly to refer to our educational policy".

(The reader will note the un-enlightened view of the Madras Government)

Then, the writer refers to the retrograde educational policy of the Government of India, which began from the time of Lord Dufferin and which opened the door to many evils in the system. The Sadler Commission, in an elaborate Report, has pointed out these defects, and suggested remedies for them. "These defects", says Sir Sankaran Nair, "can be avoided, if only education is treated as transferred subject, as suggested by the Functions Committee". In this connection, he points out that more Indians should be appointed by the Government in the Scientific, and Technical Education Departments, Engineering and Industrial Colleges etc. I do not think it necessary to consider this part of the Minute in greater detail, as those interested in the subject will find ample material in support of the opinion of Sir Sankaran Nair in the Sadler Report, already discussed in detail.

NON BRAHMIN MOVEMENT

Sankaran Nair favours the movement

In this interesting portion of his 'Dissenting Minute', Sir Sankaran Nair says that he is in favour of the non-Brahmin movement - agreeing with the Madras Government - "on the ground that without adequate protection being provided for by communal representation, the non-Brahmins will be oppressed by the Brahmins". But, he "entirely demurs to the proposition that it should be regarded as an essential preliminary to any responsible Government".

Then, he proceeds to give full reasons that, as the High Class non-Brahmins think, neither the rising generation of young

Brahmins, nor the old generation of them - owing to the good work of Mrs. Basant - is against the non-Brahmins, it is the Government who asked them in the early days to stand aloof from the Congress, an advice they did not follow, that is really against them. Thus, defining correctly the attitude of Brahmins, he supports the non-Brahmin movement, and summarises his arguments to support the plea that the non-Brahmins, even if they may not gain anything by joining the Reform Movement, they will not be worse off "the final conclusion being that the non-Brahmin movement should, on no account, be alleged as a ground for delaying the Reforms". Summing up his view, described in detail in the earlier paragraphs, he says :

> "I have already referred to a number of reforms that are long overdue and they are far more beneficial to the non-Brahmins than to the Brahmins. If the proposed reforms are carried out in their proper spirit and proper rules are framed, I have not the slightest doubt that the non-Brahmin higher Hindu castes will be gainers. I fail to see how they will be worse off."

Then, the Dissenting Minute deals with the position of the depressed classes under the Government, and for very cogent reasons, Sir Sankaran Nair shows that they have fared badly under the British Government. He then proceeds to point out that though the non-Brahmins and the Brahmins may not sufficiently support them (depressed classes) now, their position is bound to improve under the Reform and, in the end, that "in any event, he (Sankaran Nair) is fully satisfied that this class cannot possibly be worse off under the proposed reforms, while it is probable that their position can be improved, and it is certain that, if properly safeguarded, it will be improved."

To state his arguments shortly, Sir Sankaran Nair says that in any event, High class non-Brahmins will not be worse off under the Reforms, while the position of the depressed classes will gradually be improved.

I am giving below the full text of Sir Sankaran Nair's Minute to enable the reader to appreciate his views fully, and correctly, in all its aspects. I would call special attention to the last paragraph of his Minute, where he points out, for cogent reasons,

that "it is absurd to say that their (of the depressed classes) position, so far their material prospects are concerned, has improved under the British Government."

NON BRAHMIN MOVEMENT

(see paras 24 to 26)

"The nature of the objections taken to the transfer of subjects is proof of the necessity of responsible Government. Among the objections advanced to it, there is one which finds a place in this report which for reasons that will appear later I feel bound to notice. The representative of the Madras Government (and it is said the Madras Government accept his view) has taken objection to the division of subjects on the ground that without adequate protection being provided for by communal representation, the non-Brahmins will be oppressed by Brahmins. I support non-Brahmin communal representation but I demur entirely to the proposition that it should be regarded as an essential preliminary to any responsible Government for the reason given. As we are likely to hear more of this contention, I propose to state my view of the situation."

25. For the consideration of this question, it is essential to recognise two divisions among non-Brahmins, the high caste Hindus and the lower classes. In the earlier years of the Congress, the non-Brahmin leaders were invited by the Officials to stand aloof from it, and, if possible, to denounce it as inimical to their interests. They resolved to disregard the advice. Their main reasons were these : They found that by the British conquest it was the Mohamedans and the non-Brahmin higher castes who had suffered most. The Rajahs and the Zemindars who were deprived of their properties by the British Government generally bolonged to those classes. By far the majority of them were either deprived of their properties or allowed to retain whole or a portion of them on conditions which were very onerous. The revenue payable was very heavy with reference to the properties which they held at the time

of British conquest, Their rights were being encroached upon. The ryotwari system before 1857 was iniquitous and destructive of private property. Subsequently, though not quite so bad, it was felt to be oppressive. The merchants and the artizan classes, the labouring classes, were involved in the misfortune of these superior classes. I have already pointed out that the *Raison D'etre* of the Congress was the intense proverty of the people and the measures which they put forward to relieve such poverty, concerned the non-Brahmins more than Brahmins; the non-Brahmin higher castes, therefore, stood to gain from its success more than any others. The other questions which the Congress took up, like the separation of Judicial and Executive functions, also concerned them more. Under the conditions that then existed, and, to a great extent, even now exist, the Brahmins had far greater chances of success in the services and elsewhere. They had the qualities which were required by a foreign ruling race who wanted good subordinates, The Mohamedan and the Hindu Zamindars and the Hindu martial classes were looked upon with suspicion on account of such of their qualities which are only required for administration and Government; and not required in those whose main function was to obey and produce wealth which should be at the disposal of their masters. The non-Brahmin leaders, therefore, felt that they had a better chance of success in the new condition of things which they hoped would be brought about by the Congress agitation when the qualities which they, in their own opinion, possessed in a higher degree than the Brahmins would have a better scope. They found also that, though the old class of Brahmins had faults which are now imputed to them by the leaders of the non-Brahmin movement, a distinct improvement was hoped that common efforts, common aspirations and the common good of the country will introduce a change in the Brahmin classes. These hopes have not been disappointed. It is true that these sentiments are not

conducive to harmony or progress, but, on the other hand there is no doubt that, generally speaking, the Congress movement has brought about a greater approachment between the various classes. Mrs. Besant, in particular, has brought over the whole of her Brahmin party to discard the Brahmin restrictions which stood in the way of the hearty cooperation with the non-Brahmins. Besides the reasons above referred to. the non-Brahmins were startled at the official attitude. Many of the officials while insisting upon the existence of this class division as a bar to political progress, not only did not themselves take any active steps to remove them but by their passive resistance foiled every attempt of the reform party to remove such restrictions. The latter were sneered at as Anglicised Indians who had lost touch with the ordinary people and therefore untrustworthy in these matters or denounced as impracticable visionaries. Several officials went even so far as to say not only privately but in public that this ancient caste system was necessary to the stability of the society as it accustoms the people to order and obedience to authority and it is therefore in the interest of the Government to support that system. The non-Brahmin leaders felt therefore that very little could be hoped from officials to remove this caste restriction. These were the reasons, so far as I remember that determined the attitude of the non-Brahmin leaders then and I do not think those reasons have lost their force now.

I have already referred to a number of reforms that are long overdue and they are far more beneficial to the non-Brahmins than to the Brahmins. If the proposed reforms are carried out in their proper spirit and proper rules are framed, I have not the slightest doubt that the non-Brahmin higher Hindu castes will be gainers. I fail to see how they will be worse off.

26. In the case of the depressed classes the conditions are different. It is absurd to say that their position, so far as their material prospects are concerned, has improved

under the British Government. It has steadily gone from bad to worse. To mention only a few instances, under the old customs they were entitled to free house sites, materials, free from the jungles for building their cottages, free pasturage and a fixed share of the produce of the land which they cultivated for their wages, which ensured a living wage. All these they have lost under the ryotwari system. With the ruin of the Indian industries, also the non-agricultural labourers lost their fixed wages and they were involved in the ruin of their masters. The agricultural labourers suffered equally from the Government as the Zamindars and the big ryots. The proposed reforms will not directly benefit them to the same extent as the superior non-Brahmin castes, but they are bound to share in the benefits which will accrue, to the whole country if the reforms are carried out in the directions indicated and the poverty problem, in particular, is properly dealt with. Amongst them it is very doubtful whether representatives can be found in sufficient numbers to protect their interests against the higher castes, Brahmins and non-Brahmins who now lead the agitation in Madras and the planters and capitalists, but I think it is possible to devise rules which will enable them materially to influence elections, or to create electorates, to send their representatives to the Council. In any event, I am fully satisfied that this class cannot possibly be worse off under the proposed reforms, while it is certain that, if properly safeguarded, it will be improved".

In the last paragraph of the Dissenting Minute to which no special title is given, Sir Sankaran Nair differs from the view of his colleagues (Members of the Committee) in their proposals in paragraph 23 about Inspection and Advice, for valid reasons as given below:

"According to them, these officers are to inspect the operations of the Reserved and Transferred Departments, offer criticisms for the attention of the Governor to be called to the defects disclosed, so that he might use his influence and authority to secure their removal. The

authors of the Reforms Report have pointed out (see paragraph 118) that such official inspirations have increased the disposition to interfere in provincial details; they further point out that a substitute for them, in future, should be found in the stimulus afforded by public criticism. Though the necessity of publicity and public criticism is recognised by my colleagues in the paragraph above referred to, I have little doubt that the tendency again will be towards interference with the Transferred Departments and also with the Reserved Departments. It is the Government of India, as is recognised in the Reforms Report, that have stood in the way of reforms which the Provincial Governments had been willing to carry out. I am, for these reasons, unable to support the recommendations of my colleagues.

Considering the nature of these recommendations by my Colleagues, it appears to me that the further consideration of these questions should not be put off till the appointment of the Statutory Commission, and that the proposals in the Reforms Report empowering the Viceroy to transfer subjects if he thinks fit to do so, shold be maintained (see para 27 of the Minute)"

In reading the Dissenting Minute, I think, an entire divergence of opinion between the writer and his colleagues is observable only on the point in this paragraph.

CONCLUDING REMARKS

I have given above, a brief summary of the Two Dissenting Minutes of Sir Sankaran Nair, quoting wherever necessary, from the texts to emphasise his views. My chief aim in extracting the paragraphs has been to help the busy reader to form his own conclusions by reading them as regards their merits. Sir Sankaran Nair's outspokenness and his bold criticisms of the Government have been misinterpreted by many as an attack on the British people. This is not so. No charge against Sir Sankaran Nair is more untrue and unjust. There is no malice in his criticisms. He does not attack any individual or individuals; his attack is directed against the 'system' of British Government, represented by British

Officials. It requires rare courage to attack them in the 'holy of holies' - where almost all were against him. Politicians will do well to emulate it in their dealings with the Government to the advantage of their country, and also for their own benefit.

The views of Sir Sankaran Nair, in his Dissenting Minutes, were almost all accepted by the Parliamentary Committee in England. This is what he himself pointed out in November 1927, about 8 years later, in the last paragraph of an exclusive interview, which he gave to the Madras Mail, when the personnel of the Indian Central Committee to co-operate with the Indian Statutory Commission was announced :

> "My mind goes back to 1919. The Secretary of State and the Viceroy then submitted what is known as the Montagu-Chelmsford Report. It was examined by the Government of India. I happened to be the only Indian Member at the time. In my Minute of Dissent I stated and supported Indian views, with the knowledge I had from confidential and official records. If the present three Indian Members of the Government carry on their duty properly, I feel no hesitation in saying that any defect in the machinery of the Commission can be remedied.....
>
> In 1919, the Parliamentary Committee adopted almost all my proposals in the Minute of Dissent, which was opposed to the Report of the Government of India." I should add here that but for the bold and fearless stand which Sir Sankaran Nair took in the Viceroy's Council as seen in his Dissenting Minutes, it is highly probable that a probation period would have been imposed before the grant of responsible government.

CHAPTER XXI

MR. EDWIN MONTAGU AND SIR SANKARAN NAIR

BEFORE I conclude my consideration of Sir Sankaran Nair's connection with the Reform Enquiry, I may briefly refer to some of the remarks made by Mr. Montagu about him which are not by any means complimentary. In his 'Indian Diary' he said, amongst other things, that Sir Sankaran Nair was:

> "An impossible person.....He shouts at the top of his voice; refuses to listen to anything when one argues, and is absolutely uncompromising. At the same time, he has no loyalty to colleagues and consults the whole of the Congress about every minute that he writes."

It appears to me that these observations are mere exaggeration and have no substance in them. That Mr. Montagu afterwards appointed him as a member of his own Council in London shows that he did not attach any value to them, for if he had, I do not think that he would have called him to be a member of his Council. I think when Mr. Montagu was not able to carry his points in the Council, he must have bitterly resented Sir Sankaran Nair's opposition and gave expression to his anger in his diary. It must be remembered that Sir Sankaran Nair was the only Indian Member in the Council and on behalf of his country he was fighting not only the Viceroy but his Council, which with one or two exceptions were dead against him and Mr. Montagu himself. We can picture that, in such a predicament, he must have lost his temper and expressed himself very strongly which was evidently not to the liking of Mr. Montagu. His country's future political advancement was at stake, and Sir Sankaran Nair was not the man to give in when he had an opinion to emphasise and carry through in the Council. In such a circumstance, if he 'compromised', he would have stultified his own career, though his attitude might have satisfied Mr. Montagu and his friends but such conduct would

never have been appreciated by his countrymen. However, I will examine these remarks and see if there is any substance in them.

The only one that affects his character, if true, is what he says about want of loyalty to colleagues. This is entirely due to a misconception of Mr. Montagu's part of Sir Sankaran Nair's position in the Council. In the previous pages, I have drawn attention to what Lord Hardinge had told him, when he took oath as a Member of the Council, then he would hold him (Sir Sankaran Nair) responsible for giving him the correct opinion amongst the Indians outside the government, about the government and its measures, and if anything went wrong he would hold Sir Sankaran Nair responsible. He also had said that he would place full confidence in Sir Sankaran Nair and, if anything went wrong it would not be Sir Sankaran Nair's mistake, but his (Viceroy's) own fault. Sir Sankaran Nair mentioned this aspect of the matter to Mr. Montagu and he expresses this in his diary. It was unfortunate and it was well known to everybody that Lord Chelmsford did not repose any confidence in Sir Sankaran Nair, and out of this arose all the trouble. It may well be, in order to obtain the Indian opinion, Sir Sankaran Nair discussed the matter of importance with persons in whom he had confidence and they, as shrewd men, might have drawn their own conclusions, and inadvertently might have given out their own opinions as those of the government on the measures that were before the government. This certainly was not betraying the government nor consulting the whole of the Congress about what he was going to write. The special position assigned to the Indian member in the Government was, as I described above, becomes clear when we look at the history of the Congress itself.

The original idea of the founders of the Congress was that it should function as a social body presided over by the Governors of the provinces, where its meetings were to be held. Lord Dufferin, when consulted by the leaders, disagreed with this view and said that the Congress to be helpful should discuss political matters and give the government its opinion about the administration pointing out in what way it could be improved, if it was defective. Sir Sankaran Nair was the foremost leader of the Congress at the time and Lord Hardinge was perfectly right, if I may say so, when he expected him to represent to him what the Indian opinion (i.e.

really the opinion of the Congress) outside the government was about the administration. The only way to get the correct opinion was to discuss the matter with the leaders of the Congress, but as a politician of great experience, I have no doubt, he would never have disclosed any confidential matter to the leaders whom he consulted. In this connection, I may draw attention to what Sir Sankaran Nair has said in his First Dissenting Minute about the Indian Member's position in the Council. He says :

> " He (Lord Morley) also provided.....for the appointment of Indians to the Executive Councils so that they might press acceptance of the popular views upon their colleagues..." (see para 11 of Sir Sankaran Nair's First Dissenting Minute)

Mr. Montagu, as a politician himself, should have known that popular views can be obtained only by discussing matters with the leaders of the people. As I have already pointed out that such discussion, unless there was evidence of disclosure of government secrets, cannot in any way amount to disloyalty to his colleagues. To be fair to Mr. Montagu, it must be mentioned that in his diary he points out that on one occasion with respect to an important measure that was going to be considered by the Council, the Viceroy discussed it beforehand with all the Members of the Council without mentioning anything of it to Sir Sankaran Nair. Mr. Montagu did not like this attitude of the Viceroy. It further shows that Sir Sankaran Nair was not being treated properly by the head of the Government. Giving one's best consideration to the circumstances as a whole, Sir Sankaran Nair, if he discussed the governmental measures with the Congress Leaders was only discharging his proper function and not showing any disloyalty to colleagues.

That Sir Sankaran Nair shouts at the top of his voice cannot be taken as a defect in his character. Everybody knows he had a strong and sonorous voice. Perhaps the accoustic properties of the Government's Council Chamber did not suit Sir Sankaran Nair's voice. Speaking of "loud voice" in pressing one's arguments, an incident which happened in the Madras High Court comes to my mind. A well-known counsel who had a fairly loud voice was pressing his arguments before the Bench, when one of the judges

observed, that he was talking loudly and that he did not like his voice. The counsel put down the papers quietly and looking at the judge said: "My Lord, I cannot help it. God has provided me with the voice and I must use it as best as I can." Nothing happened and the case proceeded.

If Sir Sankaran Nair was an impossible person - as I said before - Mr. Montagu would not have entertained him as a Member of his Council. On the whole, it appears to me that there is no substance in any one of the uncomplimentary remarks made by Mr. Montagu and that what he had written would be attributed to his passing anger, when he found that his measure was met with opposition from Sir Sankaran Nair. Those who have read the diary will remember that Sir Sankaran Nair told him once that he could break his (Mr. Montagu's) whole scheme if he wanted to do so. That was a bold statement, nevertheless it was true, and Montagu, knowing Sir Sankaran Nair's position in the country as the foremost man in the political world at the time, believed it. Politicians in India knew well that without Sir Sankaran Nair's efficient help, Montagu's scheme would have ended in a fiasco.

CHAPTER XXII

PUNJAB REBELLION—MARTIAL LAW ADMINISTRATION—SIR SANKARAN NAIR'S RESIGNATION—HIS RETURN TO MADRAS

WITH the termination of the Reforms Enquiry, and the writing of his Dissenting Minutes, the main work during the last stages of Sir Sankaran Nair's Membership in the Viceroy's Council may be said to have ended. He had some more time to serve in the Council, as his normal term of office would end only in July 1920. In the meanwhile, the Punjab Rebellion of 1919 broke out early in April of that year. The arrest of Dr. Kitchulu and Satyapal, the shooting tragedy at Jallianwallabhag, the crawling order, and the other details of the rebellion need not detain us in this book, as I am only concerned with the rebellion to the extent it had affected Sir Sankaran Nair's membership in the Viceroy's Council. To quell the rebellion, the province had been put under Martial Law Administration, which was formally proclaimed on 15th April 1919. Sir Sankaran Nair remained in the Council during its continuance for a few days over three months. Then, he resigned his Membership on 23rd July 1919. This was on the ground that the Martial Law was being continued in the Punjab too long after the disturbances had ceased. [1] The Congress, by a resolution, congratulated Sir Sankaran Nair on his resignation. Shri Motilal Nehru, in the course of his speech, already referred to, said that "for the courageous attitude which he (Sankaran Nair) took upon the Punjab question, the country would remain very grateful".

It was said, at that time, that the immediate reason which quickened Sir Sankaran Nair's resignation, which he had already decided upon in his own mind, was the refusal of the Viceroy's

1. See article by F. H. Brown 19th Vol. of Encyclopedia Brittanica, page 950.

Government to permit lawyers into the Punjab to defend the accused charged under the Martial Law. I wonder if this can be one of the "certain phases of the Martial Law Administration", which "The Times" says, brought about Sir Sankaran Nair's resignation. It is not worthwhile to enquire whether this was so or not, as I have no authentic information about it. I only know, at that time, it was said that certain lawyers including Mr. Eardly Norton from Madras, were refused permits to enter the province. However, it may be mentioned that Sir Michael O'Dwyer in his autobiography refers to a telephone conversation between himself, the Military authorities and the Government of India, from which it would appear that he was for permitting the lawyers into the Puniab, but the Military Authorities of his province were against it and the Government of India were not able to overrule them[2].

Sir Sankaran Nair's Arrival In Madras

Immediately after his resignation, Sir Sankaran Nair left Delhi for Madras. His arrival at Madras was kept a secret, as he wanted it to be private; but, the secret had leaked out and people knew that he would be arriving on a particular day by a morning train. From the early hours of that day, people began to gather at the Central Station. There was a huge crowd on the arrival platform of the Calcutta Mail train. I was one of the crowd having gone there to receive Sir Sankaran Nair and his party. There was not an inch of vacant space on the platform. When the train arrived, Sir Sankaran Nair was not in it. The people were disappointed. But the station authorities assured them that they had detached and detained Sir Sankaran Nair's carriage at the Basin Bridge station to avoid confusion, and that his train would come in very soon. This calmed the people. A little later, after the passengers, who had come by the Calcutta Mail train had left the platform, Sir Sankaran Nair's carriage with a few bogies attached to it was brought into the station. When the people saw Sir Sankaran Nair in his carriage, hearty greetings of welcome "LONG LIVE SANKARAN NAIR, LONG LIVE SANKARAN NAIR" were heard from every quarter of the station. The peoples' enthusiasm was unbounded. It can best be imagined than described. When Sir Sankaran Nair stepped

2. See 'India I knew it' by Sir Michael O'Dwyer, page 300.

out from his carriage on to the platform, he was profusely garlanded. An admiring crowd gathered round him with the repeated cries of 'VANTHEMATHARAM, VANTHEMATHARAM, LONG LIVE SANKARAN NAIR, LONG LIVE SANKARAN NAIR". The spontaneity of the peoples' welcome was evident. That hour was, I think, the most glorious and golden hour of Sri Sankaran Nair's life. His star never shone brighter. After chatting for sometime with his friends, Sir Sankaran Nair left for home accompanied by them. The crowd then began to melt away. I extricated the ladies from the crowd and took them out by a side door of the platform shown to me by a platform Inspector. I never saw such a welcome scene before; the memory of that scene is still fresh in my mind. In the afternoon Sir Sankaran Nair was welcomed by the citizens of Madras in a big pandal erected for the occasion at the place where the Annamalai Manram now stands. Leading Members of the Community made speeches extolling his services to which he made a suitable reply. Thus ended the reception accorded to him by the citizens on his return from Delhi after his resignation.

CHAPTER XXIII

SIR SANKARAN NAIR—MEMBER OF THE COUNCIL OF THE SECRETARY OF STATE FOR INDIA—MOPLAH REBELLION—ADVISER TO INDORE STATE

LATER in the year 1919, after resting for a while in India, Sir Sankaran Nair Left for England and was appointed as a Member of the Council of the Secretary of State for India. It is surprising that Mr. Montagu whose account about him in his diary is not flattering and who thought him "as impossible and uncompromising person" should have appointed him to his Council. Evidently, he had changed his mind and opinion as he must have found the true worth of Sir Sankaran Nair's services. The Hon. Mr. Bhupendranath Basu was one of his colleagues in the Secretary of the State's Council. At that time, the Government of India Act of 1919 was at its last stage and these two - Sir Sankaran Nair and Bhupendranath Basu - helped him to put it into proper shape. During his period of Membership, the Moplah Rebellion broke out in Malabar in August 1921. The Nairs of Malabar suffered grievously from the Moplah fanatics, who butchered the Hindus mercilessly. It is said that Sir Sankaran Nair advised Montagu to adopt severe measures to suppress the rebellion. In November 1921, he resigned the Membership of the Council, having accepted the post of Adviser to the Indore State, and he left England for India. This Membership concludes his life as a paid servant under the British Crown.

VI

CHAPTER XXIV

SIR SANKARAN NAIR'S BREAK WITH THE CONGRESS— PRESIDES OVER THE BOMBAY MEETING—PUBLISHES A MANIFESTO AND WRITES GANDHI AND ANARCHY

IN 1922, on his return to India occured Sir Sankaran Nair's break with the Congress. During the time when he was in the Viceroy's Council, India's political situation had considerably changed. The non-cooperation movement had taken deep root in the country. At that time, to bring about a reconciliation between the Congress and the Government, a meeting was held at Bombay in January 1922 over which Sir Sankaran Nair presided. When Sir Sankaran Nair found that the meeting under the influence of Mr. Gandhi was bent upon discussing the question of non-cooperation, he dissolved the meeting. After leaving the meeting, Sir Sankaran Nair publishd a 'MANIFESTO' denouncing Gandhi's non-cooperation movement.

