LAWYER-SCHOLARS, LAWYER-POLITICIANS AND THE HINDU CODE BILL, 1921-1956

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LAWYERS HAD A PROFOUND influence upon the legislative history of the Hindu Code Bill. Enacted as a series of separate acts between 1954-1956 by India's First Parliament, this bill was intended to modernize, unify, democratize, and secularize Hindu family law and Hindu society, and especially to emancipate Hindu women. I shall first outline the general influence of lawyers[1] in India's national legislature during 1921-1956. Then I shall describe their influence on the pivotal events of this particular legislative history, with primary emphasis upon the British Indian period.

GENERAL INFLUENCE

Throughout this legislative history lawyers tended to dominate the legislature, its leading political parties, and the executive (not to mention

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1. Discussion of the problem of delimiting legal profession membership is outside the scope of this study. Almost all described herein as lawyers were or had been practitioners. When others are so described, other membership criteria are given. When appropriate, the national or communal identity of a lawyer is given.

the judiciary). In the British Indian Central Legislature, lawyers usually formed the largest single occupational group. Even when landlords achieved numerical supremacy, lawyers maintained actual legislative leadership. Parties did not attain great strength in this legislature, but the more important of those that did arise were led by lawyers.[2] After independence, in the Provisional Parliament (the legislative side of the Constituent Assembly) and in the subsequent First Parliament, lawyers constituted the largest and most influential occupational group. Lawyers supplied the majority of members and most of the leadership of the Congress Party, which controlled these Parliaments, and of other parliamentary parties which took an interest in the bill.[3] In every year in which a Code Resolution or the bill itself was debated or in which a Hindu Law Committee Report was considered by Government for adoption (1921, 1941, 1943-44, 1948-51, 1954-56), lawyers formed the largest single occupational group in the executive, including the responsive but nonresponsible Governor General and Executive Council of British India and the President and the fully responsible Cabinet of Independent India (the last equivalent to the Congress Party's parliamentary leadership).[4] The transformation of national party-legislature-executive relationships, and the drastic enlargement of the franchise, which followed independence did not, to say the least, diminish lawyers' general influence in the national legislature.

INFLUENCE ON PIVOTAL EVENTS

Under the British

The pivotal pre-independence event was the Government acceptance of the 1941 Hindu Law Committee Report recommendation in favor of a Hindu Code. Crucial to this action was Government's perception of the preferences of leading Hindu lawyers.

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2. M. RASHIDUZZAMAN, CENTRAL LEGISLATURE IN BRITISH INDIA 101-3, app. III (1965); 1 SIMON COMMISSION REPORT, 1930, at 165, 200, 406; TIMES OF INDIA, INDIAN YEARBOOK AND WHO'S WHO (1921-47).

3. W. H. MORRIS-JONES, PARLIAMENT IN INDIA 120, 123 (1957); Times of India, 1948-56.

4. Chelmsford, Governor General in 1921, had been a practitioner. Linlithgow, Governor General in 1941, held a law degree. Rajagopalachari, Governor General from 1948 until Prasad assumed the Presidency in 1950, had been a practitioner, as had Prasad. Every Law Member/Minister had been a practitioner. R. COUPLAND, CONSTITUTION OF INDIA 222-24 (1944); Times of India, 1921, 1941-44, 1948-56.

In the second half of the 19th century vast fields of British Indian commercial, criminal, public, and procedural law were codified and given a modern and/or English content, an intended uniform application, and an exclusively secular sanction. Hindu family law survived this period as part of a largely uncodified enclave of sacred communal family laws, with the blessing of the official policy of neutrality and noninterference in Indian religious-social affairs. This Hindu law survived with its content and structure altered as a result of its administration by British judges who gave scrupulous yet oversimplified attention to Hindu religious-legal texts—at the same time invoking English procedure, jurisprudence, and English law to fill the gaps.[5]

