APPENDIX

1) MINUTE BY LORD WILLIAM BENTINCK, NOVEMBER 8TH 1829.

2) BALSHASTREE JAMBHEKAR'S LETTER

3) JUGMEMENT OF THE HON'BLE CHIEF JUSTICE
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4) ACT NO. XV OF 1856.
Appendix No. 1
Minute by Lord William Bentinck

November 8th 1829.

Whether the question be continue or to discontinue the practice of sati the decision is equally surrounded by ad awful responsibility/ to consent to the consignment year after year of hundreds of innocent victims to a cruel & untimely end when the power exists of preventing it is a predicament which no conscience can contemplate without horror. But, on the other hand, if heretofore received opinions are to be considered of any value, to put to hazard by d contrary course the very safety of the British Empire in India, and extinguish at once all hopes of those great improvement – affecting the condition not of hundred and thousands but millions – which can only be expected from the continuance from our supremacy, is an alternative which even in the light of humanity itself may be considered as a still greater evil. It is upon this first and highest consideration alone, the good of mankind, that the tolerance of this inhuman and impious rite can in my opinion be justify on the part of government of a civilized nation. While the solution of this question is appalling from the unparalleled magnitude of its possible results , the consideration belonging to it are such as to make even the stoutest mind distrust its decision. On the one side ,Religion, Humanity, under the most appalling from , as well as vanity and ambition – in short ,all the most powerful influences over the human heart – are arrayed to bias and mislead the judgment. On the other side ,the sanction of countless ages, the example of all the Mussulman conquerors , the unanimous concurrence in the same policy of our own most able rulers together with the universal veneration of people, seem authoritatively to forbid, both to feeling and to forbid, both of feeling and to reason, any interference in the exercise of their natural prerogative. In venturing to be first to deviate from this practice it become me to show that nothing has been yielding to feeling, but that reason, and reason alone, has governed the decision. So far indeed from presuming to condemn the conduct of my predecessors , I am ready to say that in the same circumstances I should have acted as they have done. So far from being chargeable with political rashness, as this departure from an established policy might infer, I hope to be able so completely to prove the safety of the measures as even to render unnecessary any calculation of the degree of risk which for the attainment of so grate a benefit might wisely and justly be incurred. So far also from being the sole champion of a great and dangerous innovation, I shall be able to prove that the vast preponderance of present authority has long been in favour of abolition . Past experience indeed ought to prevent me, above all men, from coming lightly to so positive a conclusion. When governor of madras I saw in the mutiny of Vellor the dreadful consequences of a supposed violation of religious customs upon the minds of the native population and soldiery. I cannot forget that I was then the innocent victim of that unfortunate catastrophe; and I might reasonably dread, when the responsibility would justly attach to me in the event of failure, a recurrence of the same fate. Prudence and self interest would counsel me to tread in the footsteps of my predecessors. But in a case of such momentous importance to humanity and civilization that man must be reckless of all his present or future happiness who could listen to the dictates of so wicked and selfish a policy. With the firm undoubting conviction entertained

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upon this question, I should be guilty of little short of the crime of multiplied murder if I could hesitate in the performance of this solemn obligation. I had been already stung with this feeling. Every day's delay adds a victim to the dreadful list, which might perhaps have been prevented by a more early submission of the present question. But during the whole of the present year much public agitation has been excited, and when discontent is abroad, when exaggerations of all kinds are busily circulated, and when the native army have been under a degree of alarm lest their allowances should suffer with that of their European officers, it would have been unwise to have given a handle to artful and designing enemies to disturb the public peace. The recent measures of Government for protecting the interests of the Sepoys against the late reduction of companies will have removed all apprehension of the intentions of Government; and the consideration of this circumstances having been the sole cause of hesitation on my part, I will now proceed, praying the blessing of God upon our counsels, to state the grounds upon which my opinion has been formed.

We have now before us two reports of the Nizamat Adalat, with statements of sati's in 1827 and 1828, exhibiting a decrease of 54 in the latter year as compared with 1827, and a still greater portion as compared with former years. If this diminution could be ascribed to any change of opinion upon the question produced by the progress of education or civilization the fact would be most satisfactory, and to disturb this sure though slow process of self-correction would be most impolitic and unwise. But I think it may be safely affirmed that though in Calcutta truth may be said to have made a considerable advance among the higher orders; yet in respect to the population at large no change whatever has taken place, and that from these causes at least no hope of the abandonment of the rite can be rationally entertained. The decrease, if it be real, may be the result of less sickly seasons, as the increase in 1824 and 1825 was of the greater prevalence of cholera. But it is probably in a greater measure due to the more open discouragement of the practice given by the greater part of the European functionaries in latter years, the effect of which would be to produce corresponding activity in the police officers, by which either the number would be really diminished or would be made to appear so in the returns.