After publishing the manifesto, Sir Sankaran Nair left for Indore to take his appointment. While there, he published '**GANDHI & ANARCHY**'.

From the day when he as a college student wrote 'Bombay will be turned into a Boston Harbour', with reference to certain incidents which he was not able to remember, Sir Sankaran Nair had decided to fight for the freedom of India. He, with other like-minded men of the Congress i.e. the entire Congress, had fought inside the ligislative Council and had obtained various instalments of Reforms from the British Government. When the opportunity came, he fearlessly fought the Government, single handed, in its 'Holy of Holies' and won from it, the Government of India Act of 1919, which established dyarchy in India - no doubt an unsatisfactory measure - but useful for the time being as a first instalment of the Parliamentary Government to be followed up by other

measures. When he found that his policy for securing Independence for India within the Empire which was what the Congress was fighting for all along, was being obstructed, he wrote 'Gandhi and Anarchy' exposing the various aspects of the non-cooperation movement of the Mahatma. The first edition of this book was pubished in 1922 in the Indore State Press. As the book is out of print and is not now available, I am not able to illustrate the thesis of the book by extracts from it. However, it may be stated, that in this book he has denounced the non-cooperation Movement and has also criticised, amongst other things, the Government of India for their weakness in dealing with the Moplah Rebellion in Malabar. He describes the horrors of Moplah Rebellion in this Book. When the memory of the rebellion has faded away, it will not be right to quote the particulars and revive its memory. The well wishers of Malabar are very pleased to find that Moplahs and Nairs are running the administration working harmoniously with great friendliness. Let us hope that this state of affairs will continue and Malabar will recover its past glory. Let us also hope that when Moplahs are well settled on the saddle, they will not claim 'Moplastan'. If they do, it will be a serious problem for the Prime Minister and the Central Government to consider.

'Gandhi & Anarchy' led to *O'Dwyer Vs. Nair.*

CHAPTER XXV

O'DWYER VS. SANKARAN NAIR—PROCEEDINGS IN THE COURT—VERDICT OF THE JURY—PROCEEDINGS IN THE PARLIAMENT—CONFLICT BETWEEN EXECUTIVE AND JUDICIARY

O'DWYER Vs. Sankaran Nair was purely an action in libel, but, being a political case, and the parties having held very high appointments in the Government of India, it attracted wide attention. In this Chapter, I do not profess to be critical nor do I apportion blame between the parties respecting matters disclosed in the case. However, the case has some 'constitutional' importance, which we must notice, that is, how far can a Judge criticise the conduct of the Executive, if a question of Executive action arises for decision in the course of the case?

The relevant facts of the case are briefly these:—

The barbarities committed by the Moplahs in the Moplah Rebellion, which Sir Sankaran Nair denounced in his 'Gandhi and Anarchy', perhaps recalled to his mind the events of the Punjab Rebellion of 1919. In his book, he wrote "before the reform, it was in the power of the Lt. Governor, a single individual to commit the atrocities in the Punjab as we know only too well" (see para 3 of the plaint). The Lt. Governor of the Punjab, at that time, was Sir Michael O'Dwyer, the plaintiff. It was his case that this statement amongst others amounted to a libel on him. Two copies of the book 'GANDHI AND ANARCHY' had been received by the Secretary of State. This was publication in England of the libel. When Sir Michael came to know that Sir Sankaran Nair had made this statement in the book, he instituted proceedings in the King's Bench Division to vindicate his reputation. The Defendant "pleaded justification in support of his statement" (see para 5 of the written statement). He also (para 6 of the statement)

raised the plea of "fair and bona-fide comment." He further stated that on 13th April 1919, General Dwyer committed an atrocity by ordering the shooting at Amristar; "that the Plaintiff caused or was responsible for the commission of that alleged atrocity." The reader will recall that I have already alluded to this shooting incident in a previous Chapter. Thus, the conduct of General Dwyer, who orderd the shooting at Amristar, became one of the central issues of the case. Considerable evidence was taken, both in England and in India.

The case came for trial on April 30, 1924 and lasted for about 5 weeks before Justice Mc.'Cardie and a special jury of 12. Sir Hugh Fraser, K.C., and Mr. Charles, K.C. - both of whom became later Judges of the High Court, appeared for the Plaintiff, Sir Sankaran Nair was represented by Sir Walter Schwabe, K.C. (who had retired from the Cheif Justiceship of Madras High Court in December 1923) and Mr. Willington, K.C. who also became a High Court Judge in England later. Eminent people appeared as witnesses in the case, including Lord Chelmsford the Ex-Viceroy. The case was heard in a crowded court. Absolute silence prevailed throughout the hearing. I was also present in the court, with my wife. We arrived in London a few days after the case had begun. We and the sympathisers of the defendant sat behind the Defendant's Counsel on one side, while those who sympathised with the Plaintiff sat behind his counsel. The sympathisers being many, there was hardly room for the outsiders to sit in the Court room though many managed to get standing places. On one of the days, the Maharaja of Bikaner, sat along with the Judge on the dais to witness the proceedings. Eminent people came into the Court at different times. From amongst the Madras people present, I noticed Mr. Justice Krishnan, M/s. Jackson and Reilly and a few students. Sir Harikisan Lal, who had been for sometime Minister in the Punjab Government came to England, defraying his own expenses to give evidence on behalf of Sir Sankaran Nair. Sir Sankaran Nair's popularity in the Punjab and the affection of the people for him were unbounded.

The Judge, after the Counsels' addresses were over, addressed the Jury for about 5 hours amidst 'pin drop' silence, without looking into his notes even once, except when he referred to the documents.

The learned Judge put two questions to the Jury viz. (1) whether General Dwyer's conduct was an atrocity and (2) if 'Yes', was the plaintiff responsible for that atrocity?. The address of the Judge was heard in rapt attention; it was a remarkable performance. Of course, the Judge was one of the ablest Judges of the English High Court. After his address to the Jury was over, the members retired to consider the verdict and the people began to talk in whispers as to what the result would be. All waited expectantly to hear the verdict. The jury by a majority of 11 to 1 found that General Dwyer's conduct was not an atrocity, and found for the plaintiff on all the issues. The Dissenting Juryman - it was learned afterwards was Mr. Laski, Reader in Political Science in the London University. He states in his 'Grammar of Politics', which contains an account of the case, that in his opinion the entire evidence had not been placed before the Court.

After the verdict, agreed damages of £ 500 with costs were awarded to the plaintiff. The trial ended on June 5, 1924.

Sir Sankaran Nair wanted to prefer an appeal against Justice Mc. Cardie's decision on the ground of misdirection of the Judge in his summing up to the Jury, and the strong expressions used by him on men and matters, in the case in favour of the plaintiff. He said, he himself would argue the case in the Court of appeal. He asked me what my opinion was about filing the appeal.

Having regard to the circumstances of the case, especially also the state of his health, myself and his other relations present, strongly dissuaded him from prefering the appeal. After a good deal of consideration, we were glad that he ultimately dropped the idea of an appeal much against his own opinion. Thus ended the case in the High Court.

After the case was over, a move was made in the House of Commons to get Mr. Justice Mc. Cardie removed from his office. In his summing to the Jury, the Learned Judge had remarked that in his opinion "General Dwyer was wrongly punished by the Secretary of State for India".

On the ground that in expressing this opinion, the Learned Judge had exceeded the limits of Judicial criticism of the Executive, Mr. Lansbury, M. P. a Socialist Member moved that an address be presented to remove the Judge from his office. The Prime Minister,

Mr. Ramsay Macdonald, amongst other things said "However unfortunate the words have been they clearly do not constitute the kind of fault, amounting to a moral delinquency, which constitutionally justifies an Address as proposed..." The motion was thrown out. This episode in the House of Commons illustrates the conflict between the Executive and the Judiciary, which give the case its importance from the stand point of constitutional law.

It is interesting to note how the judiciary reacted to the proceedings that had taken place in Parliament:

Lord Cave, then Lord Chancellor speaking at the Mansion House on July 4, 1924 at the banquet given by the Lord Mayor of London to His Majesty's Judges publicly and clearly stated that Mr. Justice Mc. Cardie 'had done his duty'. At the dinner, the Lord Chancellor also referred to Mr. Macdonald's statement in these words (see 59 Law Journal page 446).

> "The pulse of a judge never beat any faster because of any criticism that was directed against his judgments. Upon a recent occasion, when a Judge was subjected to criticism for doing his duty, he faced that criticism without the least concern".

Thus ended the case of *O'Dwyer Vs. Sankaran Nair.*

O'Dwyer Vs. Sankaran Nair was the second phase of Sir Sankaran Nair's fight for India's freedom. Its first phase was fought in the Viceroy's Council, and the second phase in the British High Court. Interested people on either side tried to get the parties to compromise the case. Some of those Englishmen who viewed the Punjab incident with horror exerted themselves to end the proceedings, lest the disclosures regarding the British administration of the Punjab, might injure the cause of British Sovereignty in India. The Labour Government would have been glad to see that the proceedings were terminated. The attempted compromise broke down on a small matter. What that matter is, I do not want to mention as neither Sir Michael O'Dwyer nor Sir Sankaran Nair in their biographies has given even a slight hint of it.

The case initially was no doubt one between two individuals, but essentially the defendant was fighting for India's freedom. When this was so, it is sad to note that so far as I know he did not receive a singte letter of sympathy or encouragement from the

Congress of which he was once a distinguished ornament; but the Punjabis - all honour to them - stood by his side, one of the chief men as I said before even coming to England to support his cause.

The Congress, apparently, began to dislike Sir Sankaran Nair after the Bombay meeting; this dislike became intensified after 'Gandhi and Anarchy'. After its publication, the Congress kept silence over Sir Sankaran Nair and his services, but he followed, as usual, his policy of quickening India's freedom in the political field. Sir Sankaran Nair, no doubt lost the case in the British Court; but has his fight with all its disclosures of the tragic events that happened in the Punjab been of no use to the country? I think not.

VII

CHAPTER XXVI

SIR SANKARAN NAIR PRESIDES OVER THE ALL INDIA SOCIAL CONFERENCE—ELECTED TO THE COUNCIL OF STATE—DEATH OF LADY SANKARAN NAIR—HIS WORK IN THE COUNCIL—PRESIDENT OF THE GENERAL COMMITTEE

AFTER the termination of the O'Dwyer suit, towards the close of 1924, Sir Sankaran Nair left for India. At Bombay, he presided over a meeting of the All India Social Conference at which were present, amongst others, many distinguished Social Reformers from England and India. The Choice of Sir Sankaran Nair as the President was a deserving recognition by the country of his position as the foremost Social Reformer of the day in India. In his presidential speech, he surveyed the liberal movement amongst the women of the various parts of the world, pointed out the defects of the Indian Social Reform Movement and suggested remedies for its improvement. It is not necessary to deal with these in detail here, as now happily we have amongst us, eminent women occupying high positions as Governors, Members of the Councils, Ministers of States etc. It is well known that Sir Sankaran Nair was a doughty champion of education amongst women and of their rights. It may be said without exaggeration that he was one of the earliest Social Reformers to lay deep, the foundations for the liberal movement amongst the women of the country which has led to the recognition of their full rights. In this respect, it may well be said that he was a fighter for the freedom of women in India.

After the meeting was over, Sir Sankaran Nair came to Madras in 1925, and stood for election to the New Council of State - if I remember rightly - as a Representative of the Landholders and Zamindars of the Madras Presidency. They remebered the good

services done by him in the early days in support of their rights and got him easily elected though there were some well-known rivals. After the election, he was sworn in at Delhi as a Member of the Council. After the expiry of his first period of membership, he was once nominated to the Council by the Government. Before the close of his membership, he was appointed as the President of the Central Committee to work in co-operation with Simon's Statutory Commission. When his work in connection with this was over, he retired from active public life after a distingushed service of many years.

Familiar as he was with the proceedings of the Madras Legislative Councils, both before and after Land Cross's Act, and also with the Imperial Legislative Council, during the time of his membership of the Viceroy's Council, there was no apprehension in the minds of anybody as to whether Sir Sankaran Nair would do well in the Council of States.

In June 1926, before he settled down for serious work, God visited him with a great affliction. His wife, Lady Nair passed away at the Shrine of 'Badrinath' - the Holiest of the Holy places for a devout Hindu - where they had both gone together on a pilgrimage. Both Sir Sankaran Nair and Lady Nair were very religious. Lady Sankaran Nair had long cherished a desire to visit Badrinath. On the 11th April 1926, Sir and Lady Nair left Delhi for Badrinath. In those days, i. e. about more than a quarter of a century ago, travelling to Badrinath, situated in the Himalayas about 10,300 feet above sea level, was beset with great hardships and was not so easy as it is today. Though the journey lasted only a short time, the pilgrims had to pass through forests said to be infested with wild animals. It was even said that, at the time, a man-eater had been seen prowling round about the pilgrims way. The Government of India had made all possible arrangements for their comforts on the journey; officials, high and low, paid their respects to them on the way and offered their help. While they were nearing their journey's end, Sir Sankaran Nair and Lady Nair saw a Holy Man of striking appearance (evidently a Sanyasi) coming opposite to them down the Hill. Lady Nair got down from her Dholi, did obeisence to him and asked him respectfully when she would reach the Lord's Feet. Looking at her steadily for a minute

or two, the Holy Man gave the reply, she would reach the Lord's feet soon. She was pleased at this answer. The same evening, they reached the 'Shrine'. As their arrival on that day had not been expected, arrangements for the night had not been made. It was an intensely cold night. Sir Sankaran Nair and Lady Nair were given room to sleep in the temple. In the morning, when Sir Sankaran Nair tried to wake Lady Nair, she did not speak; she had passed away during the night. The Lord was pleased with her devotion and had called her to him. The Sanyasi was right, she had joined the Lord in His Abode soon after she had met him. Lady Nair was then aged 52 years.

After the cremation was over, Sir Sankaran Nair left the place for Delhi and began to attend to his work. Friends and others who knew him noticed that he was a changed man from the time of his return.

In the Council of State, Sir Sankaran Nair worked as an Independent Member. He did not attempt to lead any party, nor did he follow any party; but he did not remain as a 'Back Bencher'. He moved resolutions on important subjects whenever he thought it was necessary to do so, voted on the resolutions moved by other parties, and made himself generally felt as a forceful Member of the Council. With his vast experience, he was able to gauge correctly the movements in the political atmosphere of the country, and as he understood them, he brought 'Resolutions' to influence public opinion. Some of these resolutions may be noticed. On the 15th of March 1926, Sir Sankaran Nair moved a resolution "for the creation of a self-governing, Tamil speaking Province" for cogent reasons which he dealt with in his speech.

"This resolution raised the problem of provincial autonomy in its most extreme form". Mr. Crerar, on behalf of the Government, got it negatived on the ground that, if allowed, it would be creating an Imperium in Imperio [1]. It is easy to see that Sir Sankaran Nair's object in moving the resolution was not so much to get it passed as to bring before the Government of India, the growing desire on the part of the people to get self-rule as quickly as possible. He selected the Tamil Nad as an example because all the 10 districts, which he chose were compactly situated

1. See India in 1925-1926—page 142.

and formed more or less one block. In passing, I may observe that this motion has at present a topical importance as the D M K Party of Madras is now clamouring for a separate Tamil Nad. It may find reasons in support of its movement in his speech. This motion was followed by another motion from another member for the formation of Kannada Province. This was another request for provincial autonomy. Obviously, the request for self-government began to occupy seriously the attention of the legislators.

On the 16th of March 1927, Sir Sankaran Nair moved a resolution "recommending to the Governor General in Council that no further political progress should be undertaken in India until the system of communal electorates had been abolished." [2] It is obvious that the object of the mover was not that no political progress should be undertaken in India, but the Hindu and Mohammedan unity should be fostered before the reforms were introduced. Nobody will believe that Sir Sankaran Nair will object to the speedy grant of reforms. But what he really wanted was that communal electorates should be abolished. Sir Alexander Muddiman began his reply to the Motion paying a high tribute to Sir Sankaran Nair, saying that he was no 'Back Bencher' but an important personality. In his speech, he traced the history of the separate Muslim electorate from the beginning uptodate. Those who are anxious to know more about it will find it in the official gazette or in the abstract given in the Government Report.

In September 1928 Sir Sankaran Nair was appointed as the President of the Indian Central Committee which was formed by the Government to co-operate with the Indian Statutory Commission (appointed in 1927) presided over by Sir John Simon. I will narrate the story of the Central Committee in the next chapter.

2. See India in 1926-1927—page 102.

CHAPTER XXVII

WORK AS CHAIRMAN OF THE CENTRAL COMMITTEE—ITS REPORT—END OF HIS PUBLIC CAREER—MEMBER OF HINDU MAHA SABHA

BY Section 84 of the Act of 1919, consideration of the further steps to be taken in the progress of self-government within 10 years after the passing of the Act, had been promised. The period would normally end only in 1929. But, due to the pressure brought by the people it was decided by the British Parliament in 1927 - before the expiry of the 10 years - to appoint a Committee to examine the working of the 1919 Act and to consider what further steps should be taken to advance 'Self-government'. The President of this Committee called the Indian Statutory Commission, was Sir John Simon. The Committee was composed exclusively of English Members of Parliament.

When the announcement of the above Committee was made, the Indian Nationalists decided to boycott it, as it contained no Indian representatives. It was then decided by the Government to appoint a Committee of Indian Members chosen from the Council of States and the Assembly. The Committee appointed to co-operate with the Simon Commission came to be known as the "Central Committee."Amongst its members were Sir Arthur Froom, Sir Hari Singh Gour, Dr. Suhrawardy and M. C. Rajah. Sir Sankaran Nair was appointed as its Chairman.

The Central Committee worked in co-operation with the Simon Commission, and submitted a report covering about 72 pages. The Report was published on 23rd December 1929. In its conclusion, the Report asked for an explicit declaration on the part of the British Parliament that full dominion status for India was the goal at which it aimed. It demanded further, that an immediate and substantial step should be taken towards the attainment of that goal by

conferring on the Provinces a liberal measure of autonomy and by making the Government of India responsible to its Legislature in accordance with its detailed recommendations. Lastly, " we demand", said the Report; "that provision should be made in the Government of India Act which will enable the above goal to be reached without the necessity for further enquiries by a Statutory Commission or other agency." I do not think it is necessary to go further into the recommendations of the Committee. Attached to the main Report were Minutes of Dissent and explanatory notes of the Members of the Committee including the Chairman, acting either singly or jointly. The work of this Committee may be said to mark the end of Sir Sankaran Nair's public career though he took occasional part in the Debate in the Council of States.

Before the Simon Commission Report was published, the Viceroy made the historic announcement promising dominion status for India within the British Empire stating that the natural issue of India's constitutional progress in the attainment of dominion status is implicit in the August 1917 declaration, which I have already referred to.(See page 68) .This rendered ineffective the Report of the Simon Commission as well as that of the Central Committee. In this circumstance, it is not necessary to consider the Central Committee Report any further, as both the Reports became innocuous by the Viceroy's pronouncement. On 19th February 1930, Sir Sankaran Nair brought a Motion in the Council of States thanking the Viceroy (shortly stated) for his announcement and requesting him to convey the Council's thanks for the same to His Majesty's Government.

The subsequent events that followed - the Act of 1935 and the gift of absolute independence obtained by the efforts of the Great Mahatma - are within our living memory. These do not fall within the scope of this volume.

Before I conclude, the account of Sir Sankaran Nair's political career, I should not fail to mention that, after his retirement, from the Council of States, he became a Member of the well known Hindu Maha Sabha. As stated by J. Coatman, in his book " India in 1925-1926" the Hindu Maha Sabha is the central meeting of delegates of the many of the Hindu community for protection of their interests, and in some places, notably in the United Provinces,

for the reclamation of converts from Hinduism to Christianity or Islam*. Sir Sankaran Nair was an influential Member of the Sabha. He presided over a special conference of the Sabha at Delhi in the autumn of 1931. I regret I have not been able to get a copy of his speech.

* For further details of its activities, see Report by J. Coatman, in his book "India in 1925 - 1926" page 6.

CHAPTER XXVIII

RETIRED LIFE—UNIVERSITY CONFERS LL.D— SIR SANKARAN NAIR PASSES AWAY— CREMATION AT MANKARA

AFTER retirement from the Council of State, Sir Sankaran Nair spent most of his time in Madras. He lived in a house in the "Waverley Compound" - Poonamallee Road where he kept a separate establishment. His married daughters lived in the vicinity of his house. My wife invited him to stay with her in our house "Spring Gardens" on the Mount Road. But he told her "Don't worry - I will come to you when the time comes even if you do not invite me". The routine of life he followed in his retirement was very simple. He devoted the mornings of the day to his personal business and to receive those who called on him. In the afternoon, after lunch, a short sleep, and evening tea, he would go to the Cosmopolitan Club of which, for a long time, he was a distinguished President - where he used to sit in the Library Hall reading the journals and papers of the day. No one disturbed him; but if any of his old friends were in the club, they would come and chat with him. Afterwards, he would leave the club for the beach for his usual constitutional walk, return home and would retire to his bed early. Sometimes in the evenings, I used to drop in and regale him with news from the High Court and interesting gossip. During the hot weather months, of the year, he used to go to Ooty, where he would stay with his children and grand children. In Madras, he made it a rule that his grand children should visit him once a week and have tea with him. He was the host, - one of his married daughters in turn was the hostess for the occasion. His grand children used to look forward with pleasure to this function. He talked to them on things which interested them. Once or twice, he went to Malabar and lived with his son Sri R. M. Palat, who

was then President of the Malabar District Board. During the period he also visited Ceylon to see his daughter where her husband Mr. K. P. S. Menon, I.C.S. of the Foreign Department was Government of India's Representative.

Though he led a retired life now and again, he showed interest in public affairs. In 1932, he expressed his opinion on the MARUMAKATTAYAM BILL which helped its passage through the Council. Later in October 1933, he presided over the Land Revenue Conference at Calicut and pleaded for the reduction of the Land Tax.

Sir Sankaran Nair Honoured by the Madras University

The 3rd August 1932 was an eventful day in Sir Sankaran Nair's life. In those days 'Doctorates' were not given frequently by the Universities. The Senate at its meeting held on the 21st March 1932 accepted the recommendation of the Syndicate to confer the Honorary Degree of LL.D. upon Sir Sankaran Nair, Kt. C.I E., B.A., B.L. On the third August 1932, he was conferred the Honorary Degree at the special Convocation of the Senate. Sir K. Ramunni Menon, the Vice-Chancellor, during his speech presenting the persons for the conferment of Honorary Degrees made the following reference regarding Sir Chettur Sankaran Nair.

> "Sir Sankaran Nair was born in 1857, the year of the Great Indian Mutiny, a circumstance which affords to his friends, a ready explanation of the element of mild rebelliousness which they delight to detect in him occasionally. Sir Sankaran Nair held with distinction high judicial appointments in this Presidency and later as a Member of the Governor General's Executive Council, held the portfolio of Education. He was for sometime, Member of the Secretary of State's Council, from which he retired in 1921. He has thus had a distinguished record of official service. As a member of the Madras Legislative Council before and the Council of States after the reforms, he has had an equally distinguished record of unofficial public service."

"The cause of social reform has always found in him a doughty champion. He was the Chairman of the Indian Central Committee, appointed to report on Indian Reforms, and has thus helped towards the formulation of the proposals for constitutional reforms which are now occupying public attention.

As a Publicist, he has often contributed to the press, articles on current political problems. He has never hesitated to denounce official measures or popular political opinions or propaganda if he thought they were detrimental to public interests. His writings and speeches have always been marked by directness and vigour and have introduced an atmosphere of candour, independence and impartiality into the treatment of political and social questions.