In 1889 Sir C. Ilbert (who, as a former Government Law Member, shared responsibility for codifying the vast fields mentioned above) had indicated that the extension of codification to the field of native Indian family law would require the initiative and active cooperation of Indian lawyers and must await the rise of an entire "generation of Indian lawyers competent to undertake such a task."[6] In 1921, two Hindu legislators, one a lawyer in the Central Legislative Assembly (the lower House), the other an eminent scholar of Sanskrit in the Central Council of States (the upper House), initiated resolutions seeking Government support for a Hindu Code of family law. As Government spokesman in each House on these resolutions, Dr. T. B. Sapru, then a successor to Ilbert as Law Member and himself an eminent Hindu lawyer, acknowledged the rise of both Ilbert's hoped-for generation, and the requisite Hindu professional cooperation and initiative for family law codification. But he requested withdrawal of the resolutions, offering his assurance that Government would give them informal consideration and stating that this would take into account the opinions of bar associations and other bodies. As he strongly hinted it would, Government did reject these comprehensive code proposals as too contentious and costly. However, in 1921—through Sapru's speeches—Government had already gone so far as to welcome individual Members' efforts at piecemeal codification, a limited but significant shift in policy.[7] Twenty years later,

5. J. D. M. DERRETT, HINDU LAW PAST AND PRESENT (1957) and J. D. M. DERRETT, THE ADMINISTRATION OF HINDU LAW BY THE BRITISH, 4 COMP. STUDIES IN SOC'Y & HIST. 10-52 (1961); M. Galanter, *Hindu Law and the Development of the Modern Indian Legal System*, A.P.S.A. (Mimeo, 1964); L. I. Rudolph and S. H. Rudolph, *Barristers and Brahmans in India*, 8 COMP. STUDIES IN SOC'Y & HIST. 24-49 (1965).

6. C. Ilbert, *Indian Codification*, 20 L. Q. REV. 363, 368-69 (1889).

7. 1 LEGISLATIVE ASSEMBLY (British Indian Central) DEB. 1601, 1603 (1921); 1 COUNCIL OF STATES (British Indian Central) DEB. 620-21 (1921).

when the separate occupations of the two legislators who moved these 1921 Resolutions were joined together in the persons of lawyer-scholars, their advocacy of a comprehensive code would prove harder for Government to resist.

In the next two decades many such piecemeal measures were enacted, modifying the Hindu law of marriage, inheritance, and joint family property. Though certain physicians and others also were active, lawyers took a leading part in the disposition of these measures and of the many other Hindu law bills that were moved but not enacted. As a whole, the enacted bills carried further a modest, uneven, pre-1921 trend toward increasing property alienability, reducing the legal importance of caste, sanctioning religious heterodoxy and conversion and, most significantly, improving the position of women.

The most important single measure was the Hindu Women's Right to Property Act of 1937, known as the Deshmukh Act after Dr. G. Deshmukh, its physician-social reformer author. The Act substantially improved the inheritance rights of a Hindu decedent's widow and introduced as heirs his widowed daughters-in-law and widowed granddaughters-in-law. The career of this measure illustrated that Government itself was included in the growing number of those championing Hindu women's legislative cause and of those criticizing the technical disadvantages of piecemeal legislation. It also illustrated that Government, nevertheless, had not abandoned its caution in dealing with either codification or legislative reform of Hindu family law. Government's 1935 compromise, which permitted this Act to pass, also excluded from it the more advanced reforms provided by Dr. Deshmukh's original bill. Government's 1940 promise to appoint a small committee of eminent lawyers to rectify the legal confusion caused by such piecemeal legislative "tinkering" was given within the context of considering legislative correction of the glaring technical defects of the Deshmukh Act alone.[8]

In 1941 Government did appoint a four-member Hindu Law Committee, known as the Rau Committee after its chairman, B. N. Rau, primarily to: (a) resolve doubts about the Deshmukh Act's construction, (b) ensure that its introduction of new female heirs was not made at the expense of the decedent's own daughter, and (c) consider bills introduced to abolish women's limited estate and to make polygamy a ground for separate residence and maintenance. Rau (later Constitutional Advisor to the Constituent Assembly) was then a Calcutta High Court

8. 5 LEGISLATIVE ASSEMBLY 991 (1940).