It seems to be very general opinion that our interference has hitherto done more harm than by lending a sort of sanction to the ceremony, while it has undoubtedly tended to cripple the efforts of magistrates and others to prevent the practice.

I think it will clearly appear from a perusal of the documents annexed to this Minute, and from the facts which I shall have to adduce, that the passive submission of the people to the influence and power beyond the law—which in fact and practically may be and is often exercised without opposition by every public officer— is so great that suppression of the rite would be completely effected by a tacit sanction alone on the part of Government. This mode of extinguishing it has been recommended by many of those whose advice has been asked; and no doubt this in several respects might be a preferable course, as being equally effectual while
more silent, not exciting the alarm which might possibly come from public enactment, and from which in case of failure it would be easy to retreat with less inconvenience and without any compromise of character. But this course is clearly not open to Government, bound by Parliament to rule by law and not by their good pleasure. Under the present position of the British empire, moreover, it may be fairly doubted if any such underhand proceeding would be really good policy. When we had powerful neighbours and had greater reason to doubt our own security, expediency might recommend an indirect and more cautious proceeding, but now that we are supreme my opinion is decidedly in favour of an open, avowed, and general prohibition, resting altogether upon the moral goodness of the act and our power to enforce it; and so decided is my feeling against any half measure that were I not convinced of the safety of total abolition I certainly should have advised the cessation of all interference.

Of all those who have given their advice against the abolition of the rite, and have described the ill effects likely to ensue from it, there is no one to whom I am disposed to pay greater difference than Mr. Horace Wilson. I purposely select his opinion because independently of his vast knowledge of oriental literature, it has fallen to his lot, as secretary to the Hindu college, and possessing the general esteem both of the parents and of the youths, to have more confidential intercourse with natives of all classes than any man in India. While his opportunity of obtaining information has been beyond all others, his talents and judgement enabled him to form a just estimate of its value. I shall state the most forcible of his reasons and how far I do and do not agree with him.

1st. Mr. Wilson considers it to be a dangerous evasion of the real difficulties to attempt to prove that ‘sati’s are not essentially a part of the Hindu religion’. I entirely agree in this opinion. The question is not what the rite is but what it is supposed to be, and I have no doubt that the conscientious belief of every order of Hindus, with few exceptions, regard it as sacred.

2nd. Mr. Wilson thinks that the attempt to put down the practice will inspire extensive dissatisfaction. I agree also in this opinion. He thinks that successive only be partial, which I doubt. He does not imagine that the promulgated prohibition will lead to any immediate and overt act of insubordination, but that affrays and much agitation of the public mind must ensue. But he conceives that if once they suspect that it is the intention of the British Government to abandon this hitherto inviolate principle of allowing the most complete toleration in matters of religion that there will arise in the minds of all so deep a distrust of our ulterior designs that they will no longer be tractable to any arrangement intended for their improvement, and that the principle of a purer morality, as well as of a more virtuous and exalted rule of action, now actively inculcated by European education and knowledge, will receive a fatal check. I must acknowledge that a similar opinion as to the probable excitation of a deep distrust of our future intentions was mentioned to me in conversation by that enlightened native, Ram Mohun Roy, a warm advocate for the abolition of sati and of all other superstitions and corruptions engrafted on the Hindu religion, which he consider originally to have been a pure Deism. It was his opinion that the practice be suppressed
quietly and unobservedly by increasing the difficulties and by the indirect agency of the police. He apprehended that any public enactment would give rise to general apprehension, that the reasoning would be, 'while the English were contending for power they deemed it politic to allow universal toleration and to respect our religion, but having obtained the supremacy their first act is a violation of their profession, and the next will probably be, like the Muhammadan conquerors, to force upon us their own religion'. Admitting, as I am always disposed to do, that much truth is contained in these remarks, but not at all assenting to the conclusions which, though not described, bear the most unfavourable import, I shall now inquire into the evil and the extent of danger which may practically result from this measure.