As a member of the Senate and the Syndicate, he was for sometime intimately connected with the affairs and administration of the University. The conferment of the Degree of LL.D. is a fitting recognition of his varied and eminent public services."

It appers to me that the above speech of the Vice-Chancellor was the best of the short characterisations of Sir Sankaran Nair and that I have read.

In early March 1934 to Sir Sankaran Nair's great grief his third son-in law Mr. Candeth, M. A. (Cantab), Bar-at-law, then the Deputy Director of Public Instruction, passed away. He was a distinguished Member of the Indian Educational Service, and was the first Indian to be appointed to that service in this Presidency. The shock was too much for Sir Sankaran Nair to bear. It may have hastened his own end.

Some days later, one afternoon, he drove into our house 'Spring Gardens'. The place was full of old memories for him. In his apprenticeship days, his master Mr. Shepherd and he used to sit in one of the front rooms and work at their cases and read books of interest when they had no work to prepare for the Court. We had arranged that particular room as his sitting room. He must have liked that room immensely. He used to spend his day time in that room, sleeping upstairs at night. Later on as he found it difficult

to ascend the stairs, he began to sleep also in the sitting room which was a large one.

One day after I had left for the Court (I was then a Judge of the Madras High Court), at about 12 O'clock he became speechless and unconscious. He remained in that condition for about a month till the closing day of his life. On the evening of 24th of April he passed away to the sound of vedic hymns which the family priest was chanting in the adjoining room. He could have heard them if only he could hear. The slanting rays of the setting sun were shining on his face. then I reverently closed his eyes, and we all-his family, relations and dependents who had gathered round his death bed left the room-each filled with his or her own thoughts. Sir Sankaran Nair at the time when he passed away was 76 years and a few months old. Considering his strong physique and the good health that he had always enjoyed, his friends thought he could have lived some years more.

As the morning broke on the 25 instant, news of Sankaran Nair's passing away began to circulate in the city and people began to call at my place to offer condolences. Two of the earliest to call were Mr. S. Srinivasa Iyengar and Mr. T. R. Venkatarama Sastri. Then came Mr. Justice Venkatasubba Rao, Mr. V. V. Srinivasa Iyengar, Dr. A Lakshmanaswami Mudaliar, Rao Bahadur Krishna Row Bhonsle, Mr. V. L. Ethiraj and many others. During the next few days telegrams and letters of condolence began to pour in. Two of the earliest telegrams were from Mahatma Gandhi and the Viceroy Lord Willingdon.

Obituary notices extolling the services of the deceased leader appeared in English newspapers all over India and in many of the papers in England also. Tributes were paid to the deceased leader in the Council of States by its eminent members-European and Indian-when it assembled for work. In the evening Sir Sankaran Nair's body was taken in the train to Mankara where the whole village friends and relations from far and near and his tenants, had gathered to do last homage to him. Unable to resist their entreaties I allowed the Cherumas, Theyyas and depressed classes who were clamouring to see his body, to enter the house and see it. After they had gone away we took the body to the Puthukode River in an adjoining field of which it was cremated with all religious

rites. A cement memorial erected by his son marks the spot. It stands near two trees which mark the place where his parents had been cremated. Later, his ashes were immersed in the Holy Ganga. The 15th day ceremony was performed by his son on a grand scale when hundreds of people were sumptuously fed and clothes and oil were distributed to the poor.

CHAPTER XXIX

A SUMMARY OF SOME ASPECTS OF SIR SANKARAN NAIR'S CHARACTER

IN this chapter, I propose to place before the reader some aspects of Sir Sankaran Nair's character, not revealed in the foregoing pages, so that he may get a complete picture of the individual. Sir Sankaran Nair was somewhat reserved and imperturbable in his manners. He was not emotional. A popular leader, he never courted popularity; it came to him unsought. He was always courteous and accessible to the public and his friends. He befriended many young men, irrespective of caste and creed, who deserved help and who had no friends. I doubt if he had, whom one may call, "devoted followers"; perhaps, his rigid character and high principles kept average men away from him.

Sir Sankaran Nair was of charitable disposition, but he left to his wife the distribution of his charities. Her benefactions to the poor and needy are well known to many people in Madras.

Sir Sankaran Nair was religious, but he never paraded his religious beliefs before the public. I have heard him read 'Geetha' 'Narayaneeyam' and other religious books and discuss them with Lady Nair and the Pandit who used to come to his house to teach his daughters Sanskrit. On his book shelves the complete works of Sankaracharya stood side by side with commentaries of the Gospels and other religious books. It is within my knowledge that he wrote a book on Christianity. from the Hindu standpoint. I have seen the manuscript. In his household it was the rule for the young boys and girls to assemble in the evenings, and recite simple religious Hymns and woe to those who absented themselves on these occasions. He had great faith in the 'family deity'; and Lord Subramania Swamy of Palani.

Though not a professed patron of arts, he appreciated the value of music and painting as instruments of culture. Besides English

and Sanskrit, his daughters were taught music and painting. He supported the Madras School of Arts, and his daughters attended classes in that institution.

Though not a "temperance" advocate, he was abstemious; in his house, he never allowed liquor. He was not a smoker and never used tobacco in any form. Much travelled and broad minded, he lived an exemplary but somewhat austere life, much appreciated by his friends and admirers.

CHAPTER XXX

SIR SANKARAN NAIR'S PLACE IN INDIA'S HISTORY

IN the foregoing pages, I have described the life and work of Sir Sankaran Nair. A giant amongst his generation, an ardent Congressman, a renowned lawyer, a famous Judge, a Member of the Viceroy's Council and a great Social Reformer, he served his country with distinguished ability for over half a century. What is his exact place in India's history? Some have called him 'Maker' or 'Builder' of Modern India. True enough, he was one of the Makers of Modern India, but he was more than this. His activities were many sided. His main occupation was political. To work actively for the freedom of his country, in whatever circumstances he found himself was the chief object of his life. In his book "The India I knew" 1897—1947 page 163, the opinion given by the famous Editor and Parliamentarian, Sir Stanley Reed, hits nearer the mark. He mentions a group of politicians.* ..... all of them remarkable personalities ....." of which Sir Sankaran Nair is one and calls them "Fathers of Indian Freedom." Sir Sankaran Nair stands out from the group as an active fighter for India's freedom throughout his life. From the time when he indicated in his essay that in certain circumstances "Bombay may well become a Boston Harbour" till the time of his retirement, he actively fought for Indian's freedom with unparalleled zeal and courage. The greatest fight that he put up for his country's freedom was in the Viceroy's Council. In India, the Viceroy was all powerful. Sir Sankaran Nair fearlessly told his fellow Councillors and the Viceroy what he thought about them—bitter truths they were—about their Government of the country and how their measures were stultifying the "Self Government" promised

* Sir Surrendranath Bannerji, W. C. Bannerji and Bhupendranath Basu in Bengal, Pheroshah Metha in Bombay and Sankaran Nair and Srinivasa Sastri in Madras.

to the Indians by the British Parliament. The full story of the fight may be read in his two Dissenting Minutes for which says Shri Motilal Nehru the patriot... "the country is grateful to him". I have extracted the relevent paragraphs from the Minutes to enable the reader to come to his own conclusions. No Indian - however high he was - ever dared to speak to an Englishman much less a Viceroy in the way Sir Sankaran Nair did. Mr. Edwin Montagu showed his displeasure by writing angry letters home. While Sir Sankaran Nair was in the Council, the Punjab Rebellion broke out and when he found that, by his efforts, he could not put an end to the Martial Law Administration, he boldly resigned. The entire country (Englishmen including) stood amazed; such a thing was never done before "even the ranks of Tuscony could scarce forbear to cheer". Then came Sir Sankaran Nair's *open* rupture with the Congress, Gandhi and Anarchy, and *O'Dwyer Vs. Sankaran Nair* in the British Court - all of which marked 'Dominion Status' - for which the Congress had been fighting from its very early days. When he left the Viceroy's Council this fight, he continued, in the 'Council of States' also. When the Viceroy made his announcement formally promising "Dominion Status" to the Indians, his active fight for India's freedom was over and he retired from politics. Throughout his life, he was *par excellence* a redoubtable fighter for India's freedom. This is his proper place in India's History.

APPENDICES

1. **Address as President of the Indian National Congress held at Amraoti, 1897**
   (13th Session)

2. **Extracts from the Convocation Address at the Madras University, 1908**

3. **Indian Law and English Legislation I**
   (Contemporary Review, August 1911—pages 213 - 226)

4. **Indian Law and English Legislation II**
   (Contemporary Review, September 1911—pages 349 - 364)

5. **Indian Law Reports (1919) 33 Madras**
   (pages 342 - 356)

Address as President of the Indian National Congress

by

The Hon. Mr. C. Sankaran Nair

Diamond Jubilee of Queen Victoria

GENTLEMEN, I thank you heartily for electing me to preside over this great national assembly. We meet at the close of a year that will be memorable in the history of the British Empire. We have witnessed and we have taken part in the celebration of the Diamond Jubilee of the reign of our Empress. We rejoice with our fellow-subjects of this vast Empire in the prosperity of that reign. We exult in our acquisition of political rights during this period. We bless Her Majesty for her message in 1858 of peace and freedom when the occasion invested it with a peculiar significance. While Englishmen in India inflamed by race animosity and the recollection of the Sepoy Mutiny; which ignorance still calls the Indian Mutiny, were calling for terrible reprisals, she unasked, forgetting and forgiving, issued her gracious proclamation. It was a stern reproof of those who then clamoured for indiscriminate vengeance; it continues today a standing rebuke to those of her Europeon subjects who would deny us the right of equal citizenship. She is to us the living embodiment of what is good in British Supremacy, and we may feel assured that her anxiety in our behalf which she manifested in 1858 and her kindly regard shown on every occasion* will continue unabated for the rest of her life. Throughout our land her name is venerated; in almost every language the story of her life has been written and sung, and in years to come her name will rightly find a place in the memory of our descendants along with those great persons whose

* The word here in the original is not clear.

virtues have placed them in the ranks of Avatars born into this world for the benefit of this our holy land.

Charge of sedition against educated Indians

Forty years of peace and progress seemed to have amply justified the wise and generous statesmanship of the great empress, when suddenly this year, we have been startled with the cry of sedition directed not against any specific individual nor even against a number of persons but against a whole class, the product of the liberal policy inaugurated nearly half a century ago. This charge of sedition, faintly heard years ago, against the Congress, a charge the absurdity of which has been often exposed, has now been revived against the educated Indians by a section of the Anglo-Indian press. We are tauntingly asked to study our past history for proof of our degraded conditions from which the English Government has raised us, and to contrast it with the blessings we now enjoy. We do not need the invitation. We are acquainted with our immediate past, we feel grateful for the present. But our opponents forget we are more concerned with the progress of our country in the future than with the benefits we have already derived under British Rule.

British Rule in India

We are well aware of the disordered state of this country when it passed, with the insecurity of person and property, under British Rule; of the enormous difficulties our rulers had to overcome in introducing orderly administration without any help from the then existing agencies. We recognise that the association of the people in the Government of the country, except to a very limited extent was then impossible. We also know that British rule cleared the way to progress and furnished us with the one element, English Education; which was necessary to rouse us from the torpor of ages and bring about the religious, social and political regeneration which the country stands so much in need of. We are also aware that with the decline of British supremacy, we shall have anarchy, war and rapine. The Mohamedans will try to recover their lost supremacy. The Hindu races and chiefs will fight among themselves. The lower castes who have come under the vivifying influence of Western Civilisation are scarcely likely to yield without

a struggle to the dominion of the higher castes. And we have Russia and France waiting for their opportunities. The ignorant masses may possibly not recognize the gravity of the danger attendant on any decline of England's power in the East. But it is ridiculous to suggest that those who have received the benefit of English education are shortsighted enough not to see and weigh that danger. While, however full of gratitude for what Great Britain has done to India - for its Government which secures us from foreign aggression and ensures security of person and property - it should not be forgotten for a moment that the real link that binds us indissolubly to England is the hope, the well founded hope and belief, that with England's help we shall and under her guidance alone we can attain national unity and national freedom. The educational policy of the Government, a policy which combines beneficence with statesmanship, justified such hopes in us. Those hopes were confirmed by various pledges. Those pledges were followed by the creation of institutions by which we were admitted to a share in our ordinary Government which must surely, though slowly, lead to the full fruition of our ambitions.

Indian aspirations under England's training

Just look for a moment at the training we are receiving. From our earliest school days great English writers have been our classics, Englishmen have been our professors in colleges. English history is taught us in our schools. The books we generally read are English books, which describe in detail all the forms of English life, give us all the English types of character. Week after week, English newspapers, journals and magazines pour into India for Indian readers. We, in fact, now live the life of the English. Even the English we write shows not only their turns of thought but also their forms of feeling and thinking. It is impossible under this training not to be penetrated with English ideas, not to acquire English conceptions of duty, of rights, of brotherhood. The study and practice of the law now pursued with such avidity by our people, by familiarizing them with reverence for authority and with sentiments of resistance to what is not sanctioned by law, have also materially contributed to the growth of mental independence.

Self Government for India

Imbued with these ideas and principles, we naturally desire to acquire the full rights and to share the responsibilities of British citizenship. We have learnt that in the acquisition of those rights and in the recognition of the principles on which they are based, lie the remedy for the evils affecting our country, evils similar to those from which England herself once suffered. We know that in Great Britian race differences between Norman and Saxon, at one period more virulent than those which at any time existed between Hindu and Mohamedan, religious intolerance which has scarcely been surpassed in India, class divisions equalling any in our own country, a degradation, political and social, of the masses which may be equalled here but could never have been exceeded; all these have disappeared in the common struggle for freedom, and in the combined effort to retain it when acquired, in which each required the help of its antagonist and each was obliged to concede to others the right claimed for itself and which therefore resulted in the recognition and solemn affirmation of principles of Government, which obliterated all distinctions of race or religion, caste or class. Those principles affirmed the equality of all before law and Government, the right of Self-Government by the people themselves through their representatives, and complete freedom of speech and discussion as the very breath of national life. It is the hope that one day we may be admitted as equal sharers in this great inheritance, that we shall have all the civil rights associated with the English Government, that we shall be admitted as freely as English men themselves to worship in this temple of freedom-it is this hope that keeps India and will keep her always attached to the British. This hope is sustained by pledges solemnly made; and the sentiment of loyalty to the British connection created by repeated declarations that we shall be gradually allowed the full rights of English citizenship is already in full force. Such a pledge was made in 1833 when Parliament solemnly declared that race or religion or colour shall not be a disqualification for holding any appointment. This declaration of policy in a time of peace has been solemnly affirmed after the Mutiny. Already the pledge has been in part redeemed. We have been admitted as it were into the outer precincts of the temple of freedom. The Press has been

enfranchised. Partially elected members sit in our local and legislative councils. We can enter the Civil service through the open door of competition. These blessings are no doubt now coupled with conditions which unfortunately detract from their rule. But these great and healthy principles have nurtured and consolidated a sentiment of affection. All that England has to do is to persist resolutely in the line of policy she has initiated and thereby deepen that feeling of loyalty which makes us proud of our connection with England. I myself feel that there is very little reason to fear that England will reverse the past. To deny us the freedom of the Press, to deny us representative institutions, she will have to ignore those very principles for which the noblest names in her history have toiled and bled. She cannot close all her educational institutions in the country. She cannot persuade us not to read the fiery denunciations of every liberal form of Government of the petty acts of tyranny committed anywhere on the face of the earth, which appear in her papers imported into India week after week. It is impossible to keep out of India eloquent orations on patriotism by men like Mr. Chamberlain - a Cabinet Minister holding up to admiration the memory of patriots like Wallace, whose head was stuck up on the traitor's gate of the city of London, of Bruce guilty of foul murder in a church, of Emmet and other Irish leaders executed or hung for treason by the English Government. It is impossible to argue a man into slavery in the English language. Thus the only condition requisite for the fruition of our political aspirations is the continuance of the British rule. The fond hope that India may one day take her place in the confederacy of the free English speaking nations of the world can be realised only under England's guidance, with England's help. Years must elapse, it is true, before our expectations can be realised, before we got representative institutions on the models of those of the English speaking communities. Slavery we had under our old rulers, Hindu and Mohamedan; we may again get it under any despotic European or Asiatic Government. But we know that real freedom is possible only under the Government of the English Nation, nurtured in liberty, hating every form of tyranny, and willing to extend the blessings of representative Government to those capable of using it wisely in the interests of freedom and progress.

Western influence on Indian Social and Religious progress

Great as is the necessity of British Rule for the political emancipation of our country, even greater is the necessity for social and religious reform. In the present circumstances of India, inhabited as it is by followers of various religions, various sects, classes, very often with antagonistic interest, any Government which is not strictly secular and absolutely impartial must be disastrous to the best interests of the country. The customs, institutions, beliefs, practices of one community are denounced by others as unreasonable and destructive of true faith. Some of our reformers, hopeless of any internal reform building up a new social system, have accordingly adopted an attitude so antagonistic to the popular religion that they are regarded as seceders from Hinduism. Others, again have formed themselves into sects each claiming to be orthodox and denying to others the merit of adherence to the true Hindu religion. We have also preachers in our midst who, while deprecating any revolt or open defiance, urge the purification of the Hindu faith. The gulf between Hinduism and other religions has been considered impassable. But attempts are being made with some success to re-admit converts into Hinduism. Steps are being taken in some places to mitigate the rancour of religious hostility between Hindus and Mohamedans. Some of the lower castes resent the galling yoke of caste so bitterly that they seek refuge in Mohamedanism or Christianity. The original four-castes had multiplied into a number that must appear to every man unreasonable and absurd. There seems to be a general desire to break down the barriers between these numerous castes. Knowledge is accessible to all. The Vedas and other holy books are now common property; equality in knowledge must eventually lead to the practical removal, if not the entire destruction, of the great barriers that now divide the various classes. Again, you are aware of the attempts that are being made to restore our women to the position which competent authorities maintain they occupied in ancient India. We want in brief to eliminate, if necessary, from our system all that stands, in the way of progress. We desire to absorb and assimilate into our own what appears good to us in Western civilisation. This is impossible under a Government which

would uphold a particular form of religion to the exclusion of others as some of the ancient Governments of India did. To break down the isolation of the Hindu retigion, to remove the barriers which now prevent free social intercourse and unity of action, to extend the blessings of education to the lower classes, to improve the position of women to one of equality to men, we require the continuance of a strictly secular Government in thorough sympathy with liberal thoughts and progress.

Indian Witnesses before the Welby Commission

Gentlemen, I do not propose to refer to the various subjects that we have been continually pressing on the attention of our Government and of the Public. This year, Mr. Dadabhai Naoroji and our four Indian witnesses have stated our grievances before the Welby Commission with a fulness and clearness which leave nothing to be desired. They have stood the test of cross examination by those who have constituted themselves the advocates of Indian Government and their evidence will remain on record as a protest against some of the shortcomings of British administration. Our thanks are due to them.

Famine and Poverty of India

I shall accordingly content myself with referring to certain notable events of this year. Naturally, the terrible famine that has devastated our country first claims our attention. We render our hearty thanks for the magnificent aid received by us from the people of Great Britain and other countries. We recognise the great sympathy and ability with which the famine administration was carried on in India. But we cannot shut our eyes to the fact that the same energy if directed to discover and remove the causes of famine, would be of far greater benefit to the country. At the root of these famines is the great poverty of India. The Madras Board of Revenue recently estimated on the returns furnished by local officials with reference to ryotwary tracts, that in a season described as generally favourable for agricultural operations there was no grain in the presidency for five out of a population of 28 millions. If this is true, the miserable state of the people with regard to food-supply in seasons less favourable may be easily conceived. For ourselves, it is unnecessary to rely upon Government estimates and returns. The poverty of the country reveals itself to us in every

direction, in every shape and form. It shows itself in the poor condition of the labouring population and of the great majority of ryots who are underfed, and who are without not only the comforts, but even the absolute necessaries of life and who lead a life of penury and toil unredeemed by any hope of provision against the frequent vicissitudes of the seasons, sickness or old age when they must be dependent on relatives or strangers. The once well to do ryots are becoming reduced to the position of poor tenants, their poverty preventing them from carrying on any cultivation that requires capital. Parents find it difficult to give their children the education which their profession or station in life demands or, indeed, any education necessary wherewith to earn their livelihood; the extreme poverty of the class, to which the majority of students belong could easily be ascertained. Even a partial failure of the crops in one year leads to terrible scarcity or famine. Famine at certain intervals of time is becoming a normal condition of things in India. In 1877 and again this year, the loss of life has been terrible. Each succeeding famine finds the staying power of the masses, particularly in the ryotwary districts, reduced. Is this state of things to continue for ever? Are we not entitled, are not those who so generously come to our help entitled to ask the responsible Government, whether any steps have been taken to prevent a recurrence of the famine? In a fertile country with every variety of climate capable of producing every variety of produce, with a population thrifty and hard-working, if the produce is not sufficient for the population, it must be due to some defect in the system of administration which does not protect the fruits of industry but scares away capital from the land. If the produce of the country is sufficient for the population and yet as a fact the foodstock remaining in the country does not suffice for consumption, the state of things must be due to some enormous drain on the resources of the country. The feeling is gaining ground, that the Government is morally responsible for the extreme poverty of the masses, for the scarcity that prevails almost every year in some part of country or other, for the famine that so frequently desolates the land and claims more victims and creates more distress than under any civilized Government anywhere else in the world. The flippancy that dismisses the entire problem from consideration with the remark that

all this is due to over-population and is irremediable, is as dangerous as is the deeprooted belief that distress is a visitation of providence for the sins of our rulers. One great Viceroy has had the question under consideration and to him the remedy so far as the increase in wealth from the land is concerned was clear. It is permanent settlement of Government Revenue from the land. The settlement officer will not then increase the revenue and deprive the cultivator of the increased produce due to his labour, or his capital. Labour and capital will then be attracted to the cultivation of the land. There will be a large, increase in the agricultural produce in India. There will always be a large reserve of food-stocks in the country available in times of scarcity. The fixity of taxation will create a class of landh olders interested in maintenance of law and order. The policy of Government was once settled in favour of permanency, but in recent years under pressure of mainly, military expenditure, the policy has been changed and the revenue enormously raised. Our Government ought to concede the permanent settlement immediately to all parts of India and in those parts of India where from local circumstances a permanent limitation of land revenue is not feasible, it would be a step in the right direction if any increased demand for revenue by Executive action is permitted only with the permission of the Legislative Council. This would not be an adequate remedy, but it is a measure that will help to produce great and satisfactory results.

Foreign policy and Indian finance

The next remedy that obviously suggests itself has reference to expenditure. Government agencies are notoriously extravagant, at least in the opinion of those who have to find the money, and the foreign policy of the Indian Government imposes a burden on the taxpayer which is already becoming too heavy to bear. The checks that exist are not sufficiently effective. The Budgets at present are only offered for criticism. They ought to be submitted to the Legislative Councils for approval and the members ought to have the power of moving resolutions in connection with them. As the officials always form the majority, Government could never be embarrassed by an adverse vote, whereas in its difference of opinion with the Home Government, a Resolution of the Legislative Council could naturally be a great support to it. The biggest item of

expenditure is the Military expenditure. Our true policy is a peaceful policy. We have little if anything to expect from conquests. With such capacity for internal development as our country possesses, with such crying need to carry out the reforms absolutely necessary for our well being, we want a period of prolonged peace. We have no complaint against our neighbours, either on our north-west or our north-east frontier. If ever our country is involved in war, it will be due to the policy of aggrandizement of the English Government at London or Calcutta. An Army is maintained at our cost far in excess of what is required for us. The Military element is supreme in the Viceroy's Council. For interests other than Indian, countries are invaded and all the horrors of war let loose at the expense of the Indian taxpayers. As England directs our foreign policy and as wars are undertaken to maintain English Rule, the English Treasury ought to pay the entire cost, claiming contribution from India to the extent of India's interest in the struggle. This would secure a thorough discussion of any foreign policy in the English Parliament. It would also enable Indian members in the Viceroy's Council to protest against any unfair distribution of the war expenditure when the Budget has to be passed.