Judge, having originally been recruited into judicial service from the ICS. Two members, D. N. Mitter (a former Calcutta High Court Judge) and J. R. Gharpure (a law college principal) were leading practitioners and respected Sanskritists. Mitter had published his dissertation on the legal position of Hindu women according to the Sanskrit texts and Gharpure had pioneered in the editing and translation of Sanskrit texts. The fourth member, V. V. Joshi was a lawyer from Baroda—a forward-looking Princely State with legislation that had significantly improved the legal position of Hindu women.

Later in 1941 the Committee reported that the time had come for a Hindu Code. Social progress and modernization required fundamental reforms which recognized sex equality—in a code to be shaped with the aid of orthodox, conservative and reform Hindus. This was to be done in the manner of the ancient Hindu law-givers and commentators: by a comprehensive blending of the best of the current Schools of Hindu Law and the ancient texts. Broad legislative intervention had become necessary because there were no more such code-givers or commentators and because the courts denied themselves the requisite freedom of interpretation.

In anticipation of a later, comprehensive review the Committee generally deferred judgment on specific substantive issues. However, it did indicate its support for certain specific reforms, including not only the abolition of women's limited estate but also the abolition of polygamy and the abolition of the general exclusion of female heirs by male heirs—the latter two proposals, especially the last, going beyond the Committee's terms of reference. The Committee had chosen to urge specific reforms, and to imply the need for an entire code of reforms, more fundamental than that of the Deshmukh Act itself or of the other bills it was to consider.[9]

Government promptly accepted the Report and directed the Committee to begin drafting a code—actions which, given both Government's long-standing policy and its recent caution, require explanation. Even apart from the significance of its recommendation of a comprehensive reform code, this was no ordinary report. In form its argument was cautiously lawyer-like and scholarly. In content its specific reform proposals were, in direction if not in exact degree, congenial to official opinion.[10] Advocacy by leading Hindu lawyers of such reforms, and

9. Rau Committee Report, 1941: 1, 11, 12, 21, 22, 24.

10. 1 PARLIAMENTARY JOINT COMMITTEE REPORT 10 (1933). The reform proposals fell short of certain reforms then vigorously demanded by the AIWC (the All-India

more, had reached a crescendo in leading professional journals and treatises, some invoked in the Report.[11] Especially in its wartime circumstances, Government may have wished to reassure politically moderate lawyer-reformers, and to convince other social reform activists, that past official encouragements were credible and that fundamental social reforms could be achieved without rocking the slowly advancing and partially deserted but, Government claimed, sure politico-constitutional boat.

The existence of strong support for such a code by important Hindu groups, granted a special wartime need to cultivate these groups, was necessary but not sufficient to persuade Government to adopt the Report. It had long feared that it might rock its own boat by attracting a wave of opposition from orthodox and conservative Hindus whose allegiance it also sought and whose religious passion it considered dangerous to arouse against itself. The disadvantages of being drawn into fierce intra-Hindu controversy would be still greater in wartime. In times past, orthodox-conservative or revivalist-nationalist Hindus had strongly condemned both Hindus who asked for, and Government when it permitted, even piecemeal legislation of a less fundamental sort. Certain bodies, such as the VSS (Varnashrama Swarajya Sangh) had shown themselves capable of organizing opposition by revered pandits and others against reform measures.

Though placed by the Committee in an optimistic light, conservative and orthodox responses to its questionnaire gave only qualified support to the proposed abolition of women's limited estate and to the restraint (as compared to abolition) of polygamy.[12] Of course, beyond this, affirmative orthodox-conservative reaction could appear to be anticipated by the positions of Gharpure, who was regarded as quite orthodox, and of Mitter.[13] The Sanskritic exegesis itself was extremely brief and at best inconclusive, but the Report did go under the proper signatures.[14]

Women's Conference). Agitation by the AIWC and other women's organizations, whose activism itself had also received high official encouragement, had been conspicuously in evidence. SIMON COMMISSION *supra* note 2, at 49-53.

11. RAU COMMITTEE REPORT 21 (1941).

12. *Id.* at 21, 24.