It must be first observed that of the 463 sati’s occurring in the whole of the presidency of Fort William, 420 took place in Bengal, Behar, and Orissa, or what is termed the Lower Provinces, and of these latter 287 in the Calcutta Division alone.

It might be very difficult to make a stranger to India understand, much less believe, that in a population of so many millions of people as the Calcutta Division includes, and the same many be said of all the Lower Provinces, so great is the want of the courage and of vigour of character, and such the habitual submission of centuries, that insurrection or hostile opposition to the will of the ruling power may be affirmed to be an impossible danger. I speak of the population taken separately from the army, and I may add for the information of the stranger, and also in support of my assertion, that few of the natives of the lower provinces are to be found in our military ranks. I therefore at once deny the danger in toto in reference to this part of our territories, where the practice principally obtains.

If however, security was wanting against extensive popular tumult or revolution, I should say that the permanent settlement, which though a failure in many other respects and in its most important essentials, has this great advantage at least, of having created a vast body of rich landed proprietors deeply interested in the continuance of the British Dominion and having complete command over the mass of the people; and in respect to the apprehension of ulterior views, I cannot believe that it could last but for the moment. The same large proprietary body, connected for the most part with Calcutta, can have no fears of the kind, and through their numerous dependents and agents, the public mind could not long remain in a state of deception.

Were the scene of this sad destruction of human life laid in the Upper instead of the Lower Provinces, in the midst of a bold and manly people, I might speak with less confidence upon the question of safety. In these Provinces the sati’s amount to forty-three only upon a population of nearly twenty millions. It cannot be expected that any general feeling, where combination of any kind is so unusual, could be excited in defiance of rite in which so few participate, a rite also notoriously made too often subservient to views of personal interest on the other part of the other members of the family.
It is stated by Mr. Wilson that interference with infanticide and the capital punishment of Brahmans offer a fallacious analogy with the prohibition now proposed. The distinction is not perceptible to my judgment. The former practice, though confined to particular families, is probably viewed as a religious custom; and as for the latter, the necessity of the enactment proves the general existence of this exception, and it is impossible to conceive a more direct and open violation of their Shasters, or one more at variance with the general feelings of the Hindu population. To this day in all Hindu states the life of a Brahman is, I believe, still held sacred.

But I have taken up too much time in giving my own opinion when those of the greatest experience and highest official authority are upon our records. In the report of the Nizamat Adalat for 1828, four out of five of the judges recommended to the Governor-General in Council the immediate abolition of the practice, and attest its safety. The fifth judge, though not opposed to the opinions of the rest of the Bench, did not feel then prepaid to give his entire assent. In the report of this year the measure has come up with the unanimous recommendation of the court. The two Superintendents of police for the Upper and lower provinces (Mr. Walter Ewer and Mr. Charles Barwell) have in the strongest terms expressed their opinion that the suppression might be effected without the least danger. The former officer has urged the measure upon the public functionaries in the interior, but I am informed that nine-tenths are in favour of the abolition.

How, again, are these opinions supported by practical experience? Within the limits of the Supreme Court at Calcutta not a sati has taken place since the time of Sir John Anstruther.

In the Delhi territory Sir Charles Metcalfe never permitted a sati to be performed.

In Jessore, one of the districts of the Calcutta Division, in 1824 there were 30 satis; in 1825, 16; 1826, 3; in 1827 and in 1828 there were none. To no other cause can this be assigned than to a power beyond the law exercised by the acting magistrate, against which, however, no public remonstrance was made. Mr. Pigou has been since appointed to Cuttack, and has pursued the same strong interference as in Jessore, but his course, although most humane, was properly arrested, as being illegal, by the Commissioners. Though the case of Jessore is, perhaps, one of the strongest examples of efficacious and unopposed interposition, I really believe that there are few Districts in which the same arbitrary power is not exercised to prevent the practice. In the last work in the report of the Acting Commissioner (Mr. Smith) he states that in Ghazipur in the last year sixteen and in the preceding year seven, satis has been prevented by the persuasions, or rather, it should be said, by the threats, of the Police.

Innumerable cases of the same kind might be obtained from the public records.
It is stated in the letter of the Collector of Gaya (Mr. Trotter), but upon what authority I have omitted to inquire, that the Peshwā (presume he means the ex-Peshwā Bāji Rāo) would not allow the rite to be performed, and that in Tanjore it is equally interdicted. These facts, if true, would be positive proofs at least that no unanimity exists among the Hindus upon the point of religious obligation.