Equality of Indians Before Law and Government

It is also to be borne in mind that a large portion of this unnecessary expenditure is due to the recognition not perhaps openly in words, but in acts and policy by Government of the idea that the English are a foreign and superior race holding India by the sword and that the Indians are as a rule, not worthy of trust and confidence. To us this idea is hateful and therefore, we insist upon equality before law and Government. We maintain that no distinction ought to be made between classes or races, that the Queen's Proclamation should be adhered to, and, therefore, we protest against the principle underlying the Arms Act whereby no native of India may possess or carry arms without special license while Europeans and Eurasians may bear arms unquestioned. We appeal to our Government to authorize a system of volunteering for Indians and not confine it practically to Europeans and Eurasians, thereby creating and fostering class prejudices. For the same reason we demand that the Military service in its higher grades

should not be restricted to Europeans alone but should be practically opened to the natives of this country, and that Colleges be established for training them for the Military career. On the same ground we press for admission into the Public Service on an equal footing with Europeans. Apart from economic necessity, the stability and permanence of British connection require that not only no positive disqualification should exist but that the rules intended to make the declarations of 1833 and the Queen's promise of 1858 a dead letter must be removed. For the Civil Service, the Police, the Forest Service, the Salt Services, and even the Educational Services, rules are framed apparently on the assumption that a European is by mere reason of his nationality fit and an Indian for the same reason is unfit for the higher appointments in those services.

The Aim of the Congress

The concession of these demands means an enormous increase in India's defensive strength against any foe; it means a reduction in taxation which at the rate it is now growing must involve the ruin of the country. These distinctions, on the other hand cast a slur on our loyalty, accentuate race prejudices in a most invidious form and relegate Indians to the position of an inferior race and silently ensure the emasculation of our manhood. The disastrous consequences of this race question are already apparent. Englishmen and other European colonists in South Africa and Australia refuse to treat us on terms of equality and justify their refusal on account of our degraded position in our own country. On the other hand, a section, I hope a very small section, of our fellow-subjects regards a foreign power of its own religion following a course of policy apparently abhorrent to the conscience of the English Public, with feelings (of race superiority)* which, though unconsciously, took their origin in the refusal of Englishmen to treat them as fellow citizens in reality and not merely in name. To this feeling of race superiority is also due the frequent contemptuous treatment of respectable people by soldiers, a treatment which renders them a terror to peaceful inhabitants and which according to the confessions apparently believed by Government, has led to

* Some words here in the original are indecipherable - apparently the words seem to be "of race superiority."

the Poona tragedy. The racial feeling I refer to, is confirmed by the belief generally entertained in India, that it is almost impossible to secure the conviction of a European accused of any henious offence. If that feeling is justified by the action of our authorities, then the position is deplorable. If the impression is unwarranted, then its origin must be due to the idea of inequality before the law generally entertained. On this race question no concession is possible. No compromise can be accepted so far as it lies in us. We must insist on perfect equality. Inequality means race inferiority, national abasement; acquisition, therefore, of all civil rights conferred on Englishmen removal of all disabilities on Indians as such - these must be our aim.

Poona Plague Operation

I shall now briefly refer to the Poona Plague operations and their unfortunate developments. This country was passing through a terrible ordeal. Poverty which may be said to be the normal condition of our masses deepened into famine. In the Bombay Presidency it was followed by plague, a terrible disease to which no remedy has yet been discovered. The measure which the Government had to take for the suppression in Poona, which was badly effected, were said to have interfered with the domestic habits of the Hindus and Mohamedans; soldiers who were employed to enforce these Government measures were rightly or wrongly generally believed to have insulted women and defiled places of worship. The result was prostration of the people. A feeling of helplessness came over them. In Western countries, the result would have been lawlessness. In Poona, many contented themselves to sullen apathy and despair. There were a few who protested against Government measures, pointing out their unnecessary harshness. Amongst those who protested was Mr. Natu, a leading Poona Sardar. His formal written complaints recently published in English disclose, if any reliance can be placed on them, a state of affairs which certainly demanded attention. Let me give you a brief summary of his complaints.

The inspection of houses by soldiers seems to have been carried out without notice by forcing open, very often unnecessarily, when there were other means of entrance, the locks of the shops and the houses when the owners were absent, and absolutely no attempt

was made to protect the properties or the house. No notice was taken of complaints concerning them. A Hindu lady was assaulted by a soldier, and Mr. Natu reported the matter to the authorities producing the witnesses. No notice was vouchsafed. The soldiers were refractory and any complaint against them was obstruction. When a man fell ill, many neighbouring families were taken to the segregation camp and left there without any covering to protect their body or any furniture, their property at home including horses, cows and sheep being left unprotected. A man was unnecessarily taken to the hospital and sent back as not being affected by plague to find his furniture destroyed and his poor wife and relatives forcibly removed and detained in the segregation camp. Temples were defiled by soldiers and his own temple was entered by them on account, Natu believes, of his impertinence in making a complaint. An old man who succeeded in satisfying the search party that he was not suffering from plague was detained in jail some hours for having obstructed the search party, the obstruction apparently consisting in the delay caused by him. Insult was the reward for the service of the country. You all know how sensitive our Mohamedan fellow subjects are about the privacy of their women. And when Mr. Natu suggested that the service of Mohamedan volunteers should be availed of to search the Mohamedan quarter, he was told that his conduct was improper and his services voluntarily rendered were dispensed with. Mr. Natu brought all this to the notice of the officials who also pointed out that the operations were carried on against the spirit of the rules and complained that there was a great amount of unrest. The Indian newspapers gave prominence to these and similar complaints. They compared the English Government to other Governments very much to the disadvantage of the former. The Mahratta complained:

"Plague is more merciful to us than its human prototypes now reigning in the city.

The tyranny of the Plague Committee and its chosen instruments is yet too brutal to allow respectable people to breathe at ease." And it was added that, "every one of these grievances may be proved to the hilt if His Excellency is pleased to enquire into the details."

These representations were certainly entitled to attentive consideration however much the authorities might have disagreed with them. Their objects were honest, their methods were proper. Their language was not respectful, it was perhaps violent, but men dominated by feelings of distress are often carried beyond what strict prudence would dictate. The violence seems to have been proportionate to the contempt with which the complaints were treated. But to the Indian mind the idea of creating a feeling of disaffection with a view to overthrow the English Government is simply ludicrous. Language which to a lawyer savoured perhaps of sedition was only intended by the violence to attract attention and such language was only caused by the bitter feeling that milder representations by a race not so lawabiding as the Indians would have received immediate and careful attention. However, while these plague operations were being carried out, the President of the Plague Committee, to the horror and alarm of the native community, was murdered on what happened to be the Jubilee celebration day. To the Indian mind it was clear that this was nothing more than an unfortunate coincidence.

English ignorance of the native feeling

But its effect was very different in certain quarters. An Englishman in India is in a strange world with his energy, practical will and idea of freedom, he fails to understand and perhaps despises a nation, given up to metaphysical dreams, which does not regard material prosperity as the great object of life. In other parts of the world under European sway, in Africa and America, an alliance with a European is eagerly sought, while in India where also he is master, he is regarded by the castes as impure whose touch is pollution. With such differences in thought and feeling, no wonder that ordinary Englishmen ignore the people entirely and do not try to understand them. Hence their limited comprehension. Not knowing the native mind they exaggerate the importance of trifles which only ruffle the surface of native feeling and attribute to certain events of significance which however, justifiable in Eagland do not even deserve a passing notice in India. The difficulties of English administration based on this misunderstanding are increased by misrepresentations. Labouring under this incapacity

(it is not easy) to discover (the true state of affairs)* Indian papers are not generally safeguides. In times of excitement, in particular, some of them prove positively mischievous.

Deportation of Natu Brothers

Then, it is not matter for surprise that a section of the Anglo-Indian press discovered a deep design in the Poona murder. They found a pretext for the murder in the plague measures taken by Government. That the native press denounced such measures confirmed their suspicion. That the murder took place on the day of a great world wide rejoicing proved to their satisfaction a deep laid conspiracy which could have been planned only by educated cunning. Almost every incident that took place in Poona was pressed into the service to support this theory of conspiracy, and an attack was commenced on the Vernacular Press and the educated Indians, perhaps unexampled in its virulence since the Mutiny, a Gagging Act was loudly demanded, the policy of imparting education to the Indians was questioned, the Press in England was worked and the Europeans were thrown into a panic. The attack on the educated Indians and the Vernacular Press was brutal and cowardly. It was suggested as a matter for regret that the native mind had forgotten the lessons of the last Mutiny, that a fresh Mutiny would clear the air, particularly as the Mahrattas were not in the know of 1857. It was insisted that the native press was seditious and was responsible for the murder, and a section of the Anglo-Indian Press demanded the punishment by name, of Mr. Tilak, the man who had strongly attacked and denounced the measures of Government. The unreasoning panic into which the Anglo-Indian community was driven by this malignant attack and its unfortunate success in inflaming the English Public, forced, according to the English papers the hands of the Secretary of State and Lord Sandhurst had to take measures which, it is believed, he would never have sanctioned if he had remained a free agent. Ostensibly to discover the murderer, but acting on the theory that the murders were the result of a conspiracy for which the Vernacular Press was responsible, the Government arrested the Natu brothers under the provisions of an old law intended for lawless times to secure the

* Apparently the author means "the true state of affairs" but the words in the orginal script are not clear

peace of the country. Mr. Tilak and the Editors of two Vernacular papers were prosecuted and punitive force was imposed on the Poona Municipality. The arrest of the Natu brothers was and must remain a great blunder. It recalls the worst days of irresponsible despotism. Liberty of person and property is a farce if you are liable to be arrested, imprisoned, and your property sequestered at the will and pleasure of Government without being brought to trial. We shall, before we part, I have no doubt, express our emphatic protest against this proceeedings.

Imprisonment of Mr. Tilak

The Editor of one of the papers was tried by a judge without a Jury, and was convicted and sentenced to a term of imprisonment which can be explained only by the panic which seized by the entire European community. Mr. Tilak was tried by a Judge and Jury. A European, he need not even be a subject of the Empress - may claim to be tried by a Jury of whom at least one half shall be Europeans. This is practically an efficient protection not only against the Executive but against popular excitement. In the case of an Indian, the entire Anglo-Indian community, may be most unreasonably and passionately prejudiced against him; he may be an object of violent antipathy to the other races; yet he, cannot claim fair trial at the hands of his countrymen. He must submit to be quietly convicted after, it may be, the farce of a trial; for a trial seldom restrains men who are passionately excited, and the trial by Jury, an institution intended for the protection of the prisoner in such circumstances, proves a delusion and a snare by depriving the prisoner of the right of appeal. Mr. Tilak, there can be scarcely any doubt, would have claimed a trial by a Jury of whom one half were Indians. If there is any offence in India which ought to be tried by a Native Jury, it is the offence of sedition. It was possible that a Native Jury, who knew the language and who were in a more favourable position to form a correct judgement of the probable and intended effect of the articles on native mind, would not have convicted; it was certain that a European jury in that state of public excitement would convict. By exercising its right of challenge, the prosecution was able to secure a Jury of six Europeans - the number necessary to secure a conviction - and three

Indians, and the verdict was naturally 6 to 3. In a far stronger case tried by an experienced Chief Justice, who had been trained in English Courts, and retained the instincts of an Englishman, the Judge refused to accept the verdict of 7 to 2, when there was only one native on the Jury. In prison these men after conviction have been treated as ordinary criminals. You are perhaps aware that in England, a man convicted of sedition is not treated as an ordinary criminal, sedition being regarded as a political offence, but in India apparently one is subject to the ordinary hardships of prison life.

Safeguarding popular rights and liberties

This Poona incident enforces the necessity of ceaseless vigilence in keeping the English public correctly informed of whatever passes in India and of thus counteracting the mischievous effects of the dissemination of incorrect news. It emphasises the necessity of extending the system of trial by Jury to India on the same conditions as it is granted to Europeans. It also shows that the Executive Government can deprive us of our liberty of person and property, at its own will and pleasure. It has brought into disagreeable prominence the unsatisfactory nature of the law of sedition. The Government of India have announced their intention to alter such law in the light of recent events. We trust the Government will bear in mind that in the circumstances of this country anything which checks freedom of public discussion is most deplorable. Such check may become a temporary, if dangerous, bar to quiet and steady progress. The stream of our national progress will nevertheless move on. It will become dry only when our holy rivers of India becomes dry. Its progress at present under sympathetic guidance is smooth. Its unwise obstruction may compel underground passages or its overflow. It is a sad commentary on a century of British Rule, that a Vernacular paper has had to close its office with these words :—

"It is no more now-a-days safe, to conduct newspapers; hence we, who have other means of livelihood to support us, make our exit and do not feel any more necessity of attending the Deputy Commissioner's Bungalow to offer explanations for certain writings."

Responsibility of Government

Though the press prosecutions are over, the Government has not answered the question that will be asked by posterity, and that is being asked by India now. Was there any foundation for the complaints made by these various men, some of them honourably distinguished? Why have they been led to commit those acts which have now been declared to be offences? If they are not justified, if they cannot prove their allegations, they cannot be condemned too strongly; they will then have proved a curse to our country for the mischief they have committed. If, on the other hand, it was a righteous indignation for the sufferings of their countrymen that led them to jail, it will be difficult to blame those who extend their sympathy to them.

Violent criticism of Government measures

We deprecate most stongly any intemperate language in criticizing Government measures. We are bound to assume that any objectionable measure must have been due either to ignorance or to error of judgement. We have also to remember that after all our salvation lies in bringing home to the majority of the people of England our real wishes and feelings and that the persons whose actions are criticised are their own kith and kin, that the system of Government we attack was framed by men for whom they feel just respect and esteem. Any violence, therefore, will do us infinite harm, it may possibly, prevent us from securing a hearing. A false, incorrect, or even doubtful allegation will discredit us in the eyes of Englishmen and the cause of reform may be thereby put back for generations.

India's loyalty to the British Throne

Let me say at once that in the remarks I make I deem it superfluous to proclaim our loyalty to the British Throne or Constitution, or to add that we have not the slightest sympathy with any speech or writing which would regard a severance of our connection as a desirable consummation. We naturally take pride in the lives of the great men who have lived for India, and we would draw the attention of our rulers to that part of our ancient history which we think they might usefully study. But we are also aware that the present has its roots in the past, and the past is responsible for our lowly condition. We who claim equality at the

hands of Englishmen would deplore and resist any attempt to revive the days when any caste or class as such was privileged before the law, when a Brahmin, for instance, could claim immunity from punishment! We claim equality for all, Brahmins and Pariahs alike. It is this same feeling that prompts our criticism of any act on the part of our Rulers which may seem to recognise any inequality. It is by the removal of these inequalities before law between European and Indian and, by the degree of Self-Government conceded to us that we measure our progress towards freedom.

India's Political Future

Gentlemen, I have done. I am afraid I have wearied you with my lengthy remarks, but I hope I have succeeded in placing before you clearly some points relating to our present political condition. We have no need to despair of our political future so long as we depend upon Great Britain, but let us at the same time be alive to our duties and responsibilities. India expects great things from us, the whole civilized world is watching the changes coming over us. Shall we be content to leave India as it is, or shall we go on and do all in our power to lift it to a higher level. Years of subjection, nay, we may even say servitude, have sapped the strength of the Indian Nation, dwarfed its growth, and stripped it of all that was grand and noble in it, and if India is ever to occupy a better position than she fills at the present moment and take her proper place in the scale of nations it must be entirely due to the zealous efforts of her educated and enlightened sons, Let *nil desperandum* be our motto, let not 'insidious smile or angry frown' deter us from following the straight path of duty; and with the welfare and progress of our land as our end and aim, let us endeavour under a solemn sense of responsibility, as well as loyalty to our country, to bring about that glorious future which must inevitably crown our efforts.

Madras University

The Convocation Address: 1908

THE following is the full text of the speech delivered by the Hon'ble Mr. Justice Sankaran Nair, C.I.E., before Convocation this afternoon:—

GRADUATES OF THE YEAR:—I am bidden to exhort you to conduct yourself suitably unto the position to which, by the degrees conferred upon you, you have attained. My first word of advice to you is to bear in mind the example of those members of the University, who have recently retired from its active life, and of those others on whose work Death hath set its seal.

Examples to be followed:

You cannot find a worthier name in the literature of South India for the past few generations than that of the Rev. Dr. G. U. Pope, whose posthumous Tamil Lexicon will keep alive for many a generation a fame well earned by lifelong devotion to the cause of Tamil Literature. Such a name, such a record, deserves to be chronicled for the benefit of those among you who have a turn for literary work. Many of your seniors, I must not omit to add, have trodden in the footsteps of the pioneers of Vernacular Literature. And I cannot do better than exhort them and you to persevere in that direction. The work of advancing a nation's Letters is not of a day or generation, but, the application to it of conscientious toil and industry will certainly hasten the day, and the generation when the rich result is garnered in.

Of living examples I will speak with that reserve which custom and propriety demand; but it is given to few, as it has been to the Rev. Dr. Miller, to witness in their own life time a spectacle of the fulfilment of their philanthropic labours such as we may witness today, in the reformation of Indian thought. My friend, Sir S. Subramanya Ayyar, to whom the Senate has decreed the highest honour in its gift, is among us to continue the good he has

sown around him in fields many and varied. And I will not offend his modesty by dilating on his excellent example.

Female education

Graduates, I congratulate you, on behalf of the Senate, on your being invested with the degrees which you have deserved by success in your examination. In particular, I congratulate the two Indian Christian Ladies, who, for the first time among the lady graduates of this University have taken Mathematics for their Science Branch. It is a matter for regret that this year that there is no Hindu or Mohamedan Lady Graduate. We never had a Mohamedan Lady Arts Graduate from the Presidency. I am quite aware that in theory the importance of Female education is generally conceded, but we have scarcely advanced beyond theories, and what has been accomplished is nothing to what remains. That education, valuable to men is equally so to women is a trite saying, and it is another that educated ladies need not be B.A's, but while such sayings are getting worn, we must remember that whole generations of useful and valuable lives are also wearing out and going to waste. You have only to look round you in your own community, to see how all efforts at internal reform have failed in the past on account of the opposition of the ladies of the family: not a few among us can bear witness with regret how when any step was taken in defiance of their wishes their honest obstructiveness has embittered family life and proved an effectual bar to the creation of a new precedent. All have felt that their cooperation, which can only be secured by education, cannot fail to be of powerful help. Cast your glance again over a somewhat wider field, and behold what is passing in other countries; you will see, revealed to your admiring gaze, women not as a clog on the wheel of National aspirations, but as a living, powerful factor in the regeneration of the country. I cannot help reading to you a letter from Lord Curzon to an Indian lady. This is what he says:—"Asiatic Women have on the whole exercised a more powerful influence in public affairs, than European Women, and this in spite of the stricter reserve with which they have been environed. Even where accident has not placed them in public positions, their domestic influence has been

potent. No social reform of real note or lasting value is likely, therefore, to be carried out in the East unless the women — by which I mean the advanced and intelligent women — are in its favour. To those who hope for a steady relaxation of the existing restrictions upon social freedom, any movement it seeks to emancipate, to raise, to unite Indian Women, is an omen of the greatest interest and importance. Education is supposed to start with the cradle. But its real genesis is rather with the mother who presides over the cradle." Make up your mind, therefore, to see that ladies of your families are all educated. You can do it yourselves, if your degrees mean anything; and where there is a will there is a way.

Mohamedan Backwardness:

I have also to express regret on behalf of the Senate that there are so few Mohamedan graduates. Only two have qualified themselves for the B.A. Degree this year; and only one for the B.L. As a Hindu, let me tell you how sincerely we deplore the fact that your community have not availed themselves more numerously of the benefits of English education. Indian progress is impossible unless the leading and intelligent members of all the important communities are educated. The other races have to keep time with you. Isolation tends to narrowness of vision. And in the existing conditions of the country, fellowship and cooperation in the interests of progress must come through English Education, which alone is potent to create solidarity. It is therefore that while I welcome you, Mohamedan graduates, with pleasure into our ranks I wish your example and your influence may lead others to follow you.

The Purity of the law

Graduates in Law, I do not propose to tell you now of the conditions requisite for success in your profession. The books you have read and lectures you have listened to, have no doubt informed your minds to some extent to that end, and if you desire further instruction you have only to read the addresses of the eminent lawyers who have occupied the position I do to-day. I shall, therefore confine myself to one or two matters. As pleaders, do not lend yourselves to the production of false evidence. Perjury and forgery, no doubt, exist in all countries but the extent to

which they prevail in our courts is bound to have diastrous effects on our National Morality. Avoid and discountenance them as far as it lies in your power. My second word to you is never foster litigation for your personal and pecuniary profit, thereby creating strife and dessension in families. Such conduct may bring money into your pockets, but the country will have reason to rue it and if a foreign government is then blamed for imparting to you knowledge that has brought so much misery in its train, you will be the persons really to blame.

The Teachers profession

Graduates who have taken the L. T. Degree, I regret that pecuniary attractions are not great in your profession: but alredy throughout the country there is an increasing consciousness of the necessity of mass education. And far more importance is now attached to the profession of teaching than was the case a few years ago. I need not remind you and all others who undertake the profession of teaching that the future of the country is practically in your hands. Your pupils will be the citizens of the next generation, and their children of the following generation. Your influence with your pupils, the children of your countrymen, is bound to be far greater than that of foreign Professors, who have not the same opportunities of associating with the Pupils as you have. Already in some places I am happy to see that graduates of the University are undertaking the task of education for what I cannot but call a bare living wage, giving up brighter prospects for the sake of the public good. In a country where, as in Ancient Greece, the best traditions regard the occupation of a teacher as purely honorary, such action may not excite comment, but the revival is full of good augury. Government, with limited funds at its disposal cannot undertake to carryout that system of National education which is essential, to our progress. It behoves us then to undertake the task and every one engaged in teaching, or in imparting knowledge in any form and in any station, however, obscure, may be said to promote the future welfare of the country.

Responsibilities of officials

There remain among you the graduates who are impatient to enter the Government service. Let me tell you, as others have told

your predecessors before you in this hall, that on your conduct will depend the verdict on the question in which you are so deeply interested, how far the higher appointments in the Government Service may be thrown open to the natives of this country ? If you are found wanting in any respect, you injure not only yourselves but also your community. Remember also that in the present state of the country the native officials can do incalculable good. They have the means of influencing the rulers of the land to an extent which others have not. The daily routine of the administration is practically entrusted to them, and laws, however beneficial, may be rendered odious by the manner in which they are administered, and become a source of disaffection. Placed then, as you will be in a position of such influence and power, it behoves you not to deviate from the straight path of duty. You must also be on your guard against another danger. It is from the academic life that you will be transplated to service to rise by favour or by merit. See to it that you do not become imbued with the feeling which sees in the people a mere footstool for the advancement of the official class and ignores the fact that all the services, with all their arms and all their units, exist for the advancement of the people. Should you adopt the former as your principle of action, you should not wonder that, by and by, you will forfeit your influence and come to be looked upon as an insupportable burden to the people.