13. "Our *own* experience leads us to believe that a substantial measure of agreement will be possible, provided reformer and conservative appeal to the best in each other." *Id.* at 23 (emphasis supplied). Rau's great talent for mediation was no doubt instrumental in achieving this agreement.

14. As spokesman for Government, Law Member N. Sircar had earlier stated that Mitter was the "authority" for his position on the Deshmukh Act compromise. LEGISLATIVE ASSEMBLY (1935).

At least as much as the argument of the Report, the lawyer-scholar committee members, and the like-minded lawyers who wrote in journals and treatises, themselves seem to have carried the day. With Mitter and Gharpure as its badges of traditionalism and professionalism, with Rau as its official stamp of moderation, and with an implied lawyer-to-lawyer posture toward the Executive Council as its immediate rhetorical context—the eminent Committee might effectively claim Sanskrit and modern legal authority (as well as political safety) for its plea. The great achievement of the Committee was to persuade Government that the Sanskrit pedigree (as endorsed by Mitter and Gharpure) together with the appearance of representing the best of Hindu professional and scholarly opinion, would disarm and decrease orthodox-conservative opposition. The claim of this pedigree, of active and broad professional and scholarly support, and of legislative necessity arising from British judicial backwardness, placed this particular appeal to British Indian legislative power squarely on the ground of Hindu capacity and initiative for self-reform from within Hindu tradition. As far as can be determined, Government adopted the Report and had the Committee begin drafting a code without first circulating these fresh, important recommendations for further opinion.

By 1943 a significant opposition to the code had begun to develop inside and outside the Legislature. But in the 1943-1944 legislative debate, opponents and supporters alike accepted as fact the view that the bulk of the legal profession had originally favored, and continued to support, the code. Opponents tried to undercut this perceived support by arguing that lawyers had become Westernized, or that the merits of the bill were for the people at large to decide, and not the lawyers.[15]

In the debate on Part I (Intestate Succession) in 1943 Sir S. Ahmed, an eminent Muslim lawyer and then Law Member, emphasized the Sanskrit pedigree of the bill. He stated that if Part I was shown to violate the original Vedic texts (which he regarded as parallel, in ultimate Hindu family law authority, to the Koran in Muslim family law), Government would withdraw it. He also gave assurance that Government would appoint three text-experts as witnesses to aid the Joint Committee consideration of Part I.[16]

Subsequent events illustrated that up to a point professional standards could transcend communal loyalties; that communal loyalties could

15. 2 LEGISLATIVE ASSEMBLY 819 (1944).

16. 2 LEGISLATIVE ASSEMBLY 1629 (1943); 1 COUNCIL OF STATES 524 (1943).

nevertheless take priority; that not all lawyers could successfully play the role of Sanskrit expert; and that lawyers were important in leading the opposition as well as the support for the bill. Ahmed's professional competence in debate and as Joint Committee Chairman won him Hindu praise. The legislators who called attention to the fact that he was a Muslim did so to acknowledge his great learning in Hindu law notwithstanding the fact. If this showed the supracommunal power of professionalism, Ahmed's own later actions showed the decisive force of communalism—perhaps especially where the bearing of professionalism was uncertain or not unfavorable to communalism.

The Joint Committee majority recommendation of material alterations in the bill, which required its recirculation, precluded its reconsideration by this legislature. There is evidence that Ahmed joined the Joint Committee majority with the intention of killing the bill. There is also evidence that this profound reversal was occasioned by the exposure of the comparative incompetence of V. V. Joshi (then Joint Committee Advisor and, earlier, member of the 1941 Rau Committee) as a translator or expounder of Vedic texts, in combination with the testimony by at least two of the three expert witnesses that some bill provisions did violate the Vedas.[17] By contributing to a Joint Committee majority which supported the bill but, in effect, caused it to lapse, Ahmed could perform his duty of support as Law Member and at the same time temporarily prevent the establishment of a possible precedent for enactment of Muslim family law measures in violation of the Sharia. If this showed the force of communalism, it also showed that the power of professionalism to restrain it had been weakened, insofar as the witnesses' expert testimony together with Joshi's poor performance tended to undermine the professional-scholarly stature of the Rau Committee's Report and its drafted bills. When the Rau Committee was later revived, Joshi was replaced by T. R. Venkatarama Shastri, a successful practitioner who had some Sanskrit training.