Having made inquiries, also, how far satis are permitted in the European foreign settlements, I find from Dr. Carey that at Chinsurah no such sacrifices had ever been permitted by the Dutch Government. That within the limits of Chandarnagar itself they were also prevented, but allowed to be performed in the British territories. The Danish Government of Serampur has not forbidden the rite, in conformity to the example of the British Government.

It is a very important fact that, though representations have been made by the disappointed party to superior authority, it does not appear that a single instance of direct opposition to the execution of the prohibitory orders of our civil functionaries has ever occurred. How, them, can it be reasonably feared that to the Government itself, from whom all authority is derived, and whose power is now universally considered to be irresistible, anything bearing the semblance of resistance can be manifested? Mr. Wilson also is of opinion that no immediate overt act of insubordination would follow the publication of the edict. The Regulation of Government may be evaded, the Police may be corrupted, but even here the price paid as hush money will operate as a penalty indirectly forwarding the object of Government.

I venture then, to think it completely proved that from the Native population nothing of extensive combination, or even or partial opposition, may be expected from the abolition.

It is, however, a very different and much more important question how far the feelings of the native army might take alarm, how far the rite may be in general observance by them, and whether, as in the case of Vellore, designing persons might not make use of the circumstances either for the purpose of immediate revolt or of sowing the seeds of permanent disaffection. Reflecting upon the vast disproportion of numbers between our Native and European troops, it was obvious that there might be, in any general combination of the forces, the greatest danger to the State, and it became necessary, therefore, to use every precaution to ascertain the impression likely to be made upon the minds of the native soldiery.

Before I detail to Council the means I have taken to satisfy my mind upon this very important branch of the inquiry, I shall beg leave to advert to the name of Lord Hastings. It is impossible but that to his most humane, benevolent, and enlightened mind this practice must have been often the subject of deep and anxious meditation. It was consequently a circumstance of ill omen and some disappointment not to have found upon the Records the valuable advice and direction of his long experience and wisdom. It is true that during the greater part of his administration he was engaged in war, when the introduction of such a measure would have
been highly injudicious. To his successor, Lord Amherst, also, the same obstacle was opposed. I am, however, fortunate in possessing a letter from Lord Hastings to a friend in England upon satis, and from the following extract, dated 21 November, 1923, I am induced to believe that, had he remained in India this practice would long since have been suppressed:—

'The subject which you wish to discuss is one which must interest one's feeling most deeply, but is also one of extreme nicety when I mention that in one of the years during my administration of government in India about 800' widows sacrificed themselves within the Provinces comprised in the Presidency of Bengal, to which number I very much suspect that very many not notified to the magistrate should be added. I will hope to have credit for being acutely sensible to such an outrage against humanity. As the same time I was aware how much danger might attend the endeavouring to suppress forcibly a practice so rooted in the religious belief of the natives. No men of low caste are admitted into the ranks of the Bengal army. Therefore the whole of that formidable body must be regarded as blindly partial to a custom which they consider equally referrible to family honour and to point of faith. To attempt the extinction of the horrid superstition without being supported in the procedure.

There must be a mistake in the numbers stated. – W.B. by a real concurrence on the part of the army would be distinctly perilous. I have no scruple to say that I did believe I could have carried with me the assent of the army towards such an object. That persuasion however arose from circumstances which gave me peculiar influence over the native troops.'

Lord Hastings left India in 1823. It is quite certain that the Government of that time were much more strongly impressed with the risk of the undertaking than is now very generally felt. It would have been fortunate could this measure have proceeded under the auspices of that distinguished nobleman, and that the State might have had the benefit of the influence which undoubtedly he possessed in a peculiar degree over the native troops. Since that period, however, six years have elapsed. Within the territories all has been peaceful and prosperous, while without, Ava and Bhartpur, to whom alone a strange sort of consequence was ascribed by public opinion, have been made to acknowledge our supremacy. In this Interval experience has enlarged our knowledge, and has given us surer data upon which to distinguish truth from illusion, and to ascertain the real circumstances of our position and power. It is upon these that the concuring opinion of the officers of the civil and military services at large having been founded, is entitled to our utmost confidence.