Industrial development

But rather than bury your talents behind a desk, rather than throng the corridors of the great public departments in quest of well or illpaid posts, I would ask you to turn your attention to the great industrial development, of which we are now witnessing the early dawn. The diversion of the English educated intelligence of the country, if I may so designate it, into the Government Service and the legal profession is greatly to be deplored. The reason for this diversion is to my mind, that the first graduates, and the majority of those who have succeeded the first were Brahmins or other Hindus, who have not traditionally engaged in trade or labour. From very remote times, as we all know, learning, trade and labour flourished in this country as independent spheres of activity, "protected" as we should now say, by caste and religion. The long course of studentship or apprenticeship in each calling was designed

no less to secure scholarship or efficiency than to scare away possible intrusion from without. Such a system is of course opposed to that which is inculcated by the learning or civilisation of the West. There learning was never restricted to any class, but was always open to all able and willing to acquire it. It has been considered unjust in Europe—though it must be asserted with some reserve—that any class or corporate body should have the monopoly of a trade, handicraft or labour, without the possibility of ever attracting to itself the best intelligence from without that may be fitted to carry it on and carry it forward. Freedom of learning, freedom to follow any industry, or labour is thus the invaluable boon that is offered to us by English Education, and we have neglected this boon far too long. The Brahmins, who formed the majority of the early graduates, had scarcely the inclination to turn to industry and labour. The other classes are not even now well represented in the rolls of the University. This year out of 445 Hindu Arts Graduates only 82 are non-brahmins while 363 are Brahmins. The non-Brahmins naturally followed the lead of the Brahmins. The head of a Non-Brahmin family engaged in any business or trade whose members might have risen to a high position by combining their educational advantages with such capital as the family could afford aspired to the honour of seeing his scions in Government Service. A great number of small capitals, which in the same circumstances in Europe would have been the foundation of banking, trading or industrial fortunes, were thus diverted from the business in which they have been acquired. The result is not only the impoverishment of the inhabitants and the ruin of Indian industries under the crushing weight of Western enterprise, but also the loss of trained energy, the lack of trained will and judgment, the absence of organising capacity in which such diversion is bound surely though gradually to eventuate. Fortunately the appointments are too few for the number of graduates now competing for them, and we are beginning to find out that we can do more good to ourselves as well as to our community in the ordinary pursuits of industry then by entering Government Service or by embracing a legal career. By your proficiency in your studies you have shown yourselves capable of severe application to any subject before you, and if that same intelligence and

capacity hitherto diverted into the Government Service, is turned to the various Indian industries which appeal to you for support and help, you will not only be the pioneers of the industrial development of the country, but you will effect a material alleviation of the poverty which has been brought about by the abandonment of old ideals and the pursuit of new and varied walks of life.

Unrest in India

I would not be doing justice either to the office imposed on me by the Chancellor or to the profound interest I feel in your future if I ignored on the present occasion what is called the "Unrest in India". It is undoubtedly an outcome of the education on Western lines imparted to the youth of this country. The teaching of Western Arts and Sciences, many of them in sharp contrast with the wisdom of the East, was bound sooner or later to produce friction and ferment. Criticism is in the air. When the awakened critical faculties of educated India are challenged by the Christian missionaries and they are called upon to choose between the Hinduism of their fathers and a foreign faith, it is impossible to prevent them from employing weapons from the same armoury to test the worth of merely human institutions. But let me as an old graduate warn you of the difficulties in your path, which in your youthful enthusiasm, you are apt to ignore. First let me tell you that every country will get—it is scarcely possible to conceive of any exceptions—the Government it deserves. Our countrymen may occupy the highest posts in the country, not excepting that of Viceroy; we may have elected Councils, with full Parliamentary Powers of taxation and legislation and control over the executive.

We shall then have all the external forms of free institutions, but if our people have not the character, the moral, and social conditions necessary to sustain free institutions, they will only be invested with the show and not possess the reality of freedom. I am speaking to all, Christians, Hindus, and Mohamedans, and if there are amongst you, followers of other creeds, or of no creed, to them also.

Lack of cohesion

The most acute minds of India were intent on things not of the world, and the world itself they regarded as an illusion. In such

an environment the virtues of social and political life, faded into insignificance and when in due time the foreigners came into this country, they found India in a state of stagnation, with a certain amount of well-being but not in a state of healthy activity or progress. It was a state of society in which no cohesion was aimed at and no co-operation was required. India then became a political kingdom under foreign rulers and will continue to be one so long as its heterogeneous elements are held together by the British Government. To imagine that any change in the political status, wrested as a mere concession from her rulers, will transform her into a homogeneous whole, is the fashion of certain politicians, but such a conception can only be classed among the chimeras of subject races. My earnest advice to you is, to try to make India a natural kingdom whose subjects are held together by unity in interest, character and social intercourse. Christians not united even among themselves, Mohamedans with their class divisions, Hindus split into innumerable microscopic sects, all classes standing aloof from one another, many classes priding themselves on their isolation, on their class morality, their own standards of well-being their own ideals of civilisation rightly or wrongly impressed with the belief that they have no community of interests with others, such is the sorry spectacle, presented by the India of today, the candidate for admission to the concert of nations. Those who, whether from laudable or from unworthy motives, seeks to perpetuate these distinctions may flatter you by pointing to other so-called causes of your retrograde condition, but believe me it is social disunion which has kept you back and which will necessarily keep you so long as you persist in it from attaining your proper place among the nations of the world.

Sweep away the Barriers

Calm and disinterested inquiry will convince you of the truth of my assertion, and if you are convinced of it, it will be your duty to sweep away the barriers to social union. It is not enough to preach the father-hood of God and the brother-hood of man, to preach the universality of the soul, to insist on the unity of everything in Brahmin, but it will be more to the purpose to carry a tithe of these professions into the region of every day practice. You have to show by your conduct that you are prepared to extend

the hand of brotherhood to your fellow countrymen irrespective of class, caste or creed. I have often heard it said that without the opportunities now denied to you, you cannot prove your convictions, and your readiness to treat everybody alike, but those who relegate such professions to contingency admittedly remote, when it is in their power to give instant proof of their sentiments, are oblivious to the charge of seeking, not the general good, but the dominance of a particular class in the Government of the country. So long as you claim superior privileges on account of religions, colour or class, there is no knowing but that when in power you may use that power to claim those very privileges to the detriment of others. Others may tell you that there is caste in Europe and there is caste in India and that neither kind of caste need interfere with political freedom. The prejudices of the West are not as the prejudices of the East. There is a division of the classes in the West, but in sharp contrast to those of the East, their divisions do not stand in the way of their co-operation with one another, and they all share in the life and movements of the body politic of which they form a part, and the individuals are allowed to rise or fall in rank. That is what is meant by saying that compared with the East, society in the West is an organic whole, and the divisions of such a society lend zest to the exercise of the political freedom instead of impeding it. In India, each division of society occupies, so to say, a compartment fixed in space and restrained by castiron walls (or what are such in popular imagination) not merely from participating in the life of its neighbours but also from any corporate movement upward or onward. The colour prejudice is apparenty new to the western nations, but it existed before the dawn of history in India if 'Varna' or colour was the basis of the Shastraic division into castes. Some of you may consider these barriers flimsy but they are there and unless they are removed, political progress is impossible.

The Need for action

Old abuses cannot be removed without some shock to the social system, but most Indians flinch from facing the shock like men, and prefer inaction or even opposition, an attitude for which specious pretexts are not wanting. The end of argument is conviction and conviction is of no moment, nay, it is a source of normal danger,

unless it is followed up by action. They are the most formidable enemies of progress who will concede the soundness of your argument and even support you on platforms, but will decline to act with you on the pretext that in the present state of society action is impossible or that they are waiting for the better education of the masses, a contingency which I have no doubt, they devoutly hope, will not occur in their life time. I am quite prepared to admit that some social confusion, perhaps social anarchy, may have to be endured before the new order of society settles down permanently, and the new forces are cemented together: but believe me, it is the storm that clears the air. If such words frighten you away from reform, all I can say is that, you are not worthy of the priceless inheritance bequeathed to all those who speak the English language by the great Englishmen of old and you will deserve the reproach that English education in India is a phantom and a mockery, producing individuals who dare not carry out in practice the opinions they profess in public as well as in private.

Possibility of social union

If you would achieve a consummation so devoutly to be wished as perfect social union (I am now addressing myself to the Hindus and Mohamedan among you) you have to see whether your social system is so inextricably bound up with your religion, that it is not possible to adapt it to its new environments. That is the great work that lies before the graduate of this, as of other Indian Universities. Your responsibilities are truly great. You have to work into your ancient civilisation the teachings of the Western sages. With those who passed through this hall before you, and with those who after you will be bidden to enter its portals, you have to forge a new civilisation combining all that is beautiful in Asia with all that is true and great and good in Europe and not failing to provide plenty of room for all religions and races. For this work it matters not what position you occupy; for each of you can in his own sphere do something to help it forward.

Favourable foreign influence

Everything is in your favour, For a hundred years we have had a foreign government, a foreign civilisation, at first deliberately and now silently and in spite of themselves, but with irresistable force, pulverising to atoms, the repellant units of our

society and forcing them into such closer contact with one another as is bound to generate sufficient heat to fuse all those elements into homogeneous mass the social India of the future, which, as I said before, is the parent of the political India of the future. So far as Southern India is concerned many obstacles are being removed; with a redistribution of landed property in the wake of the British conquest, and the intrusion of the official into the place occuped by the Rajah or Zemindar between the ruler and the ruled, the influence of the great landholders began to decline. With that decline and the advance of English education, the ancient priesthood of India also began to lose their hold upon the people. The influence of these classes is still not discreditable, but it is a decadent and dwindling influence, and they will be able to regain their lost position only by passing through the crucible of Western Education and joining our ranks. The village community too, as a living force is gone. These, the great landholders, the priests and the village community were in ancient days, as it were, the three estates of the realm, which swayed the moral and political destinies of the country and their silent disappearance from political life is the most momentous change that has come over South Indian Society for a thousand years. They were all forces making for conservatism if not for reaction both in Hindu and in Mahomedan Society, and the policy of the British Government, consciously or unconsciously, has driven them out of active life and thus materially smoothed our path. It behoves us to follow up this enormous advantage which is not of our making.

The Awakening of India

Indian Society has not been wholly idle. Mohamedanism in India is rousing itself from a sleep of more than a hundred years; Christianity keeps its Indian adherents organised and under disciplined control and is increasing in strength. Brahmanism, has rallied its forces and is not only entrenching itself behind new defences but under skilful leadership has assumed the offensive. Buddhism hopes to make a stir in the land once more as it did of old. The democratic teachings of the West helped by its humanitarian ideals, its tenderness to the weak, the fallen and the outcaste, have awakened answering chords in Indian breasts, and our youth are devouring with avidity the Western literature

of liberty, equality and fraternity. The present social condition of India is thus one without a parallel in the history of the world. Out of this seething cauldron, is bound to rise the future Indian civilisation, and yours is the magical wand that will summon the new existence into the light of day. Elsewhere and in other periods of the world history, wherever two such forces have come into conflict, the issue has been usually decided by physical force and by the wager of battle; but in India the opposing forces are kept in check by a Government which for our purpose is happily neutral. The struggle of diverse intellectual, moral and spiritual forces under such conditions of fairness was unknown at any previous epoch of history, and is not possible anywhere else in the world, in Europe, Eastern Asia or America; and even in India it is only possible under the neutral British flag.

Conclusion

My conclusion must be brief. Brotherhood within Hinduism or among the various divisions of the Indian people is the threshold to brotherhood among Hindus, Christians and Mohamedans. Do not consider either as an impossible dream. Remember that even if we are destined to fail in our own generation, we are working not only for ourselves, but still more for futurity, and it is posterity that will judge us. Do not therefore make a bid for cheap notoriety, and look not even for contemporary approbation. Remember that the holiest names that the pages of history has consecrated are those who defied public opinion. Remember also that no great result has been achieved, whether by individuals or by nations, without sacrifice. In America during the concentrated agony of a four years' Civil War, the white race offered the blood of their own people, in expiation for sufferings untold on the Negro race for as many centuries. Your sufferings, as I have reminded you, may be of a different kind and perhaps harder to endure. A revolution in social life is bound to produce acute suffering as well in its victims, but without suffering there can be no progress. Remember that you are the detachment enlisted this year for the campaign of reform and in despatching you to the front, I will make no other peroration than to wish you with all my heart "God Speed" and "success".

INDIAN LAW AND ENGLISH LEGISLATION

I

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by

The Hon. Mr. Justice Sankaran Nair

INDIAN LAW AND ENGLISH LEGISLATION

I

LORD MORLEY'S reformed Legislative Councils are already exercising a marked and perceptible influence. On Imperial questions, in which right was clearly on the side of the reformers and the Government of India were not interested in opposing them, resolutions have been brought forward by non-official members, passed, and the Executive Government prompted to action. Generally they have acted as a restraining influence on the Executive. Measures in the interests of social progress of a far-reaching character have been introduced into the Council. The importance of Mr. Gokhale's Education Bill - very limited in its scope, and cautious and halting as its provisions are - is easily recognised by Englishmen. Of a very different kind is the Mussulman Wakf Bill, introduced by a Mohamedan Member. The Mohamedan laws of inheritance, distributing the property among various heirs, as well as the restrictions placed on the right of devise and the law of gift, tended to diffusion of property and prevented any great accumulation of ancestral wealth in the hands of a family. Though the Mohamedans could not thus dedicate any property to the use of themselves or their relatives, yet they took advantage of a law which allowed dedication of the property to the poor, to provide that such property shall be primarily used for the use of themselves and their descendants, with an ultimate reversion

in case of failure of the family, to the poor. The result was the creation of innumerable Wakfs, by which property was dedicated by a person in perpetuity to the benefit of his descendants. The courts, however, decided that where the substantial dedication was for the benefit of the descendants, and the dedication to charity was really illusory, it failed. The result was that Mohamedan families were broken up. This was exactly the effect of certain Privy Council decisions in the case of Hindu families also. For Hindus and Mohamedans it is now practically impossible to make a settlement of property in favour of a person unborn at the date of the settler's death. This is more strict than the English law or the law of property applied in India to others than Hindus or Mohamedans. There is great dissatisfaction among both Hindus and Mohamedans, and it has long been felt by every one who has bestowed any attention on the subject that some alteration in the law was necessary. There was an attempt to give some relief in 1882 by legislation when the Transfer of Property Act was passed. But the Hindus did not then accept the proffered legislation, as they considered it very inadequate, and hoped to persuade the Privy Council to reconsider their view. The Mohamedans also entertained a similar hope for some time. But they seem latterly to have abandoned it. The non-official Mohamedan members have thrown off all reserve on this question. They declare their object to be to enable Mohamedans to make settlements in perpetuity for the benefit of themselves and their descendants. They recognise that the idea is opposed to English Jurisprudence. There was a faint attempt to support it on grounds of public policy, as the honourable mover was able to discover a Russian Professor who cansidered it a most rational and happy solution of economic problems, "which must have often troubled parents solicitous about the future of their descendants." But the general feeling was expressed by another honourable member, tersely, when he said: "Public policy, as understood by modern lawyers, has no place in Mohamedan Law." The Hindu lawyer who supported it, complaining that the Hindus have equally suffered through the action of the Privy Council, and recognising that the wishes of the Hindus and Mohamedans to enable them to create family trusts for indefinite periods may be repugnant to "modern

sense," said, however, that "we have got to deal with a law promulgated nearly 1,200 years ago." That legislation of some kind is necessary for both Hindus and Mohamedans there is no doubt. But a way must be found on the difficulty without abandoning "public policy" and "modern sense."

A measure of a far different character is the Marriage Law Amendment Bill, introduced by Mr. Bupendranath Basu. It is to enact a civil marriage law for India. The Mohamedan Wakf Bill is put forward as an enactment to carry out their religious law. There is no difficulty created by the Mohamedan religion in its way. But the civil Marriage Law is opposed by certain Hindus on religious grounds. Similar attempts in other directions are likely to be made in future. It is therefore necessary that the grounds for legislation should be clearly kept in view. As some of those who have spoken in the council seem to have entirely misapprehended the questions at issue, it seems desirable to state the problems so that they may be discussed with some knowledge of the consequences that would follow the acceptance or rejection of the Bill. I confine myself to such legislation as, in the opinion of the social reformers, is necessary in the interests of social progress, and is opposed on the ground that it would be an interference with Hindu religion and usage. I propose to refer in this paper, briefly, to the forces at work which render legislation necessary in the interests of progress, and, in my opinion, therefore inevitable. I should then refer briefly to the grounds on which the social reformers, as I understand them, base their demand for legislation. Next will be noticed the arguments founded on religion with reference to such demands; and finally, I propose to discuss in what direction legislation should proceed, that the reader may judge for himself whether the religious objection should be allowed to stand in the way of legislation. It is impossible within the limits allowed me to do more than briefly state the nature of the arguments. I shall only add that not a single fact is here stated which is not supported by abundant authority, and, in my opinion, conclusively proved to be true, and no opinion is advanced which has not the sanction of highly competent authorities. This foreword seems necessary to avoid the impression that the questions here

raised are novel or original, and for that reason not deserving that careful consideration which is due to them.

First and foremost it is important to remember that this demand for legilsation is entirely due to the renaissance caused by the conflict of Eastern and Western civilisations. A few salient points of contrast may be noted.

In India the original religious teachers were also law-givers. They aimed at preparing their followers for citizenship in an invisible and future world, and endeavoured to draw away their thoughts from the earth. They inculcated submission to evil, distress, and misery, as things transient and unavoidable. The law was therefore included in, or rather was coterminous with, religion and morality, and there was no difference between religious, social and legal morality. On the other hand, the English law aims, not at punishing sin, not at making people religious or moral: it concerns itself with protection of person and property, and has very little to do with feelings and principles or honour. For instance, it punishes theft not on account of its being a violation of a divine precept, but to protect society; legal morality enforced by law, therefore, is very different from religious or social morality. The English law recognises equality of all human beings in the eye of the law, does not deny education to any class; it does not divide people into separate compartments; it allows every person to pursue any calling at pleasure. The Hindu law on the other hand, is based on the immutability of caste, and its divine origin. It stamps the members of each caste with an inviolable character of superiority or of abject degradation, and imposes on them the consequent obligation to follow their caste occupation. Thus to the majority of the people the reading of sacred books is a sin, and literature being forbidden to them, the degradation of some of the castes was the necessary result. The English, unlike the Hindu law, does not treat woman as man's property, to minister to his passion, pleasure, or comfort. The Hindu sacred books denied education to women, except so far as may be necessary for the purpose of ministering to man, and bound her to accompany her husband to the next world to attend to his comforts. The one law is individualistic, and based on the inviolability of contract, with the result that success attended energy and labour. The other was rooted in communistic and

family bondage, and was one of status-fostered indolence and stifled all energy. The English law is one under which a race has made astonishing progress, and is suited, therefore, to the needs of a progressive community. The Hindu law and usage, on the other hand, were the product of a society either already enslaved or on the road to slavery, and were suited to stagnant society.

It is natural that there should arise a sharp conflict between the exigencies imported by a belligerent civilisation with such ideals and the teachings of the Hindu Shastras. The tragedy enacted on Mount Calvary two thousand years ago is a standing monument to the unwisdom of leaving to a subject race, governed by theocratic ideals, the administration of the criminal law. For a long time, however, the East India Company allowed, for a variety of considerations, crimes of an even more atrocious character to be perpetrated. But it was impossible for them with their ideals to tolerate for any length of time practices which they were at first compelled to permit as bearing the sanction of Hindu religion. Gradually they began to interfere. They made the criminal law applicable to all castes, and the immunity of Brahmins from legal punishment was no longer recognised; the last relic of such privileges, the exemption of the Benares Brahmins from the death penalty, was abolished in 1817. The practice of drowning children in the Ganges, in fulfilment of vows to mother Ganga, the inhuman parents often pushing their children with their own hands into the river, was rendered a criminal act. Similarly, the practice of exposing children in the Sunderbans or Saagor Islands was rendered punishable by the Government in the early part of the last century. It was the practice of Brahmin creditors to enforce payment of real or fictitious debts by Dharna. This has been made a crime. The putting down of infanticide, which often took place in the darkness and privacy of the Zenana, through means practically impossible, of detection, required more than half a century of stern vigilance and incessant pressure on the part of British officers, who had to face the undisguised hostility of native opinion. Burying a widow alive on the death of her husband was declared a crime about 1830, despite the indignant protest of orthodoxy; slavery was abolished

in 1843. Coming down to times within the memory of men now living, the Penal Code in 1860 declared the intercourse of man with his wife under ten years of age to be rape, although the Hindu law was silent on the point; the dedication of girls under sixteen to a life of prostitution, under the pretext of religious sanction, was constituted an offence. In 1891 the age of consent by a wife to intercourse with her husband was raised from ten to twelve years. Where the injustice was patent, the British administrators interfered, even outside the domain of criminal law. The Hindu Law, which deprived a convert of his property and many of his civil rights, was abrogated in 1850. Widows were allowed to marry in 1856. The religious law which compelled a person to pay the debts of his father and grandfather, under the penalty of the deceased being excluded from heaven, was not generally enforced, and in one Presidency, where the courts enforced it, the Legislature, in 1866, repealed the law by legislation. These achievements alone, in the face of strong opposition, would, apart from all other reforms, constitute a record of which any Government might be proud; but more glorious still is that awakening of India's intellect and moral cosciousness to the inhumanity of the system which justify such acts in the name of religion.

Such an awakening was bound to come. In 1835 Macaulay decided for the Indian Government that "the great object of the British Government ought to be the promotion of European literature and science among the natives of India". This object was steadily kept in view. The increasing study of English literature and science in schools and colleges, under English teachers, and through the medium of English books, journals, and periodicals, had the natural and anticipated result of bringing the intellect of English-educated India under the sway of the principles and ideals of Western civilization. The press and the public platforms contributed their share. The railways and post offices brought the various races and provinces of India closer together, and widened the outlook of Young India. Facilities of travel to England brought India more in contact with English habits and civilization - all this while the administration of common laws tended to produce a feeling of unity, substituting ideals of Western civilization for those of ancient India. Altogether, while in matters unconnected

with natural morality the foreign Government evinced a scrupulous anxiety to maintain in their pristine vigour the laws founded on ancient Hindu religious thought, a great revolution in the modern phase of that thought was steadily pushing its way onward and upward in every stratum of society. In the domain of the ordinary concerns of life, the Shastras had to give way to self interest, and the caste system, in some of its essentials, was given up without compunction. The Hindu religion regulates the life of a Brahmin from his birth to his death. It consecrates him to a life of study under preceptors, to a householder's life, carefully planned out to ensure salvation, to be followed by two other stages of seclusion from the ordinary world. It was this life whose first revelation so startled the Greeks, and it was this which obtained for the Hindus the respect of other races. The time to rise and to bathe, and times for prayer, for sacrifice, and for rest, were prescribed. For a considerable number of Brahmins, fired with a new ambition, such a life was impossible under the British Government, and they had no scruples in casting it away. They yearned to follow professions, and accept Government service, under conditions that were incompatible with the life prescribed by their religion. Further, the very occupations which they now began to embrace would have rendered them outcast in ancient Hindu society. They had to face the humiliation of seeing the other classes taking possession of the fields from which their religion jealously excluded them. In fact, whenever self-interest required it, people of all classes did not scruple to act against their religion when they were not coerced by the civil courts into conformity with the Hindu law. Another phase of the same tendency was that earnest inquiries undertook a fresh examination of their sacred writings, to ascertain whether the law as generally understood was really that inculcated by the spirit or even the letter of the sacred books. In this task the western Oriental scholars rendered invaluable help. A very considerable number of Indians are now satisfied that a true interpretation of the Shastras leaves ample room for the removal of almost all the obstacles that stand in the way of reforming Indian Society. To them most of the customs defended by religion are but excrescences on a pure system, which not only does not sanction them, but positively demands their removal. In the course of this article I shall briefly

indicate the attitude of the reformers towards some of the questions that demand immediate attention.

Now laws must conform to and vary with the ethical and practical needs of a community. In ancient India they did so vary and develop. In the old days each class or community made its own laws, and administered justice among the members of its own class. The King had little to do with the internal organisation of a caste or a class, or its administration of law amongst its members. The Brahmin Pundit declared the mode of life and the laws designed to attain spiritual bliss. The community generally followed the Brahmin lawyer, and their rank in the social scale depended upon their conformity in life and usages to the Brahmin Shastras. But it was left to the community to follow the whole or any portion of the law, as declared by the Brahmin Pundits. There are instances of communities who follow usages in direct conflict with Brahminical teachings. Where the Brahmin Pundits differed, the community made their choice. If, again, a section held views different from those of the majority, that section had merely to designate itself a different caste, and it obtained, *Ipso Facto*, legal talents for its tenets. This process had gone on for centuries, when the Hindu Law first fell under the eyes of British officers, and it went on under the eyes of British officers in provinces where the theories of English law were not being rigidly applied; nay, it is going on under our eyes to the extent the law will allow it. If there was only one man who wished to leave his community he might do so with personal immunity, but with the result that all relationship between him and the rest of the community was cut off. He might marry and live a separate life. This system is in accord with sacred Hindu Law. Both Manu and Yajnavalkya, whose commentaries with one exception now guide the courts, declare the following to be the Dharma or guide of a man's conduct.