The Joint Committee's Advisor and its three expert witnesses were lawyers or lawyer-scholars—no pandits or professors of Sanskrit were called upon for aid in the interpretation of the texts. Of the Joint Committee itself, lawyers formed the largest single occupational group and almost half of those members whose occupations can be identified.[18]

17. JOINT COMMITTEE (British Indian Central Legislature) REPORT 3, 4, 8, 10 (1943).

18. Times of India, 1943-44.

One of the two expert witnesses who testified against the bill was V. V. Deshpande, then Professor of Hindu Law at Benares Hindu University. He possessed a uniquely strong textual training that had been acquired by long study with pandits. Though a very unusual lawyer, this spokesman for the pandits was himself a lawyer and not a pandit.

Deshpande played a very special part in the history of this bill. Earlier, he had alerted certain orthodox organizations and individuals to the existence of the 1941 Report and to the Government's acceptance of it. His own professional-scholarly reply to the Rau Committee was published as a book (*Dharmashastra and the Hindu Code*), parts of which were relied upon by legislators in the debate on the motion to refer Part I of the bill to the Joint Committee.[19] After he gave his testimony against Part I to the Joint Committee, he proceeded to write pamphlets which established him as the foremost polemicist against the bill. Deshpande's considerable and influential efforts at organization and articulation indicated that the rapidly growing opposition would be led in large part by lawyers.

The most spectacular indication of increasing opposition under the British was found in the Minute of Dissent by Mitter, originally submitted in 1945 and appended to the 1947 Report. This 1947 Report of the Rau Committee included and went far beyond the 1941 proposals, recommending (1) the abolition of the joint family property system, (2) the introduction of the daughter's simultaneous succession with the son to the father's estate, (3) the abolition of the barrier to intercaste marriages, (4) the assimilation of civil and sacramental marriages, and (5) the introduction of divorce for the higher castes. By 1945 Mitter opposed even the 1941 proposals.[20] This leading practitioner, who was one of the two Sanskritic authorities of the crucial 1941 Report and whose own work had been richly cited in support of its proposals, had flatly reversed himself. As stunning as his reversal were his grounds. He simply had not anticipated the vehemence, scale, and quality of opposition which the code recommendation and the specific proposals would attract in the intervening four years. He painstakingly analyzed all written and oral testimony collected by the Committee (which sat in nine major cities during three consecutive months in 1945), concluding that

19. 2 LEGISLATIVE ASSEMBLY 1574 (1943).

20. RAU COMMITTEE REPORT 13, 32-34, 156, 182 (1947).

> Hindu ladies and gentlemen representing the wealth, the talent and the public spirit of this vast country are *almost* unanimous in condemning the Code . . . [while only a] microscopic minority [favor codification].[21]

The bulk of that testimony, published in 1945, was offered by lawyers[22]—a fact which Mitter did not mention, probably because of his intention then to stress the near-universal (*e.g.*, cross-occupational) aspect of the opposition which he had found. However, he did not neglect to invoke the weight of his own experience as advocate and judge along with the force and significance of general Hindu opinion.[23] In reply to a later private letter from Rau that was an impressive effort at conciliation, Mitter persisted in his opposition. Specifically, he referred not only to his own conservative instincts as a lawyer but to the fact that the majority of judges and lawyers of his own province (Bengal) opposed the bill.[24] The fresh division within the revived Rau Committee reflected the division, unveiled by its own work, within the legal profession itself.