I have the honor to lay before Council the copy of a circular addressed to forty-nine officers, pointed out to me by the Secretary to Government in the Military Department as being from their judgment and experience the best enabled to appreciate the effect of the proposed measure upon the native army, together with their answers. For more easy reference, an abstract of each answer is annexed in a separate paper and classed with those to the same purpose.
Adverse to all interference whatever with the practice the number is only give; secondly, of those who are favourable to abolition but averse to a absolute and direct prohibition under the authority of the Government, the number is twelve; thirdly, of those who are favourable to abolition, to be effected by the indirect interference of magistrates and other public officers, the number is eight; fourthly, of those who advocate the total immediate and public suppression of the practice, the number is twenty-four.

It will be observed, also, of those who are against an open and direct prohibition, few entertain any fear of immediate danger. They refer to a distant and undefined evil. I can conceive the possibility of the expression of dissatisfaction and anger being immediately manifested upon this supposed attack on their religious usages, but the distant danger seems to me altogether groundless, provided that perfect respect continues to be paid to all their innocent rites and ceremonies, and provided also that a kind and considerate regard be continued to their worldly interests and comforts.

I trust, therefore, that the Council will agree with me in the satisfactory nature of this statement, and that they will partake in the prefect confidence which it has given me of the expediency and safety of the abolition.

In the answer of one of the military officers, Lieutenant-Colonel Todd, he has recommended that the tax of pilgrims should be simultaneously given up, for the purpose of affording an undoubted proof of our disinterestedness and of our desire to remove every obnoxious obstacle to the gratification of their religious duties. A very considerable revenue is raised from this head, but if it were to be the price of satisfaction and confidence to the Hindus and of the renewal of all distrust of our present and future intentions, the sacrifice might be a measure of good policy. The objections that must be entertained by all to the principle of the tax, which in England has latterly excited very great reprobation, formed an additional motive for the inquiry. I enclose the copy of a circular letter address to different individuals at present in charge of the district where the tax is collected, or who have had opportunities, from their local knowledge, of forming a good judgment upon a review of the whole by conviction is that in connection with the present measure it is inexpedient to repeal the tax. It is a subject upon which I shall not neglect to bestow more attention than I have been able to do. An abstract of these opinions in annexed to this minute.

I have now to submit for the consideration of Council the draft of a regulation enacting the abolition of satis. It is accompanied by a paper containing the remarks and suggestions of the Judge of the Nizamat Adalat. In this paper is repeated to unanimous opinions of the Court in favour of the proposed measure. The suggestions of the Nizamat Adalat are in some measure at variance with a principal object. I had in view, of preventing collision between the parties to the
sati and the officers of police. It is only in the previous processes, or during the actual performance of the rite, when the feelings of all may be more or less roused to a high degree of excitement, that I apprehend the possibility of affray or of acts of violence through an indiscreet and injudicious exercise of authority. It seemed to me prudent, therefore, that the police, in the first instance, should warn and advise, but not forcibly prohibit, and if the sati, in defiance of this notice, were performed, that a report should be made to the magistrate, who would summon the parties and proceed as in any other case of crime. The Indian Court appears to think these precautions unnecessary, and I hope they may be so, but in the beginning we cannot, I think, proceed with too much circumspection. Upon the same principle, in order to guard against a too hasty or severe a sentence emanating from extreme zeal on the part of the local judge, I have proposed that the case should only be cognizable by the Commissioners of circuit. These are, however, questions which I should wish to see discussed in Council. The other recommendations of the Court are well worthy of our adoption.

I have now brought this paper to a close, and I think I have redeemed by pledge of not allowing, in the consideration of this question, passion or feeling to have any part. I trust it will appear that due weight has been given to all difficulties and objections, that facts have been stated with truth and impartiality, that the conclusion to which I have come is completely borne out both by reason and authority. It may be justly asserted that the Government in this act will only be following, not preceding, the tide of public opinion long flowing in this direction; and when we have taken into consideration the experience and wisdom of that highest public tribunal, the Nizamat Adalat, who in unison with out wisest and ablest public functionaries, have been year after year almost soliciting the Government to pass this act, the moral and political responsibility of not abolishing this practice far surpasses, in my judgment, that of the opposite course.

But discarding, as I have done, every inviting appeal from sympathy and humanity, and having given my verdict, I may now be permitted to express the anxious feelings with which I desire the success of this measure.