"Sruti, Smriti, Sadachara, Svasya, Cha, Priya Atmana," which is thus translated, "the Veda, the Sacred Tradition, the customs of virtuous men, and one's own pleasure." — SACRED BOOKS OF THE EAST, 25. *

The right of every man to act according to his own pleasure sufficiently circumscribes individual liberty within reasonable

* See Manu, Chapter 12, 110 to 114.

limits, while allowing full scope for it when another person is not affected. After the schism in the Hindu religion brought about by the rise of Buddhism, the commentators, afraid lest so wide a statement should be taken to justify conversion to another religion, declared that a man had his choice only when there was a conflict among the sacred texts, and that the authority of each of the four sources above enumerated should prevail in the order named.† As some sacred authority can be found to justify almost any departure from recognised practice, the gradation of the authorities made no practical difference. Questions in dispute were to be decided by an assembly consisting of a certain number of persons, or it might be by even one Brahmin, versed in the law.

It will be seen that the king is nowhere referred to as the source of law. His functions seem to have been limited to adminstering the law.

The above conception of law is utterly foreign to British Jurisprudence where the Sovereign alone is the source of law. The English judges, therefore, did not act upon this theory, and perhaps it was in the best interests of Indian society that they enforced the English view.

The British Government have declared that the Hindus shall follow Hindu law in their domestic relations, and in all questions of inheritance. They have thus imposed on all Hindus the necessity of following the Hindu law as declared by the Shastras and the religious rites required to constitute such relations, or to generate any claim under Hindu Law. A Hindu may feel that the injunctions of the Shastras ought to be disregarded, that they are tyrannical, and breed misery; but he is bound to follow them. If he disregards them, he may find that his wife is only a concubine in a court of law, and his children all bastards without civil rights. It is unnecessary to enumerate other consequences.

If, then, in some of these respects there is a proved necessity for change in the interests of the well-being of our society, how is such change to be effected?

The old policy of the Hindu Law of allowing each class to make its own laws is, as already pointed out, now impossible; a

† Yajnavalkya, Chapter I, Verse 9.

system which is based on the theory that the Sovereign is the fountain of all law has no place in it for such a policy.

There remain, then, two methods; judicial legislation and direct legislation by the Legislative Councils. In England, till recently, it was usual for English Judges to mould the law to the requirements of English people, in some cases even in defiance of legislative enactment. That was natural enough, seeing that the Judges felt the pinch of the law themselves equally with their relatives and friends. But English Judges in India are not affected by the rules of Manu, and are not therefore personally interested in seeing reforms carried out. They are sworn to administer the Hindu law, and there is nothing to deter them from administering it without regard to consequences. No doubt in some cases, when they saw their way clearly, they did not hesitate to introduce vast and beneficial reforms in the Hindu law. The removal of restrictions on alienations of property, the relaxation of bondage within the family, the introduction of wills, the decided amelioration of the status of women, are well-known instances of reformatory judicial legislation. If the Privy Council had its way and had been loyally supported in India, the Hindu Law would have been substantially released by now from the benumbing influence of dogmatic religion. It may be regretted, therefore, that owing to the increasing influence of Indian Judges, the English Judiciary have ceased to take the same active part that their predecessors did in moulding the law to the requirements of the people. It has also to be remembered that judicial legislation cannot be safely entrusted to judges who are not themselves governed by that law. The Indian Judges generally belong to a class imbued with notions derived from ancient books on religion. Their tendency is to accept the law as laid down exclusively in the old religious books, and to forget what Mr. Mayne pointed out years ago, that those who derive their knowledge of law not from books, but from practical acquaintance with the Hindus in their old homes, did not admit that they were governed by any Brahminical Law as laid down in such religious books. Our Indian Judges have not the traditionary instincts of the English Lawyer, who regards the law as a living and growing organism; and in their hands, therefore, the law had a tendency to become not progressive, but re-actionary. It is a matter

of common observation that almost all the rules of Hindu Law in favour of progress were laid down by English Judges against the protest of Indian Judges of great eminence. That English Judges have not yet succeeded in stopping the consecration of young girls to prostitution in temples, and that they hesitate to enforce the provisions of the Penal Code and root out the institution of dancing girls by treating their usages as immoral, is perhaps one of the latest concessions to Indian Judicial opinion.

But it may be asked, why should not the Legislative Councils modify the Hindu Law where, in the interests of progress, it requires alteration? Where, the necessity was proved, the Indian Government have not hesitated to do so. With Indian members of ability and experience, the reformed Councils, it may be said, may be safely trusted to do the needful in this respect. What, however, is the lesson to be learnt from the past? I shall refer to the course to legislation with reference to women to show that any reform of the Hindu Law as such is impossible, and that the remedy must be sought for in other directions.

It seems inconceivable to a person who has come under the influence of Western civilization to imagine that anybody was ever found to advocate as a religious duty the burning of a widow alive on the death of her husband, and one would think that if certain diseased minds ever carried out that theory in practice, it had only to be denounced to be put an end to; yet when the great Indian social reformer, Ram Mohan Roy, denounced that practice, he met with stout opposition and this was the more remarkable because in Bengal, where he began his agitation, Sati was carried out in a revolting manner. There the practice was to bind down the widow with the corpse of the husband, and then pile upon her such a quantity of wood that she could not rise; and when fire was applied to the pile she was forcibly held down with bamboos. The following were the sacred texts on which the apologists for this abdominable rite rested their defence :—

> "1. 0 Fire! Let these women, with bodies anointed with clarified butter, eyes coloured with collyrium and void of tears, enter thee, the parent of water, that they may not be separated from their husbands, but may be

in unison with excellent husbands, themselves sinless and jewels amongst women."

RIG VEDA.—The following are from Angiras and other Saints :—

"That women who on the death of her husband ascends the burning pile with him, is exalted to heaven, as equal to Arundhati. She who follows her husband to another world shall dwell in a region of joy for so many years as there are hairs in the human body, or thirty-five millions."

"As a serpent-catcher forcibly draws a snake from his hole, thus raising her husband by her power, she enjoys delight along with him."

"The woman who follows her husband expiates the sins of three races; her father's line, her mother's line, and the family of his to whom she was given a virgin."

"There, possessing her husband as the chiefest good, herself the best of women, enjoying the highest of delights, she partakes of bliss with her husband as long as the fourteen Indras reign."

"Even though the man had slain a Brahmin, or returned evil for good, or killed an intimate friend, the woman expiates those crimes."

"There is no other way known for virtuous woman except ascending the pile of her husband. It should be understood that there is no other duty whatever after the death of her husband." This is what Vyasa has written in the parable of the Pigeon :—

"A pigeon devoted to her husband, after his death entered the flames, and ascending to heaven she there found her husband." Harita had said this :

"As long as a woman shall not burn herself after her husband's death, she shall be subject to transmigration into a female form." In "Brahma Puranam" you find the following :—

"If her lord die in another country, let the faithful wife place his sandals on her breast, and pure, enter the fire."

It is unnecessary now to recapitulate how Ram Mohan Roy tried to convince the Government that these formidable texts were not an insurmountable obstacle. Yet there can be no doubt that in the face of these extracts it is impossible to deny that the abolition of Sati was opposed to the modern Hindu sacred law; and they are here referred to, to show that an exegesis which can supply so many sacred authorities for this horrible practice cannot be in want of similar holy injunctions to support almost any "detestable superstition," to use Lord Auckland's phrase by which he described Sati. Lord Auckland was so staggered at the opposition that he wrote; "I am not prepared to recommend an enactment prohibiting Sati altogether.....I must frankly confess, though at the risk of being considered insensible to the enormity of the evil, that I am inclined to recommed to our trusting to the progress now making in the diffusion of knowledge, for the gradual suppression of this detestable superstition. I cannot believe it is possible that the burying or burning alive of widows will long survive the advancement which every year brings with it in useful and rational learning." When it was abolished in 1829, a petition was presented to the king, wherein the suppression was said to be "an interference with the most ancient and sacred rites and usages of the Hindus, and a direct violation of the conscientious belief of an entire nation." It was urged "that the abuses, if any, which may have arisen or occured in the practice of Sati can be effectually prevented by a proper attention to the opinions of the Hindus, and an equitable administration of the existing laws, without requiring a total interdiction of the practice; and it was alleged that the regulation "is an unjust, impolitic, and direct infringement of the sacred pledge to keep inviolate the religion, the laws, and usages of the Hindus, manifested throughout the whole general tenour of the acts of the legislature of Great Britain, and regulations and conduct of the Government of the East India Company." The answer was that "a discriminating regard for those religious opinions is not incompatible with the suppression of practices repugnant to the first principles of civil society, and to the dictates of natural reason."

The next interference with the Hindu religion in the service of humanity was when the Government passed the Widow-Re-marriage

Act. The same tactics were repeated as in the case of Sati. The opposition was, if anything, stronger. It was introduced, however, in the time of a Viceroy who, as he said in the case of another measure, "The Converts Disabilities Act," was determined to enforce freedom of conscience as a fundamental principle of British Government.

Soon after the Universities were established, there was every reason to anticipate the fulfilment of Lord Auckland's expectations that education would remove these cankerous growths on the social system. What happened, however, was quite otherwise. Mr. Malabari tried to persuade the Government to advance a further step, and he published a pamphlet, "Infant Marriage and Enforced Widowhood in India," advocating the raising of what has been generally called "the age of consent." Lord Dufferin, expressing his own view that some reform in the direction indicated by Mr. Malabari was necessary for the well-being of the people, directed the Provincial Governments to consult the recognised authorities, European and native. The result was that, with the exception of Bombay, all the Provincial Governments reported against any change, and Lord Dufferin had therefore to refuse legislation. Mr. Malabari was driven to carry on the agitation in England. About this time, a peculiarly atrocious case which came before the Calcutta High Court, and in which cohabitation with an immature girl had resulted in her death, called public attention to the subject, and Mr. Malabari was able to form in England a committee comprising men and women of all shades of opinion - men like Spencer, Tennyson, Max Muller, Lord Northbrook, Lord Dufferin, Cardinal Manning, Sir James Fitzjames Stephen, noblemen like the Dukes of Westminister, Argyle, and Fife; representatives of every church and creed, and many ladies, including Peeresses of the realm, to carry out his proposals. The result was that a very small measure of reform was passed, called the Age of Consent Act, by which it was made a crime for a husband to cohabit with a wife below twelve years of age. The literature on the subject disclosed the prevalence of practices revolting in their nature, and extremely dangerous to the health and life of the child-wives. It looked almost impossible to make out a stronger case for legislation. The evils clearly required a

stronger and more drastic remedy than the measure actually passed; yet it aroused a storm of opposition, unprecedented and larger in volume than any previous measure of social progress. Among the men who headed the opposition were Sir Romesh Chunder Mitter, who acted some time as Chief Justice of the Calcutta High Court; Sir T. Madhava Row, one of the foremost of Indian administrators and statesmen; and Tilak of Poona, widely celebrated as a profound Sanskrit scholar. Names equally eminent were no doubt ranged on the other side also. It may be stated as certain that if the Government could have had any idea of the volume and strength of the opposition they were about to rouse they would not have embarked on the measure at all, and the proof is that since then they have not ventured upon any measure opposed to orthodox religious sentiment, and have steadily refused their consent to any private member bringing forward any bill to alter Hindu Law, and in the present temper of India it is difficult to say they are wrong.

What is the lesson to be learnt from all this by friends of social reform? That those who delight in calling themselves orthodox Hindus are still as intolerant as ever. Their mind is still at the stage where it was before the Sati Regulation. Occasionally you may see in the newspapers an account of a stray attempt at Sati. No Indian newspaper, edited by an orthodox Hindu, ever condemns such an attempt. On the other hand, they call the world to admire the spirit of heroism of the widow. There is little doubt that if orthodox Hinduism had its way, India would revert to the pre-Sati-Regulation state of things. Where it is possible to enforce that teaching, they still do so. The disfiguring of a widow after her husband's death by cutting off her locks is a case in point. It is quite certain that a Hindu widow in a matter of this kind would implicitly carry out her husband's directions; but we have never heard of a Hindu chivalrous enough to direct by will or otherwise that his wife shall not be disfigured after his death. It is often in the power of the widow's father to prevent the cruel disfiguration, yet we have not heard of many instances where a father was chivalrous enough to prevent this cruel rite. But we see the practice even now defended. Certain recent events, which called in question the fitness of orthodox Hindus' leadership of

other classes, as well as their fitness for high appointments, on account of their attitude towards women, have provoked from them many utterances for the consumption of Europeans and of simple-minded persons; but their conduct and lives belie their professions, and we shall have to wait long to see their sentiments translated into action. They are themselves not prepared to take the forward step, and they oppose, tooth and nail, not only any attempt made to upheave society as a whole, but the slightest move made by reformers in the Legislative Councils that may have the effect of weakening the power of the priestly caste or of promoting the freedom of women. While education has, on the one hand, swelled the ranks of the social reformers, it has had the effect, on the other not of permeating orthodox Hindus with liberal ideas of progress, but of strengthening and hardening the reactionary element in them. Almost any practice is supported by sacred texts, which educated orthodoxy brandishes in the face of the reformers, just as we saw the Vedas and Shastras brandished in the face of Ram Mohan Roy in defence of the barbarous practice of Sati. It is equally true that the reformers are busy collecting other texts, equally sacred, in support of their measures. In fact, it is the general tendency of Pundits all over India to ferret out from the Shastras such texts as their patrons would like to have, and to scare away by specious objections other texts that may seem to have any bearing to the contrary. As one of them told Sir Alfred Croft, when the Bill to raise the Age of Consent was under discussion in 1891, they are ready to "prove from the Shastras that the Bill is right or the opposite."

Under the present conditions, this state of things renders it practically impossible for the members of the Legislative Councils to reform generally the Hindu Law. In countries governed by an elected Legislature, any party pledged to carry out a measure begins with the education of the electorate. The chances of success increase with the number of representatives pledged to support its cause in Parliament. When the final appeal is made to the electorate upon the main question of reform, and a majority is returned in its favour, no possible objection can be taken to the measure being finally passed by Parliament; nor can the disappointed side fairly complain of the result. But in India all

this is not possible. The conditions under which elections are held here make it difficult to turn an election upon any definite issue of social reform; and as the electorate, i.e., the Local Boards, consist of quite as many members nominated by Government as elected by the people, even if we could get the elected representatives of those boards to vote upon any particular issue, it would be open to the opponents fairly to urge that the results of such an election should not be regarded as a true index of public opinion. Furthermore, besides the members elected by Municipal Councils and District Boards, there are many others who are nominated by Government, and nomination, as it now takes place, detracts as a matter of course from any weight attaching to the opinion of such members as representative of the public. On the whole the Legislative Councils, as we now have them, cannot be expected, as representatives of public opinion, to deal with questions of social reform. Some years ago I suggested in the English press a scheme for the formation of a different kind of Legislative Councils–that is Councils especially designed to legislate on social questions. It was a forgone conclusion that that scheme would not find favour. The Indian journals, which are, as a whole, under the sway of orthodox Brahminism, disliked it, as it bade fair to test their capacity for self-government by bringing them face to face with conflicting social interests, and by calling upon them to perform the supremely difficult task of vindicating Brahminism as a progressive and social force at the bar of Western civilization. This scheme was no doubt beset with difficulties, but difficulties are inherent in every scheme of self-government for India; and it is the feat of statemanship to overcome difficulties, and not to run away from them. It dropped out of sight, however, and we have to work with the present Legislative Councils. As we cannot wait until we get Councils composed of elected members, how we are to proceed in the present environment is the main problem of social reformers.

INDIAN LAW AND ENGLISH LEGISLATION

II

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by

The Hon. Mr. Justice Sankaran Nair

INDIAN LAW AND ENGLISH LEGISLATION

II

IN my last article I showed that the Hindus, as a body, are still sunk in degrading and cruel superstition; that no reform can be expected from the people themselves or their representatives under the existing conditions of election and nomination to the Legislative Councils; and that no foreign Government can be expected to interfere with their law, even though such interference may be required in the interests of progress. At the same time it is clear that there is an increasing class of men, who have outgrown the religious beliefs of their ancestors and follow different ideals; in their case conformity to Hindu Law means an outward conformity to what is called Hindu religion as well. The British Government should not stand in their way. The principle of neutrality requires that not only should the adherents of the old law be left undisturbed, but that those who do not wish to be governed by that law, which requires compliance with the ancient faith and ceremonial, should not be compelled to adhere to that law. If the Hindu Law, therefore, on account of the opposition of the so-called orthodox party, cannot be altered to suit the changing needs of the times, the only course open to the Indian Government appears to be *not to coerce* unwilling people to follow it.

The justice of this contention was easily allowed in the case of those members of the community who were willing to renounce their class as well as their law. For the benefit of those who feel that the Hindu Law is a milestone round their necks, and are willing to declare themselves non-Hindus, the Legislature has enacted the Indian Succession Act and the Marriage Act.

A different case is that of others who for various reasons object to calling themselves non-Hindus, but at the same time feel that they ought not to be tied down by the British Government to law framed for a society which disappeared centuries ago from living history. It is the British Government that compels them through the agency of its courts to follow the law. But when the administrators of the law themselves acknowledge that it is not consonant with their highest ethical views, or even with their ideas of ordinary justice, it is certainly unreasonable to impose the law upon people who are not willing to be bound by it.

This is the real question at issue:—

Are the Hindus to be told so long as they remain Hindus by religion they must follow the Hindu Law? There is no Hindu Church authorised to declare what Hinduism is. The difference in doctrine and ritual between some of the sects are wider than those which separate them from Christianity or Mohamedanism. Among the sects are some, not small in numbers, who deny the authority of the Vedas, do not recognise the caste system, and accord to women a position very different from that allowed by Hindu Law as interpreted by the Courts. Yet all these are Hindus governed by Hindu Law. Is the British Government justified in coercing the modern Hindu into the profession of a phase of Hindu religion which he believes he has outgrown? Is he to be manacled to the ceremonies of his ancestors after he has lost faith in them? He has to comply with them if his civil rights are to be determined according to the Hindu Law. It is the worst form of tyranny to deny a Hindu the right of choosing his own mode of worship. This is what the British Government is accused of doing by imposing the Hindu Law on those who do not wish to be governed by it.

For the Government the simplest course is to say to the reformers, "if you are not willing to follow your Hindu Law, give

it up. You are at liberty to follow the Indian Succession Act, or a Marriage Act like III of 1872. In our opinion that is a law fit to be adopted by any modern society, but we do not wish to force it on you. You are at liberty to follow it if you choose." There are, of course, certain conditions which may have to be imposed in introducing optional legislation of this kind, one of them being that the renunciation and acceptance should be irrevocable, and should not interfere with vested rights; but these are questions of detail. The Legislative Council may pass an Act enabling any Hindu to renounce irrevocably his own law, and adopt the above laws formed by the Legislature. It is hoped that the Indian Government will enable all classes of people to do so. In that case the Government may disregard all objections, as the law will only be permissive. It will have the great merit of avoiding interference with any system of law; and in my opinion it will be of great political value, since it ought to be the aim of every adminstrator to bring the various communities, so far as it is possible, under the same system of law. Such a policy was advocated by Sir Henry Maine, Mr. J. D. Mayne, and Sir Whitley Stokes, whose opinion is thus recorded:—

> "The wisest, and I believe the most welcome, measure that could possibly be passed affecting the Hindus would be an act enabling them to discard their own law of property; in other words, to adopt (without prejudice to vested rights) the legal status of Europeans domiciled in India, the change of status being formally registered, publicly announced, and, when once made, absolute and irrevocable. This suggestion is immediately due to Mr. J. D. Mayne's paper on administration of native law in the courts of the Madras Presidency - the ablest essay that I have ever read on the subject of the law-which should be applied to a conquered nation. The ultimate source of the suggestion is, of course, the well known decision of the Privy Council in Abraham Vs. Abraham, 9, M. I. A. page 195."

Another course is to leave the Hindus to be governed generally by the Hindu law and to remove by legislation any proved injustice; the demand for legislation in such cases must be based on

principles which the British Government must feel bound to act upon, and which an ordinary educated Indian, who may be supposed to feel some interest in the progress of the country, dare not oppose. To illustrate and explain those principles of legislation which the Indian Reformers think ought to be followed by the British Government in such cases, I proceed to refer to some of the questions now in dispute between them and the so-called orthodox Hindus. For obvious reasons I shall first take up the question raised in the Viceroy's Legislative Council by

The Civil Marriage Bill.

The Hindu law is believed to permit marriage only within the caste, and any marriage between members of the innumerable castes scattered throughout the country is null and void. Similarly, a marriage which does not comply with the ceremonial required by the Shastras runs the risk of being set aside. The reformers want a civil marriage law which will enable any two persons to contract a marriage not liable to be set aside on account of their faith, caste prohibition, or non-compliance with any ceremonial. This is what the Bill now before the Viceroy's Council aims at. They believe this is indispensable in the interests or morality and progress. A law which prohibits a union not opposed to the conscience of a large body of men, undoubtedly tends to the spread of immorality. As to the caste system itself, there has been a unanimity of opinion among those who have spoken or written on the subject that the caste system stands in the way of progress according to Western ideas. That loyalty can only be lip deep which treats contact with the Sovereign as physical contamination requiring purification, and considers him a Mlecha. It is idle to prate about sympathy and associations with Christians and Mohamedans, so long as they are considered the abomination of the Lord. Caste division is also responsible for the wretched condition of the low classes. They are not only denied education, but it is considered a sin to impart education to them. They suffer not only from every form of hardship that a selfish priestly tyranny can impose, but from all the hardships of feudal slavery imposed by the warrior classes, and the hardships of industrial serfdom imposed by all the caste Hindus. Nor are the equal castes respected by one another. Many of the innumerable sects and classes in the country regard one another with

loathing and contempt. Almost all the castes carry their mutual dislike to such an extent that in Government service, failing their own castemen, they would more willingly serve a European than a member of another caste. In commercial enterprises they would more willingly associate with Europeans than with other castes. Naturally, therefore, no class is willing to trust its fortunes to another. Everyone generally tries to insinuate himself in a subordinate capacity into a position of vantage occupied by another castemen, and once has secured a foothold there, he gently shoves out all the other castemen, and shoulders in his own. So long as this state of things continues, progress is impossible. A closer association among the caste is imperatively called for, if national union is not to be a dream and a chimera. Nor is there any caste which is so circumstanced that it cannot improve by association with others. The class which is generally believed to be the foremost in intellectual capacity and adaptability to environment, is believed by the rest to be sadly wanting in character and in courage to act upon a conviction when it may not be safe to do so. The classes which are supposed to be physically strenuous, and to possess high moral stamina, are generally reputed by the others to be wanting in intellectual capacity. Every restriction barring the way to closser association must be removed if the country is to make any progress. Since the mutual dislike of the castes is bottomed upon the fancied superiority of some and the fancied inferiority of others, all restrictions recognised by law as tokens of precedence, among the castes must be done away with. The restrictions, therefore, upon marriages between various castes, where such restrictions are due to the supposed religious inferiority of some of them, must be removed. A comparatively easier task than this is that of removing those restrictions between castes which have sprung from usage, as distinguished from religion. Besides these restrictions, we have also to consider others imposed by society, disregard of which at present entails religious excommunication, and consequently affects civil rights.

From the religious point of view, it was no doubt the belief for a long time that these caste divisions were originally the creation of the Almighty. That belief is now held only by those whose reasons are occult, and not understandable by ordinary

intelligences, and who are therefore beyond the reach of argument. The social reformers on this question also have a complete armoury of religious citations. The sacred books no doubt discourage inter-marriages, but there is scarcely any Hindu lawgiver who does not recognise such intermarriages, or has not classified their issue, and thus recognised their validity for certain purposes. Great men, leaders of religious thought, of whom India is justly proud, have condemned and deplored these divisions, and an appeal from the moderately sacred to the undoubtedly sacred books of the past, such as the Upanishads and the Vedas, completely disarms the objection that the caste system, as now understood in courts of law, is an essential part of the Hindu religion. It has also been placed beyond doubt that not only throughout the times of the Vedas, Upanishads and Puranas, but for most of the historical period, and even in our own day, intermarriages have frequently taken place. This is borne out by ethnological investigations, which have shown that the features of some of the so-called lower classes have more of the distinctive physical characteristics of the Aryan race than even the higher castes can show, and that there is a good deal of aboriginal and foreign blood among the Brahmins and Kshatriyas.