The first and primary object of my heart is the benefit of the Hindus. I know nothing so important to the improvement of their future condition as the establishment of a purer morality, whatever their belief, and a more just conception of the will of God. The first step to this better understanding will be dissociation of religious belief and practice from blood and murder. They will then, when no longer under this brutalizing excitement, view with more calmness acknowledged truth. They will see that there can be no inconsistency in the ways of Providence, that to the command received as divine by all races of men, ‘No innocent blood shall be split,’ there can be no exception; and when they shall have been convinced of the error of this first and most criminal of their customs, may it not be hoped that others, which stand in the way of their improvement, may likewise pass away, and that thus emancipated from those chains and shackles upon their minds and actions, they may no longer continue, as they have done, the slaves of every foreign conqueror, but that they may assume their first places among
the great families of mankind? I disown in these remarks, or in this measure, any view whatever to conversion to our own faith. I write and feel as a legislator for the Hindus, and as I believe many enlightened Hindus think and feel.

Descending from these higher considerations, it cannot be a dishonest ambition that the Government of which I form a part should have the credit of an act which is to wash out a foul stain upon British rule, and to stay the sacrifice of humanity and justice to a doubtful expediency; and finally, as a branch of the general administration of the Empire, I may be permitted to feel deeply anxious that over course shall be in accordance with the noble example set to us by the British Government at home, and that the adaptation, when practicable to the circumstances of this vast Indian population, of the same enlightened principles, may promote here as well as there the general prosperity, and may exalt the character of our nation.

W.C. BENTINCK

November 8th, 1929.
A LETTER FROM BALL SHASTREE TO RAMCHUNDRA SHASTREE AT POONA CONCERNING THE PURIFICATION OF SHREEPUT SHESHADREE

(19TH NOVEMBER 1843)

(१९ नवंबर, १८४३)

लोक त्या मुलास प्राचिनताविषयी अनुमत देयन्यास अंदेशां घेतात म्हणून लिहिलं. त्यास एक मूल बाल्यास आणि परत न आला यांत्र ब्राह्मणवाल्या कर्मी होत्या असे नाहीं. परंतु पारीलोक लोकांस भ्रस्त करावं या हेतूने जे आले आहेती त्यासं मोठे लोक बहुत करून बघत नाहीं. यामुळं थोडेसे बाततात. त्यांचा डाव मुलाल्यां अनावरणांनी सिद्धांस जातो. मुलाचे बुद्धीसं भेद करण्यास त्यास काहीं श्रम पडत नाहीं. पांढरीचे शाळेत मुलें जाण्याची बंद करावीं तर गरीब निराशित लोकांचे मुलास विद्या होणे कठीण. सर्व त्या लोकांस इज फार होत्या. यामुळे तेंची सिद्धांस जात नाहीं. परंतु मानिस एक मूलगा परत आणिला म्हणजे बादविवेकाच्या उद्देशाला आल्या पद्धती अपले धर्मसंस्कृतां फार फायदा आहे हे जाणून लिहिलं. तरी थेविष्यें ते ते लंडन लीडवरी खाती करावी. या कारणांमध्ये त्या मुलाची आपल्यांस काहीं गरज नाहीं. यासाठी ते लंडन लीडवरी बारीक मोठा मजबूत सर्व समजावून आल्यास न होतं शास्त्रांपासे पत्र घेऊन लोकांच तापिली पाहिले. एकच संचालन म्हणून अवकाश लागावयाचा. करिता बेजवी करून पाठवावत. विद्याश्रय देखील यांस आपले नावं पत्र लिहावेत. त्यापूर्व मजबूत आणण पाठविले तत्त्व फाल्करे. द्राक्षादिद मध्य म्हणजे काय ते लिहून पाठविवें आणण लिहिलं त्यास द्राक्षादिद मध्य म्हणजे “सुरू” नवं या अभिप्रयायांचे कार्तिक वद्यं ६ मित्रांचे पाठवावे.”
Appendix no 3
JUDGEMENT OF THE HON'BLE CHIEF JUSTICE