The social reformers have also studied the historical origin of castes. The inquiries of Revenue officials have shown how different castes are springing up under our very eyes. The Sudra of yesterday, becoming a Kshatriya of to-day, may be a Brahmin in the next few years, and possibly relapse to his own original caste in after years. The caste is seldom racial, but is more often occupational. There is very little doubt but that the majority of the Brahmins, at least in Southern India, represent the priestly classes among races long ago assimilated by Hinduism. The social reformers believe, therefore, that religion does not stand in the way of abolishing caste, which is nowadays defended only on grounds similar to those employed in the West by the upholders of every noxious privilege. Although the Reforms have been at pains to show that all these reforms which they advocate are not only not opposed to, but in strict conformity with, Hindu religion, they are conscious that on any question even remotely connected with religion, it is not possible to expect general agreement among

conflicting parties. It may, however, be useful to draw the attention of the considerable body of men who are open to conviction to the considerations above set forth, and it is possible that, after weighing them, they may come to modify their views. It will also be effective in the case of the rising generation, whom we are trying to educate on this as well as other subjects. If nothing else has been achieved, it is something that the orthodox party are being met on their own ground, and that their position is at least rendered doubtful.

So far as the Government are concerned, we cannot expect them to form an opinion one way or the other, or rather we cannot expect them to act on the view that one view is right any more than the other.

If, therefore, they are to press for legislation, it must be on grounds independent of the religious aspect—on grounds which must compel every Government anxious to do its duty by its subjects to legislate, even if such legislation should appear to be against the dictates of the Hindu religion.

The relief that the Reformers ask for is civil marriage law permitting any two persons to marry without regard to religious considerations, and, should they elect to do so, without religious ceremonies. They think it is right for the Government to assit people of different sects or castes to intermarry, and also to afford such facilities for widow-marriage as the contracting parties are entitled to. In making this claim, the ground on which they take their stand is, that there must be complete liberty of conscience, or, as put by Sir Barnes Peacock, "so long as the interests of society were not injuriously affected, no political Government ought to throw in the way of its subjects any impediment whatever against their following the dictates of their own consciences, either directly by subjecting them to penalties, or indirectly by subjecting them to disabilities or refusing to allow them to participate in the benefits enjoyed by other citizens, or favouring those who entertained a particular belief." Now if a man and a woman wish to enter into a contract of marriage, it is not for the Government to step in between and say that they shall not be allowed to enter into that contract because of a prevailing notion that the religion which they follow does not allow them to enter into such a

contract. Their religion is their business, and if, according to their conscience, they ought to enter into a contract of marriage, there is no reason why the State should interfere. If a caste Hindu wishes to marry a Pariah, the prohibition of such marriage by the State is undoubtedly an interfernce with liberty of conscience and freedom of action. It cannot amount to interference with the religious beliefs of the caste Hindus, because the law which allows these two persons to marry does not say that a person need marry anybody whom he thinks he ought not to marry. There would be nothing in such a law which could compel any man to marry outside his caste. If persons who propose to get married under the civil marriage law did not wish to avail themselves of it, they would be at liberty to do so. To prevent a man from marriage by recognising a prohibition interposed by third parties is an injury to society, in as much as the prohibition favours those who entertain the particular view which prohibits marriage. It refuses to these two persons participation in the benefits enjoyed by other citizens, and it subjects them to undeserved disabilities. If Government upheld certain religious views as to marriage, there is no reason why they should not uphold the religion itself; no reason, for instance, why they should not insist upon everybody acting according to the beliefs of Christianity or of any other religion. Denial of the right to marry is, in the circumstances, against the express Proclamation of her late Majesty, that the Government should abstain from all interference with the religious beliefs of her subjects. It is undoubtedly an interference with the religious beliefs of a person to say that he shall not be allowed to marry because the religion of the Hindus—even though he belongs to it—does not allow him to marry, when he himself thinks otherwise.

A civil marriage law is not only necessary for the unification of the Indian races, but is required to prevent their demoralisation, as its absence encourages hypocrisy. Many of the marriage rites, which it is necessary for a Hindu to perform in order to effect a valid marriage, have lost all meaning in the eyes of most Hindus. Some of them are positively repugnant to them, and yet if they do not conform to them, the Civil Courts, which are required to administer the Hindu Law, will declare the marriage invalid. Many, therefore, go through the ceremony without attaching any faith to it. The

same reasons which induced the British Parliament to pass a civil marriage law for England apply here with greater force. In India the Crown had distinctly proclaimed neutrality in matters of religion. Yet we can conceive of no greater infringement of that Proclamation than to compel a man to conform to a ritual in which he has no belief. The claim for a civil marriage law to enable those have lost faith in the efficacy of the ceremonies of religious marriage, which the Civil Courts deem indispensable, ought not to be resisted.

Such a law is also necessary in the interests of widow re-marriage. It is no doubt true that widows are permitted by law to re-marry, and that such marriages may be performed under the present law with such qualifications in the ritual as may be required in their case. But it is a fact that the priests who officiate at Hindu marriages will not solemnise the marriage of a widow. Great difficulties are often experienced in procuring a Brahmin priest for the purpose. One has often to be procured from a great distance. The delay gives room to strong external pressure which is put upon the parties to abandon the marriage; and really there is no reason why the parties to such a marriage should not have the same facilities that any ordinary citizen has. A civil marriage law will serve this purpose. For those who are willing to avail themselves of it, and in the case of others, too, who may think that without a religious ceremony the marriage law will not be complete, the fact that the civil law can make them husband and wife, and has made them such, will mitigate opposition and produce a more conciliatory attitude on the part of the priests, who will very promptly be brought to their senses.

If a civil marriage law is passed, it is bound to have far-reaching, beneficial results in another direction. The conditions of the marriage market are such that a girl is considered a great burden, and families are often ruined by the expenses attendant upon a marriage. The spirit that prompted infanticide in times not so long gone by still occasionally comes here and there to the surface of Indian society. The civil marriage law will provoke a far larger number of suitors to compete for a girl's hand. By widening the market, it will increase her importance in the eyes of the young men of her own class. Instead of being hawked about, as at present, in

the market as an article to be handed over on conditions that may be imposed by the bridegroom, she is likely to be sought after, and her future prospects to be more carefully attended to in her disposal.

If political exigencies require that the married couple should be deprived of their rights of inheritance, under the Hindu Law, to the property of their orthodox relatives, on the ground that such marriage is opposed to that law, this may be done; though it is difficult to see why this marriage should have that effect, while apostacy does not work any forfeiture and the deceased had the right of disherison.

A question quite as important has reference to the hardships inflicted upon Indian women by.

Child Marriage

Towards such legislation the social reformers take the first step by showing that humanitarian reasons imperatively demand it. There is no minimum limit for marriage at present. In fact, there are baby-widows. The Hindu insists upon marriage before puberty, though according to Anglo-Indian law consummation can take place only after the girl has attained her twelfth year. The results, in the opinion of the reformers, are disastrous, and they want a law which will validate marriages after the age of puberty—a law which will prescribe a minimum limit for marriage, to prevent physical injury to the girl and to lessen the chances of infant-widowhood; a law to raise the age of consummation, if not of marriage, to the sixteenth, or at least the fourteenth year. The volume of literature that has gathered round the Age of Consent Act has established beyond all doubt the truth of the weighty utterances of Dr. Chevers, in his standard work on *Indian Medical Jurisprudence*. He says: "If safe child-bearing and healthy offspring are to be regarded as being among the first objects of marriage, this rite ought seldom to be allowed till the eighteenth year, the sixteenth year being the minimum limit in exceptional cases." Indian chiefs like Jeypore and others have resolved that fourteen should be the minimum age for marriage in the territories subject to their influence. Sir Romesh Chunder Mitter, who represented Bengal opposition, where it was the fiercest, admitted that marriage

should be deferred till fifteen or sixteen. Dhanvantri, called the father of Hindu Medicine, is quoted as saying that a girl is not fit to conceive before she is sixteen, and this view is said to have been adopted by later Hindu physicians. According to them, "children born of parents who are respectively less than twenty-five and sixteen years old are either "still-born, or, if born alive, are weaklings."

Infant-marriage is attended with danger to the health of the child-wife. Medical testimony is unanimous that a host of complaints from which our women suffer all their lives, or to which they fall early victims, arise from the evils of early marriage. It has been also established that infant marriage conduces to the physical degeneracy of the classes among whom it prevails. The extraordinary number of still-born children, the heavy infant mortality, the increasing number of puny and sickly persons, the decline in the physical stamina of young and middle-aged persons, the comparative paucity of men after sixty retaining their mental or bodily vigour, the excessive death-rate, the short duration of average life, are some of the results of child-marriage. Without the willing co-operation of women a healthy home is impossible, and these evils are bound to increase. For their co-operation education is indispensable. Education for women is impossible under a system where infant-marriage prevails. In fact, it has to cease just at the time when real education should begin. A girl has to be taken away from school, however promising she may be, and translated from her parents' home, where she is surrounded by love and affection, to what is practically a strange dwelling to her, of which her husband, ordinarily a boy, is not the head and herself not the mistress; and where they form two of the numerous members of a corporation, i.e., the joint Hindu family. A life in that family is incompatible with continuance of systematic study. Strangers rule over the girl. Her life in a joint family is very often not happy, and she may be only one of several wives of her husband. On her husband's death she has to live a severely ascetic life. Her isolation very often leads to moral depravity, and moral depravity leads to crime. It is responsible for a great number of infanticides, and a great number of abortions. Rendered vicious herself, the Hindu widow is often a fruitful source of corruption

to others, and conspires to undermine the hononr and virtue of those with whom she associates.

Such are the facts ascertained by observation and investigation and in the opinion of the social reformers they have been established to an extent which justifies legislative interference so far as such interference is possible, and is necessary to diminish sensibly the evils proved to exist; when once it is admitted that the education of women is indispensable for national progress, the infant-marriage system which, for the reasons above pointed out, is incompatible with female education, stands self-condemned.

On the religious side, also, the social reformers are pressing home the attack. They admit the general practice of infant-marriage. They also admit that this usage is supported by many writers whose utterances are regarded as sacred and authoritative. But they say, first of all, that the sacred texts are themselves conflicting. For instance, there is an injuction of *Manu* to the effect that a woman need not be married, even though she may have long attained puberty, if her parents cannot procure a proper husband for her. Under cover of this text, the Brahmins of the West Coast of India even now put off the marriages of their girls for many years after they have attained puberty; and as to the other sacred books which support the modern usage, the reformers, while reminding their opponents that Oriental scholarship has denounced the passages in question as late tamperings with, or interpolations in, older texts, rely upon the universally admitted fact that all these writings are said to draw their inspiration mainly from the *Vedas* which are of paramount authority, and which do not support infant-marriage. On the other hand, it is clear from the Vedic formulae, surviving in the (post-Vedic) modern marriage ritual, that the Vedic ideal of marriage is the union of a mature youth with a mature maiden who understands the obligations which she takes upon herself, and deliberately imposes duties corresponding to those which she undertakes.

Their next argument, to get over the religious objection, is that these so-called sacred texts which enjoin infant-marriage are shown to have had their origin in comparatively recent times to meet certain special dangers to the safety of Indian women. The present system of the Hindus was evolved during centuries of foreign

invasion and internecine war. What Hindu women of the day stood most in need of was not independence, but safety, and the usage that is now in question sacrificed independence to safety. It compelled the father to find a husband for his daughter, even while she was an infant, so that she might find a protector even at an early age. Religious sanction was given to a dictate of social exigency by treating marriage as a religious ceremony indispensable to her for her salvation, and a father who neglected to marry his daughter early was supposed to incur sin. The happiness of married life was not treated, as Mr. Juctice Muthuswami Aiyar long ago pointed out, "as a primary or secondary object of marriage." For the very same reason it became necessary that the wife from the moment of marriage should become a member of her husband's family and should pass under his or its control.

In order that every girl might have a chance of marriage, and that the husband's family might secure adequate protection to her, re-marriage was not permitted, and widows were condemned to an austere and ascetic life, or burned. If re-marriage had been allowed, there is little doubt that the husband's family would not have treated her as one of themselves, for whose protection they were responsible, and if defigurement and austerity of life were not enforced, the temptations she might be exposed to might prove too strong for her.

It is clear that in the present state of the country and of society the necessity for securing protection for a woman ought not to prevail to the extent of depriving her of her entire freedom. It was useful and necessary before; it is not necessary now, and it is opposed to the spirit of the times. Under the British Government the Courts have improved her position in some respects, and rendered it worse in others. The joint family system ensures her maintenance in the joint family, and there is very little doubt that the joint family property was always subject to the imperative obligation of maintaining all the women in the joint family. In their laudable anxiety to encourage free dealing with property, however, our civil tribunals have subordinated the claims of women to those of the creditors of the family, and many widows are in consequence reduced to destitution. On the other hand, the breaking up of the joint family system under the influence of Hindu

Law, as administered by our Courts, results very often in the wife becoming the mistress of her own home, and she thereby necessarily secures greater freedom. While such has been the action of the Courts, the Legislature has interfered to protect her by enacting that no marriage shall be consummated before the wife completes her twelfth year. The age of twelve was fixed as the standard age of puberty. But medical testimony is overwhelming that a prematurely excited imagination, an unnatural forcing of the animal instincts and unnatural stimulation of the passions on account of the parties being brought together after marriage, has a good deal to do with this early puberty. The social reformers are therefore anxious that further restrictions should be introduced by law; that is, that the minimum age of girls for marriage should be raised to sixteen, if possible, or at least fourteen. If, on humanitarian grounds, it is necessary to enact that there shall be no marriage at any rate before a girl completes her fourteenth year of age, we believe not only that there is nothing in the declared policy of neutrality of the British Government to prevent them from passing such a measure, but that they are bound to do so according to principles of administration which they cannot forsake. No precept of Hindu religion can prevail to enforce what the law of the country considers a crime, or ought to consider as a crime. It is the supreme duty of every Government to protect the lives of its subjects. That rule extends to protecting their persons not only from danger to life or limb, but also from usages which endanger the health of one-half of its subjects and are forced on them against their will and consent. It is a fixed principle, not only of British Justice, but also of Hindu Law, that minors are peculiarly under the protection of the Crown. The Crown entrusts the custody of a minor to a father, or some other guardian, under the Hindu Law on the ground that it is for the interest of the child that the right of guardianship should be exercised by the person most interested in his or her welfare. The theory of the Hindu Law that a minor girl is the property of her father—a theory which is really the basis of many of the rules which are so fruitful of mischief—is not only repugnant to British justice, but has been expressly repudiated by Anglo-Indian legislation. It is another great principle of British justice that marriage, whatever else it may be, is in the first place

a contract, that neither the minor nor her father can enter into a contract which is against her interests and, as in the case under consideration, results in physical injury to her. Any one of these principles will justify the social-reform demand for legislation to raise the age of marriage or its consummation. The first step is to declare that no penal consequences will attach to marraige after puberty, or at any later period. It is not clear now that a father or guardian may keep a caste Hindu girl unmarried after a certain age. If he does so, he runs the risk of the validity of the marriage being challenged on religious grounds. This is an intolerable evil. But the demand of the social reformers goes further; they say that a parent or guardian should not have the power of dealing with the person of a minor girl to her obvious injury. Dedication of girls to temple prostitution indicates the extent of the abuse of parental authority under priestly influence. The Reformers think it scandalous that this practice should be tolerated under a Government which calls itself civilised. But the social reformers go further, and demand that the marriage age should be raised, and no father should be allowed to marry his daughter to any person before that age.

Where it is shown that the happiness or the welfare of the child requires that the father should be deprived of its custody, the Civil Courts have not hesitated to deprive the father even of that right. Where the reason of the law fails, the law itself must be altered. If early marriage is shown to be detrimental to the health of the child, then it is the duty of the Legislature to deprive a father, who would insist upon subjecting his minor daughter to such a danger, of his right of guardianship, and direct the responsible officers to appoint a proper guardian, or carry out the same object by directing him to marry the minor after a certain age. It is perhaps necessary to inquire who, under the Hindu religion, incurs the sin by not marrying a girl under age, and that therefore the Government ought not to place obstacles in his way, the answer is clear that he may do anything he likes which his religion directs him to do, but he cannot be allowed to interfere with the health or comfort or liberty of action of another person, even if his religion requires him so to interfere. If it is the father who complains that this religion directs him to marry his daughter at an

early age, the answer is that the English law allows him the guardianship of his daughter for the benefit of the daughter herself, and not in his own interests, and that therefore he cannot be allowed to do anything which will not be for her good. If the objection is that the minor herself considers it a sin, then the reply is that she is too young in age for a matter like this to be left to her uncontrolled discretion, and that her sentiments are probably the result of unhealthy surroundings, so that no attention need be paid to them. The argument, moreover, that the Legislature cannot interfer to protect minors was already advanced and authoritatively discarded in 1891 by the Government of India when they raised the age of consent to twelve. We now come to the more difficult question of

Ex-communication

It is a fact that though the law might allow a thing to be done, though it might allow a widow to be re-married, or enjoin a minor to be married after a certain age and not before, or legalise marriages between different classes, yet by denial of access to temples and ex-communication the parties may be subjected to intolerable hardships, and the beneficial provisions of the law may to a great extent be nullified. In 1891, when the Age of Consent Act was under discussion before the Legislative Council, it was suggested that to bar the passage of a Hindu women, married under the Act of 1856, into a temple might be declared to be wrongful restraint under the Penal Code. To ex-communicate persons married duly under the law might also be treated as an offence. Lord Landsdowne's Government rejected this suggestion on the ground partly that it would be a far-reaching innovation to compel the admission of any person to a place of worship in opposition to the religious scruples of the rest of the community, partly also for the reason that social ex-communication, with which no law can interfere, will render any step useless and illusory. It may be admitted that to the answer made to the demand so formulated, no exception can be taken. It is no doubt inadvisable, as Lord Landsdowne stated, to compel the admission of a man to a temple against the wishes of the majority, since the result would be the desertion of the temple by the majority of the worshippers. But it seems to have been forgotten that if the majority of the

worshippers are inclined to allow such admission, the law still prohibits them from allowing the admission, if there is only a small minority prepared to protest. The principle of neutrality to be observed by the Government requires not only that they should not thrust a person upon a hostile majority, but also that a willing majority should not be prevented by a dissenting minority from receiving anybody they may wish to admit. It would no doubt practically be difficult to determine, till we have an elected Legislature, whether a majority is for or against a person's admission into a temple, or for or against a persons ex-communication. But that is no reason why Government should deliberately assist the majority. The Government do not fulfil their duty by abstaining from enforcing the right of re-married persons alleged to be interfered with by ex-commuication, when the effect of such abstinence is to coerce the parties to obey the writ of ex-communication. Though the Civil Courts are not supposed to decide questions of ritual or of religion, yet they directly enforce an order of ex-communication by refusing to recognise the rights of the ex-communicated person to continue as a member of his caste. Consistency and neutrality seem to require either that the Courts should consider the question of the validity of the order complained of—i.e., whether it is consistent with the Hindu religion—or that they should refuse to recognise the validity of the order. The present practice seems to be to presume the validity of any order, provided certain forms are satisfied. A law enacting that a religious question, such as the right of entry into a temple or the question of the validity of an order of ex-communication, shall not be decided by a Court for any reason whatever, whether incidentally arising or not, and that no court shall make the validity or the invalidity of such an order a ground for action, will place those who are denied admission into temples, or who are ex-communicated for having exercised the rights given to them by law, on an equal footing with their opponents.

Another question is whether legislative interference should be invoked against

Polygamy

Marriage is undoubtedly a contract to which the parties themselves or their guardians on their behalf are parties. When two

adult persons, each knowing the evil effects of polygamy, enter into a contract of marriage according to a law which allows polygamy, there may be no reason for relieving either of them from the consequences. But in the case of a minor the question assumes a different complexion. *Prima facie*, when two persons marry, each is entitled to the conjugal society of the other. The Courts, by enforcing claims for restitution of conjugal rights, have declared that each of the married parties is entitled to the society of the other. If a man marries more than one wife, it is impossible for him to fulfil the terms of his contract with each, whatever may have been the old idea of Hindu marriage: and as a minor should not have been presumed to have given her consent to a polygamous marriage which is so detrimental to her interests, it appears to be right and proper that the husband should be restrained from marrying a second wife, or at any rate that restrictions recognised by Hindu Law should be placed upon his doing so. The Hindu Law justified such an advance in civilization, and if a law is passed declaring that second marriage shall not take place, if it takes place at all, without the first wife's consent previously obtained, which consent can be given only for special reasons, it will effect a great and beneficial change, and, I have no doubt, will be welcomed by the great majority of the people. I am aware that a petition presented to the Government of India in 1856 by the Maharajah of Burdwan, and other nobles of Bengal against polygamy was rejected, but it was not put forward in this restricted form, and the reasons for its rejection do not apply to the present modest proposal.

If, for any reason the Government feel precluded from carrying out the above suggestions, there is another direction in which legislation might proceed. The theory that the existing laws, framed for a state of society which ceased to exist centuries ago, must be imposed on a reluctant people, and cannot be altered by them, is not one to be supported for a moment; and if they cannot be allowed to escape from it openly in some of the ways above suggested, the course which was adopted at my instance by the Madras Legislature may be given effect to. The Legislature may provide that when any step is proposed to be taken by certain persons, which there is room to apprehend the Courts may

afterwards declare to be against Hindu Law, then any objection on the ground of its invalidity must be taken before such step is taken. Thus, for instance, if a marriage is proposed to be celebrated under conditions which would invalidate it in a Court of Law, then it may be provided that objection to it must be raised before the celebration of the marriage; otherwise it ought not to prevail. This principle has been already accepted in Anglo-Indian Law. Parties are often prevented by laws of limitation and of estoppel from challenging the validity of a marriage or an adoption. For all practical purposes, the status of husband and wife, or of an adopted son, is created against the principles of Hindu Law; such a Law would facilitate the gradual modification, and help the final disappearance of usages which stand in the way of progress.

These instances illustrate the necessity of legislation to carry out the wise principle of neutrality to which the British Government is pledged, but which in the opinion of the Indian Social Reformers is now violated in practice.

Madras C. SANKARAN NAIR

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(pages 342 - 356)

IN (1910) INDIAN LAW REPORTS 33, MADRAS

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Justice Sankaran Nair

(sitting with Abdur Rahim, J.) held that "marriages between members of different classes of Sudras" are valid.

JUDGMENT (SANKARAN NAIR, J.)

THE plaintiff sues to recover possession of certain properties claiming to be the reversioner of Avudanayaga Mudaliar, the last male owner thereof from the alienees of the first defendant who claims to be, but according to the plaintiff is not according to Hindu Law, his widow, as at the time of her marriage and till her husband's death she was a Christian, or in the event of the first defendant's title as widow to the property being established, for a declaration that the alienations by her are not binding on the reversioners. The lower Appellate Court has found that the plaintiff has established the relationship alleged by him and that the alienation by the first defendant was not made for purposes which would justify a widow under Hindu Law from alienating the property. The only question therefor for decision is whether the first defendant is the widow of the deceased entitled to his property under the Hindu Law. In that case the plaintiff would not now be entitled to possession. The first defendant was a Christian before her marriage to the deceased Avudanayagam. The Subordinate Judge accepts the defence evidence that the marriage between her and Avudanayagam, a Hindu belonging to the Kaikolar class, was performed according to the formalities prescribed by the Hindu Law: a Brahman priest officiated at the marriage, the homum was performed, and the tali was tied round the neck of the bride.