After the case had been ably argued by the learned counsel, the chief justice proceeded to pronounce judgment. His lordship began by recapitulating the main facts of the case. "It is contended" continued his lordship, "that the father has no right to the procession of the child, that the boy is of sufficient intelligence to choose for himself, and that the court accordingly ought to make no order but to allow him to exercise his own discretion in choosing his place for residence. Now it is quite obvious that the boy is of very tender age; but then it is contended that it is the duty of the court to examine him and so be enabled to decide on his competency to form a judgment. It is further argued that as the court would receive his evidence on any question affecting the life or liberty of another, therefore we ought to allow him to exercise his discretion in the mode contended for. This part of the argument I cannot but hold to be very absurd. Very possibly, and considering where the boy has been pursuing his education, very probably, he has all the knowledge that is asserted; and I am prepared to say I would at once give credit to the evidence of the boy in any question that comes before this court; indeed I would much sooner credit his evidence than that of a great many of the natives who come before us to give evidence here. I am then quite prepared to believe all that has been urged in the reference to his intelligence; but even where he much farther advanced than he is, I could not interfere with the father's rights. As to the proposal that we should enter into an examination of the child, it is entirely out of the question. Very probably such an examination would end in a theological discussion between us and the boy, - a thing that would be quite preposterous. The question of religion must be entirely set aside; it is one with which can have nothing whatsoever to do. Were I to allow these considerations to come in, and allow my own views and feelings on these matters to influence me in the least, I would say that it were much better for the happiness and the interests of the boy that he remained where he is, under the care of the gentlemen whose protection he has sought. But we must not forget that it is not competent for this court now to enter into the consideration of religious questions and interests. Considering the circumstances of this country we are bound to exercise the greatest control over ourselves in regard to religious considerations. But it appears to me that a very great part of Mr. Dickinson has laid great stress upon the case of Mr. Wellesley and others, where the parents or guardians were of an immoral character, or held doctrines dangerous to society. But we cannot in this country, look upon the Hindoo religion as dangerous to society. Lord Mansfield's opinion in the case of Sir Francis Deaval was that the court was not bound to give the children to any particular person, nor to allow the children themselves the privilege of electing with whom they would go; but that it was in the discretion of the court to decide the matter. In one of the cases cited by Mr. Dickinson where the child was not more than 9 or 10 years of age, the court would appoint no guardian, but entrusted it to the father, as it was to
young to take care of itself. In the other cases when the children were of 6 or 7 years of age the same doctrine was ruled.

The fact of the family's living in the territories of the Nizam has also been urged. It is contended that the boy may be taken out of the reach of British law, and there be treated with harshness or cruelty. But His Highness the Nizam is connected with the British government; his Government can be influenced through the British. His father being a subject of Nizam, is not our alien enemy,—had he been so, the argument might with more plausibility have been urged; but friendly relations exist between our Government and the one under which he lives. If violence should be used towards the boy, surely the British Government, through its Resident at Hyderabad, could interfere so as to secure the offending parties being punished. But even if the father had been an alien enemy, still we should have been bound to deliver his child up to him. Suppose an English child were educated in France and wished to withdraw himself from his father's care, certainly that child would be delivered up when the father made application.

The poverty of the father, which has been or probably might be established, is surely not to be held as a reason sanctioning his being deprived of his paternal rights.

The father has done nothing to warrant his being deprived of these. We cannot interfere with their exercise.

And here I must say that Mr. Cassidy's going to Narayen's house and bringing the boy away with him, was a very questionable proceeding. Of course there was no physical force; but there was something like moral force; the presence of a European overawed the eldest brother and he allowed Shreeput to escape.

I again say the father has done nothing to forfeit his rights over his child, and whatever our own feelings and predilections might be, his child must be restored to him.
Order of the court

The Queen Vs. the Reverend Robert Nesbit

Upon Shreeput Sheshadree the son of Sheshadree Govinda being this day brought here into Court by virtue of a Writ of Habeas Corpus issued out of this Honourable Court, returnable this day, and on reading the said writ and the return of the said Reverend Robert Nesbit thereto, and the Affidavit of the said Reverend Nesbit, the Affidavit of Narayen Sheshadree, and the Affidavit of Mr. Henry Cassidy, and on hearing Mr. Dickinson, being of Counsel on behalf of the said Reverend Robert Nesbit, it is ordered that the said Shreeput Sheshadree be delivered up into the custody of his father the said Sheshadri Govinda. Witness Sir Henry Roper, Knight, Chief Justice at Bombay aforesaid, this 3rd day of November 1843.

By the Court

H.B.Herrick

Clerk of the crown.

The 9th day of November, 1843.
Appendix no.4

ACT NO.XV. OF 1856

(Received the Governor Generals assent on the 26th July 1856)

An Act to remove all legal obstacles to the marriage of Hindu widows.