They lived together as husband and wife for about 30 or 40 years from the date of marriage to the death of Avudanayagam in 1901. They were living with his parents as members of one family. She lived as a Sivite Hindu like her husband. They were not treated as outcastes or put out of caste. The members of the Kaikolar community including the plaintiff associated with them as Hindus and members of their community. The plaintiff and the other members of the caste took meals cooked by the first defendant. They were also worshipping at the temples. They had a boy who was treated as a Hindu. When Avudanayagam died his funeral ceremonies were performed by the plaintiff's son. These facts are mainly proved by the plaintiff's witnesses themselves. The common purohit of the deceased and the plaintiff, who is a Brahman and also the purohit of the Tinnevelly Kaikolar community proves that the first defendant took part in the religious ceremonies performed by her husband at which he was the officiating priest.

The validity of this marriage is assailed on various grounds.

It is first contended that the first defendant was a Christian at the time of her marriage, which is therefore null and void under the Christian Marriage Act of 1872 and 1865. This question was not raised in the Court of First Instance. If therefore the first defendant was a Christian when she was married without further enquiry it cannot be decided whether the marriage took place while the Acts of 1865 or 1872 was in force. But it is unnecessary to consider that question as there is no doubt that the first defendant became a Hindu when she married her husband. She was a Roman Catholic Christian before her marriage. She removed the cross from her neck. Her forehead was smeared with holy ashes. The Brahman priest made homum and had the tali tied round her neck, or in other words with her husband she accepted his religion also. The question then is whether a marriage of a Hindu with a convert from Christianity is valid. It is contended by Mr. Ramachandra Aiyar that it is valid both by custom and the general law of the land. The Subordinate Judge holds that no custom has been proved to validate the marriage and even if proved, the custom cannot be upheld as repugnant to Hindu Law. The District Munsif recorded his finding in these terms. "The evidence let in the case shows the prevalence of the practice of Hindus marrying

Christian girls according to Hindu rites and such girls after their marriage following the Hindu religion." The Subordinate Judge in appeal holds that "the worthless evidence of a couple of witnesses who have no clear conception of what they are talking about is altogether insufficient to establish a custom." It is difficult to understand the Subordinate Judge. If he is referring to the evidence of the four defence witnesses as worthless, he has entirely ignored the evidence given by the plaintiff's witnesses themselves and the facts admitted by the plaintiff which go very far to, if they do not, prove the custom. The plaintiff, as his own first witness admitted in cross-examination that "among Mudalies, Christian girls used to be married, if no other girls would be available"; and in re-examination said "If marriages of Christian girls be made according to Hindu religion, Hindus will go and take meals." He proves that one Ponnammal, daughter of Antony, a Christian, married a Hindu, Pichakannu Mudaliar, and succeeded to the property of her husband who died without any issue. Her sister was married to another Hindu Sivite. One Chinna Muttoo married a wife who was a Christian. His son who predeceased him was a Sivite and she succeeded to his property. He refers also to one Myvelo Mudaliar whose mother was a Christian woman. The plaintiff's son and daughter were married by members of these families. Another witness, plaintiff's fifth witness, proves that one Arumazi, daughter of a Christian father Samuel, was married to a Hindu according to Hindu rites. He says "she went to Christian Church before marriage, after marriage she would smear ashes to her forehead." Her daughter was married by the witness's son, a Hindu. He refers also to another intermarriage where both parties remained Hindus after marriage. He states that according to usage "if a Christian girl be married by a Hindu, she would follow her husband's religion." The plaintiff's sixth witness admits that his brother-in-law, a Hindu, married a Christian wife. This evidence given by the plaintiff's witness strongly supports the defence evidence which proves the usage. The evidence establishes beyond all doubt that according to usage the members of the Kaikolar community in that locality used to marry girls who were Christians, who lived as Hindus after their marriage, were accepted as members of the community to which their husbands belonged and were allowed rights of inheritance

under the Hindu law. The learned pleader for the respondents did not dispute these facts which prove the custom. The practice is not shown or alleged to be recent. Considering that the Catholic Christian community is an ancient community and their converts did not always give up caste on conversion, there is nothing improbable in the plantiff's evidence that it is an ancient custom. The pleader for the respondents contended that the custom is so utterly repugnant to the Hindu law as declared by the Courts and in the Dharmasastras that it should not be recognized. The Judicial committee has held "under the Hindu system of law clear proof of usage will outweigh the written text of the law" and under the Madras Civil Courts Act, section 16 of Act III of 1873 any proved custom about marriage must be upheld.

Apart however from its validity as being in accordance with custom, I am also of opinion that the marriage is valid under Hindu Law. It has been settled by a uniform course of decisions in this Presidency that marriages between members belonging to different divisions of the Sudra caste are valid. See *Pandaiya Telaver V. Puli Telaver*[1], *Inderum Valungypooly Taver V. Ramaswamy Pandia Telaver*[2], where the husband was a Marava and the wife was of Pareevara, an inferior class, and *Ramamani Ammal V. Kulanthai Natchear*[3], where the wife was a Vellala, a superior class, and the husband was of the inferior class. These decisions have since been followed. In Calcutta, Bombay, and Punjab, the same view is now accepted. See *Upoma Kuchain V. Bholaram Dhubi*[4], *Fakirgauda V. Gangi*[5], *Haria V. Kanhya*[6]. In the Punjab case which had reference to a marriage between members of sub-divisions of Kshatriyas the question is fully discussed by Chatterjee, J. But it is argued that as the first defendant was a convert from Christianity she must be treated either as an outcaste or a person who does not belong to any caste, and a marriage between her and a Sudra might be invalid. In my opinion the contention cannot be accepted. It is difficult to find any principle on which any such distinction can be supported. The decision in *Pandaiya Telaver V. Puli Telaver* was based by Holloway, J., on

1. (1863) I.M. H.C.R., 478
2. (1869) 13 M.I.A., p. 141 at 158 and 159.
3. (1871) 14 M.I.A., p. 346 at 352.
4. (1888) I.L.R., 15 Calc., 708
5. (1898) I.L.R., 22 Bom., 277
6. Punjab Record, Vol. 43 p. 326

the ground that the classes spoken of are the four main castes and not the sub-divisions of these castes; and as the twice-born man is instructed to marry in his own class the fair interference is that on one not twice-born the precept is not binding. All those who are not twice-born are thus treated as Sudras. Neither the first defendant nor her husband belonged to the twice-born castes. The learned Cheif Justice in the same case was prepared to go further and hold that the restrictions on marriage between the castes were only directory. In the Calcutta case the wife was the daughter of an outcaste and in the Bombay case the parties were Lingayats, who in theory recognize no caste, as all who wear lingams are equal; and as they are not twice-born were treated as of the same caste for this purpose. It is clear therefore that by "Sudras" it was intended to include all Hindus who are not dwijas or twice born classes. This is strictly in accordance with Manu, Chapter X, clase 4, that a body taken in adoption need not belong to any caste, also supports this view. *Shamsing V. Santabai*[1]* and *Kusum Kumari Roy V. Satya Ranjan Das*[2]* Further in *Mayna Bai V. Uttaram*[3]* the children of a Brahmin woman by a European father were treated as Sudras. It is clear therefore that the first defendant must be treated as a Sudra under these decisions and the marriage is therefore valid under Hindu Law.

It was further contended by Mr. Ramachandra Aiyar that a marriage accepted as valid and binding by the community, sect or caste to which the parties belong cannot be held to be invalid on the ground that it is opposed to the ordinary Hindu Law and the marriage in question is therefore valid even if it is opposed to the Dharmasastras. A caste for this purpose may be taken to be a combination of a number of persons governed by a body of usages which differentiate them from others. These usages may refer to social or religious observances, to drink, food, ceremonial pollution, occupation and marriage. Some of these usages may be common to others also. The caste is, so far as I know, invariably known by a distinctive name for identification, it has its own rules for internal management and has also got power of expulsion. The

*1. (1901) I.L.R., 25 Bom, 551
*2. (1903) I.L.R., 30 Cal., 999
*3. (1864) 2 M.H C.R., 196
As Numbered in the original.

plaintiff and the deceased are Kaikolars and they undoubtedly form a seperate caste—the Tinnevelly Kaikolars form a sub division of that caste and for our present purpose may be treated as a distinct caste by itself.

Though it is a rule of law that a person cannot alter the law of succession applicable to himself, it is now settled in India that he may change it by conversion to another religion, when *Prima Facie* he is governed by the laws of inheritance prescribed by that religion; a Hindu convert to Mohamedanism will *Prima Facie* be governed by the Mohamedan Laws of inheritance, *Jowala Buksh V. Dharumsingh* [4]. A Hindu convert to Christianity could before the Indian Succession Act retain his Hindu law or accept the law of the Christian community to which he has attached himself. *Charlotte Abraham V. Francis Abraham* [5]. This was so decided on the ground that though it is not competent to parties to create as to property any new law to regulate the succession to it *ab intestato*, yet when there are different laws as to property applying to different classes, parties are to be considered to have adopted the law as to property of the class to which they belong. This reasoning of course applies to a family which has changed its status without changing its religion. Thus in the case of Christians, it was held that though by origin and in his youth a person might have been a Native Christian following the Hindu law and customs as to property it was open to him to attach himself to the East India class who were governed by different laws relating to property, *Charlotte Abraham V. Francis Abraham. A fortiori*—for these reasons apply to them with greater force—it is open to a Hindu who is governed by one law of inheritance to accept another law of inheritance recognised by Hindu Law. Thus it has been held that a Hindu governed by the Mitakshara law may retain it or accept the Dayabhaga law prevalent in the locality to which he had migrated, *Soorendranath Roy V. Mussamut Heeramonee Burmoneah*[2]*, *Chundro Seekhur Roy V. Nobin Soondur Roy*[3]*, *Ram Bromo Pandah V. Kaminee Soonduree Dosee*[4]* and Mayne's "Hindu Law", section 48.

4. (1866) 10 M.I.A. 511
5. (1863) 9 M.I.A. 199

*2. (1868) 12 M I.A. 81
*3. (1865) 2 Suth. W.R. 197
*4. (1866) 6 Suth. W.R. 295
As numbered in the original

When such is the case with the law of inheritance prescribed or allowed by the State, it may be easily imagined that greater latitude was allowed in cases of marriage. In fact, in the cases from the WEEKLY REPORTER above referred to, in deciding whether the family had accepted a different law relating to property, the Courts laid stress on the adoption of different marriage rites. The Hindu lawyers prescribed various ceremonies to constitute a valid marriage—see Mandlik, on "Hindu Law", page 401. But those ceremonies in their entirety are seldom if ever performed. According to them Vivaha Homam and Sapthapathi are essential. But it is notorious that marriages are performed in many castes whithout them and it is now settled that if by caste usage any other form is considered as constituting a marriage then the adoption of that form under those conditions prescribed by the caste with the intention of thereby completing the marriage union is sufficient. No other conclusion is possible if due regard is had to conditions in India. They show that in all questions regarding marriage including restraints upon marriages between persons of different castes, each sect is governed by its own usage, which often vary from the accepted authorities off Hindu Law. For instance it was and is an ordinary process for a class or tribe outside the pale of castes to enter the pale and also for the lower castes to claim recognition as belonging to a higher class. If the other communities recognize the claim they are treated as of that class or caste. This process of adoption into the Hindu hierarchy through castes is common both in Northern and Southern India. If their claim is refused then they form a new sect. Sometimes classes belonging to higher castes are denied religious communion by other classes of the same caste and if not sufficiently powerful to enforce their claim become of lower caste. Amongst such classes we often find the several usages of the two castes or classes. Contact with Buddhism, Mohamedanism and Christianity has evolved various sects which have discarded many ideas and practice rites which are popularly supposed to appertain to the other religious systems. Conversions to and from, orthodox Hinduism, Buddhism, Jainism, and in rare instances to and from Christianity and Mohamedanism, have not always or even generally been accompanied with changes in the laws of marriage and inheritance. These facts make it impossible

to apply the rules of present orthodox Hinduism to such sects when any usage inconsistent with such rules is proved or to treat such usages as deviations from the ordinary and continuity necessary to uphold a custom in English Law. A reference to Mr. Bhattacharya on "Hindu Castes and Sects", the appendix in Mandlik's Hindu Law, relating to marriages (pages 394 to 459) and to Sir H. Riseley's "People of India" will illustrate this position. As to some of these sects it may be not easy to affirm that they are governed by Hindu Law. Thus the Hosainis are a class of Brahmins in Western India who are said to have adopted to some extent the Mohamedan faith and its observances. The Kuvachandas in Sind are said to resemble the Mohamedans in their habits (Bhattacharya, page 118). The Jaiswars of Northern India (page 258) and the Kormies of Bihar (page 272) are said to worship Mohamedan saints, according to Mohamedan vitual. Of course a Mohamedan priest officiates. The Hindu Law has to be applied to those only who are Hindus by religion and it is very doubtful whether some of those communities can be treated as Hindus or Mohamedans. In the absence of any statutory provision they will be governed as to their marriages and inheritance by the rules of justice, equity and good conscience (See Raj Bahadur V. Bishen Dayal[1], or in other words as laid down by the Judicial Committee in Charlotte Abraham v. Francis Abraham[2] according to the usages of the class or community. About the laws applicable to them I entirely agree with Sir James Stephen in his opinion thus recorded: "My own opinion is that if a considerable body of men, bound together by common opinions and known by a common name appeared to be in the habit of celebrating marriages according to forms and on terms unobjectionable in themselves, the Courts ought to recognise such marriages as valid, though in any particular case, there might be circumstances which do not suggest themselves to my mind and which could invalidate the marriage. The fixity of the sect, the propriety of its forms, and the propriety of its terms would all have to be considered by the Court. I think, in short, though it cannot be affirmed with confidence, on the one hand, that all persons who are not Hindus, & c., can marry in any way which sufficiently expressses their intentions, and on whatever

1. (1882) I.L.R., 4 All. P. 343.

2. (1863) 9 M.I.A., 199.

terms they think proper, it may also be affirmed that a marriage between persons so situated would be valid, unless circumstances existed which led the Courts to treat it as invalid,....." Proceedings of the Legislative Council pages 77, 78, Gazette of India Supplement, January, 27, 1872.

Between these classes who occupy the border land between Islam and Hinduism and those castes who confirm strictly to the rigorous tenets of extreme Brahminism, lie various classes or castes whose sole common bond or union is that they are all classed as Hindus, and are governed by Hindu Law.

Though Hindus they are widely divergent in their religious belief and conduct and their usages are in many respects utterly repugnant to orthodox Brahminism. Sir H. Risley's "People of India" and Mr. Bhattacharya's "Hindu Castes and Sects" may be usefully consulted for information about sects which originated in religion but also on community of function. Intertribal marriages have been responsible for the formation of many castes. So also migration and changes of custom. I shall refer to some of these cases which have a bearing on the question before us. The sects of Lingayats (Bhattacharya, page 396), Ram Sanehi (page 448), Dadupanthi (page 446), Chaitanya (page 464), Swami Narayan (page 474), Balahari (page 493), Jains (page 550), Kabir (page 496) and Sikhs (page 505) recognise no caste, no Brahmin supremacy, and many of them receive converts from all castes. The Khuninhar Brahmins of Bihar (page 109) and the Ooriya Poojari Brahmins (page 62), are believed to have been of low caste. Certain classess in Assam are supposed to have been made Brahmins by royal edicts with the result that when their ladies marry pure Brahmins they do not interdine with their maternal kindred (page 58). Similar promotions to the Kshatriya and other castes were made within the memory of men still living (Risley, App. cxxxi).

Emigrants often form castes with their status lowered but emigration also enables men of a lower caste to attain a caste promotion. See Risley, page 90. Similarly the offspring of the union between Brahmins and lower castes are in some places treated as Kshatriyas—Risley, page cxxxi and page 83. For other instances see page 81. Clans who were Jats a few years ago are

now Rajputs on account of changes in their customs and the converse practice also is said to be no less common, page cxxxi.

There are classes of Jats who claim to be Kshatriyas though they wear no holy thread (Bhattacharya, page 145). Among the Agarwals the wearing of the sacred thread depends upon their occupation (page 206). A Kolita in Assam wears a sacred thread when he becomes "a big man" (p. 196). Instances of Brahmins ceasing to belong to that caste when they take to agriculture are given by Sir D. Ibbetton, p. cxxx, Risley. So also it is noted that a Kshatriya in that locality becomes a Kayastha when he becomes a clerk. This divergence from the Shastras is observable in a greater degree in Southern India. This is only natural, for as rightly pointed out in the census report of 1901, Madras, Volume 15, part I, the essential difference between the castes of this Presidency and those of Upper India is that the ideas of the Aryans and the rules of Manu have affected the people of this Presidency less deeply than those north of Vindhyas, page 121. See the very instructive observations of Mr. Mayne on this point, section 47, page 53, 6th edition.

In Southern India many castes numbering over a million deny the superiority or the sacredotal authority of the Brahmins. See Madras Census Report, page 139. Many others, over five millions, follow practices which according to the Shastras place them beyond the pale of Hinduism (Groups 9 and 1-, page 139). We also find that many castes claim a position far higher than that which the Hindu Society in general is inclined to accord to them. A few caste claim to be classed as Brahmins. The Pallis or Vanniyas, the Shanars and some of the Balijas claim to be Kshatriyas; the Komaties, the Muttans and some of few Vellalas state they are Vaisyas (page 130), Madras Census Report, 1901. Sometimes, as in the case of Jatapus entirely new castes are formed, page 131. As in Northern India a change in the occupation sometimes creates a new caste. A commom occupation sometimes combines members of different castes into a distinct body which becomes a new caste. Migration to another place makes sometimes a new caste. For instance, see page 132. This tendency to divide into sects of divisions, to form new sects with their own religious and social observances is characteristic feature of 'Hinduism' and in my

opinion it is not for the Courts to interfere with it. If a community have consciously accepted different religious ideas and rites, it is not for the Court to insist upon their adherence to their abandoned ideas and practices.

Most of these sects arose within a recent date, some of them only with the last century. The Brahmo Samaj became a definite sect only about 1830. The Balahari sect "The most important of whose cult was the hatred that he taught his followers to entertain towards Brahmins" (page 493) (Bhattacharya), became a recognised sect only later, and the Arya Samaj only within the last few years. The process is still going on. Sir H. Risley says (page 75) that "it is a matter of observation at the present day.....that the adoption of new occupations or of changes in the original occupation may give rise to sub-divisions of the caste which ultimately develop into entirely distinct castes."

The offspring of the sexual unions between members of higher and lower castes becoming members of a different caste is also said to be going on at the present time (pages 82, 84, also page 81). Sir D. Ibbestson states that in the Himalayas any one can observe caste growing before his eyes, the priest into a Brahmin, the peasant into a Jat and so on and he also says that the process was also more or less in course at a period not very remote from the present day in Kangra where the proudest and most ancient Rajput blood in the Punjab is to be found, Risley (Appendix page cxxxi). He also states that this process of forming separate castes "is going on daily around us, and it is certain that what is now taking place is only what has always taken place during the long ages of Indian History." I entirely agree. It is impossible to hold that marriages performed amongst such communities are invalid on account of non-conformity with the accepted tenets of orthodox Hinduism laid down by the Courts.

To these communities it is impossible to apply a marriage law which is based on the immutability of castes, and on ordinances which proscribe many of their most cherished practices. The caste referred to are only a few selected for illustration and their usages cannot be treted as exceptions to any general rule. It appears to me, therefore, that the Hindu Law to be administered by the Courts consists of the Shastras which claim divine sanction and are

followed by the Brahmins generally and also of the usages or approved habitual practices, of these communities, whose caste status depends upon the degree of conformity of their usages to the Shastras and if according to the usage of the community a marriage is valid or the community recognize a marriage as valid then, in the absence of any statutory prohibition, I fail to see why it should not be recognized as valid even without the requisites of a valid custom in derogation of what may be styled the ordinary Hindu Law unless it offends against rules which would render any other marriage invalid.

It is, of course, open to a community to admit any person and any marriage performed between him and any member would in my opinion, be valid, if it complied with their usage though it may be opposed to the Dharma Shastras.

Sir James Stephen's opinion on this question certainly seems reasonable. He said that, if it were not for English Courts and English Law, no difficulty would have risen. "New sects which might have risen would have adopted their own usages and would have lived or died according to the degree of vitality which they might contain. Their marriage and other customs would, if they lasted, have taken their place amongst the other customs of the country and would have been treated as equally valid with those which are in more general use. Why should we interfere with this state of things? Why should we determine at all what is, or is not, orthodox, according to Hindu notions? Why should we interfere with the natural course of events? There can, I imagine, be but one answer to these questions, namely, that no course can be more unwise, more opposed to our settled policy, more unpopular with the natives, or more unjust. All that can be said for it is, that it is more or less favoured by certain analogies which may be drawn from a part of English Law which has less in common with India than almost any other part of it. It is upon these grounds that I think it impossible to lay down, before hand, with any approach to completeness, all the essentials to the formation of a new and valid custom as to marriage. It is possible to affirm, in general, that the mere fact that a Hindu sect is of recent origin, and the fact that it has adopted forms of celebrating marriage differing from these commonly in use, are not sufficient to

prevent such marriages from being held valid by Hindu Law as interpreted and administered by our Courts." (Gazette of India, January 27, 1872, Supplement, page 81).

This is in strict conformity with the spirit of Hindu Law. The legal rules put forward by the sacred writers are primarily intended only for those who accept in theory, the religious belief, the religious, social and moral obligations which form the foundation of that system. On the others, it is binding only by adoption and, though it will be presumed that as Hindus they are governed by that system of law, circumstances may exist to throw the burden of proof on the party asserting that they have adopted any specific rule of Hindu Law (See Fanindra Deb Raikat v. Rajeswar Dass alias Jagindra Deb Raikat (1), where the Judicial Committee held that where a family were shown to have become Hindus in part only recently, there is no presumption that they have adopted the law of adoption. Where, therefore, the religious and legal consciousness of a community recognizes the validity of a certain marriage, it follows that it cannot be discarded on account of its repugnance to that system of law.

Whether the marriage is valid or not, according to the caste rules, it is for the caste itself to decide. So far as ancient history and modern usages go, marriage questions have always been settled by the caste itself and the validity of a marriage between the members of a caste who recognize it as binding has not been questioned by outsiders though the caste itself may be lowered in their estimation when such marriages are repugnant to their notions of morality.

Where, therefore, a caste accept a marriage as valid and treat the parties as members of the caste, it would be, it, appears to me, an unjustifiable interference for the Courts to declare those marriages null and void.

It does not follow that a marriage opposed to the usages of the communities and not recognized by them would be invalid. A marriage whatever else it is, i.e,, a sacrament, an institution, is undoubtedly a contract entered into for consideration with correlative rights and duties. The civil Courts Act only requires that so far as Hindus are concerned its validity must rest upon Hindu Law, i.e. as explained above the law of the Dharma Shastras

as distinguished from caste rules or the caste law. If it is not recognized by the caste or caste rules, the parties, may cease to belong to the castes whose usages they have violated and who would, therefore, expel them. There is nothing to prevent a man from giving up his caste or community. He is bound by the caste rules only on account of this voluntary submission and therefore, if the marriage is valid under the ordinary Hindu Law, they will be legally married even if such marriage is opposed to the rules of the caste or community to which they belong.

In fact in the case before us there are sub-divisions of the Kaikolar community intermarriages between whom are not allowed; but it is not contended that such marriages would be invalid in a Court of Law though they may entail expulsion from those sub-divisions.

I am, therefore, of opinion that this marriage is valid(1) on the ground of custom; (2) because it is in conformity with Hindu Law which does not prohibit marriages between any persons who are not dwijas or twice-born persons, (3) because when the caste of which the parties are accepted members, recognize a marriage as valid, then it is legal marriage under Hindu Law.

I would, therefore, reverse the decree of the Sub-Judge and dismiss the suit for possession and restore that of the Munsif.

As however, the alienation has been found to be not binding on the reversioners, there must be a declaration to that effect. It was contended that on the death of the original plaintiff the suit abated so far as the declaration is concerned. But as the suit for declaration was brought by the plaintiff not on his behalf only but also on behalf of the reversioners, the right to sue survives and the suit does not abate. Each party will bear his own costs throughout.

ABDUR RAHIM, J.—I Agree.

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