PREAMBLE

Whereas it is known that, by the law as administered in the civil court established in the territories in the possession and under the government of the east India company, Hindu widows, with certain exceptions, are held to be, by reason of their having been once married, incapable of contracting a second valid marriage, and the offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property, and whereas many Hindus believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the civil law administered by the course of justice shall no longer prevent those Hindus who may be so minded from adopting a different custom, in accordance with the dictates of their own consciences, and whereas it is just to relieve all such Hindus from this legal incapacity of which they complain; and the removal of all legal obstacles to the marriage Hindu widows will tend to the promotion of good morals and to the public welfare: It is enacted as follows:

MARRIAGE OF HINDU WIDOWS LEGALIZED

1. No marriage contracted between Hindus shall be invalid, and the issue of no such marriage shall be illegitimate, by reason of the women having been previously married or betrothed to another person who was dead at the time of such marriage, any custom and any interpretation of Hindu law to the contrary notwithstanding.

RIGHTS OF WIDOW IN DECEASED HUSBAND'S PROPERTY TO CEASE ON HER REMARRIAGE

2. All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to lineal successors, or by virtue of any will or testamentary disposition conferring upon her. Without express permission to remarry, only limited interest in such property, with no power of alienating the same, shall, upon her remarriage, cease and determine as if she had then died; and the next
heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.

GUARDIANSHIP OF CHILDREN OF DECEASED HUSBAND ON THE REMARRIAGE OF HIS WIDOW

3. On the remarriage of a Hindu widow, if neither the widow nor any other person has been expressly constituted by the will or testamentary disposition of the deceased husband, the guardian of his children, the father or paternal grand-father, or the mother or paternal grand mother, of the deceased husband or any male relative of the deceased husband may petition the highest court having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death, for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who, when appointed. Shall be entitled to have the care and custody of the said children, or of any of them, during their minority, in the place of their mother; and in making such appointment the Court shall be guided, so far as may be, by the laws and rules in force touching the guardianship of children who have neither father nor mother.

Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother; unless the proposed guardian shall have given security for the support and proper education of the children whilst minors.

NOTHING IN THIS ACT TO RENDER ANY CHILDLESS WIDOW CAPABLE OF INHERITING

4. Nothing in this Act contained shall be construed to render any widow, who, at the time of the death of any person leaving any property, is a childless widow capable of inheriting the whole or any share of such property if, before the passing of this Act, she would have been incapable of inheriting the same by reason of her being childless widow.

SAVING OF RIGHTS OF WIDOW MARRYING EXCEPT AS PROVIDED IN THE THREE PRECEDING SECTIONS (2, 3, AND 4.)

a. Except as in the three preceding Sections is provided, a widow shall not, by reason of her re-marriage, forfeit any property, or any right to which she would otherwise be entitled; and every widow who has
remarried shall have the same rights of inheritance as the would have, had such marriage been her first marriage.

WHATEVER CEREMONIES NOW CONSTITUTE VALID MARRIAGE SHALL HAVE THE SAME EFFECT ON THE MARRIAGE OF A WIDOW.

b. Whatever words spoken, ceremonies performed, or engagements made, on the marriage of a Hindu female who has not been previously married, are sufficient to constitute a valid marriage, have the same effect, it spoken, performed, or made on the marriage of a Hindu Widow; and no marriage shall be declared invalid on the ground that such words, ceremonies, or engagements are inapplicable to the case of a widow.

CONSENT OF RE-MARRIAGE OF A WIDOW WHO IS A MINOR

c. If the widow remarrying is a minor whose marriage has not been consummated, she shall not remarry without the consent of her father, or, if she has no father, of her paternal grand-father, or, if she has no such grand-father, of her mother, or failing all these, of her elder brother, or, failing also brother, of her next male relative.

PUNISHMENT FOR ABETTING MARRIAGE MADE CONTRARY TO THIS SECTION

All persons knowingly abetting a marriage made contrary to the provisions of the section shall be liable to imprisonment for any term not exceeding one year or, to fine, or, to both.

EFFECT OF SUCH MARRIAGE

An all marriage made contrary to the provisions of this Section may be declared void by a Court of law.

PROVISO

Provided that, in any question regarding the validity of a marriage made contrary to the provisions of this section, such consent as is aforesaid shall be presumed until the cleared void after it has been consummated.

CONSENT TO RE-MARRIAGE OF MAJOR WIDOW

In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her re-marriage lawful and valid.