After Independence

After independence, the pivotal event was the 1952 electoral success of the Congress Party, above all of Nehru himself. On attaining independence in 1947, the lawyer-led Congress Party (which formed the Government in the Constituent Assembly's legislative side—the Provisional Parliament) inherited the Hindu Code as a legislative proposal with an increasingly strong opposition. The Congress leadership itself was divided over the bill with P. Sittaramaya, P. Tandon, V. Patel, and no less than the President of the Indian Republic, R. Prasad, against it (the last three being lawyers). Prasad had argued that whatever the bill's merits, the Constituent Assembly had been elected primarily to frame a constitution—that as a Parliament it lacked an electoral mandate to enact a legislative measure of such major significance. Some legislators who supported the bill preferred to postpone its consideration until after the elections to permit more time to overcome the increasing opposition and/or to avoid defeat in the 1952 elections. Apart from the question of timing, supporters of the bill were themselves divided

21. *Id.* at 116, 119-120 (his emphasis).

22. Written Statements and Oral Testimony Submitted to Hindu Law Committee, 1945, *passim.*

23. RAU COMMITTEE REPORT, *supra* note 20, at 117.

24. Sir B. N. Rau's Private Papers 114-15 (1947).

over the merits of particular provisions and Prime Minister Nehru declined to impose a settlement of these differences.[25]

Nehru had already been forced to retreat from an original position making passage of the bill a matter of confidence in his Government. He obtained the needed affirmative votes by Sittaramaya and others on the general motion to consider the bill—but only in return for freeing Congress members to vote as they pleased on specific clauses; for permitting twenty months of delay, from December 1949 to September 1951; and for agreeing to make informal efforts at accommodation. Nehru's position greatly improved in 1951 when he replaced Tandon as Congress President. But he chose not to test his combined powers as Prime Minister and party president, in regard to the bill at that time—and the bill was allowed to lapse.

He did, however, promise fellow supporters that he would campaign on the bill with plain arguments on the merits rather than with textual arguments. He considered the textual arguments to be pitched rhetorically to a tiny fraction of the population—the middle class, urban, Western-educated, orthodox Hindus—who held a disproportionately large share of votes and offices before 1952. The plain arguments he saw as the language of the common man for whose well-being the 1950 Constitution had provided universal adult suffrage.[26] Preferable to him on general grounds,[27] secular debate was also the rhetorical imperative he inferred from the advent of responsible central government together with universal suffrage.

Joined with Nehru's deemphasis on the Sanskritic appeal was a deemphasis on his professional status. He did not hold himself up as a lawyer-expert but tended to obscure the fact that he was a lawyer. Just as Nehru did not judge or offer himself in terms of his competence as a lawyer-scholar, most of his electorate probably did not judge him in these terms but rather for his broad political leadership of the nation.

Nehru was reelected by a four-to-one margin. The election was pivotal because it greatly strengthened his hand—especially against Prasad and others who had insisted on the need for a mandate. It replaced supporters' uncertainty with self-confidence and it fired Nehru with determination to bring to an end both the supporters' indecision

25. G. R. Rajagopaul (Secretary, Law Ministry under Ambedkar and Pataskar), Note on the Hindu Code (undated) (mimeo), 14, 17.

26. Interview with Mrs. R. Ray, 1966.

27. J. NEHRU, DISCOVERY OF INDIA 533 (1946).

about various bill provisions and the opposition's success in delaying the consideration of the bill.[28] This is not to say that Nehru transformed his style or that the effect of the election was absolute. He mixed determination with liberal doses of mollification and shrewd tactics.[29] Unlike the Rau Committee, Nehru maintained that the ancient Hindu laws were no longer timely and could not be adapted to the new India and, like the Committee, he praised the ancient law-givers themselves. H. V. Pataskar, a well-known lawyer whom Nehru selected as a Minister of State for Law to steer the bill, drastically reduced the actual Sanskritic emphasis by comparison with that of the Rau Committee but did sweeten the measure with felicitous examples taken from the lives of ancient Hindu heroes and heroines. This reduced emphasis stands in contrast not only to the Rau Committee but to Pataskar's predecessors. Apparently fortified by secular authority from the election (and perhaps by the very fact that both he and Nehru were Brahmins) Pataskar could afford to give much less of a Sanskritic emphasis than Nehru's earlier, untouchable Law Minister (Ambedkar)[30] and the British Indian Government's Muslim Law Member (Ahmed).

CONCLUSION

Given their general legislative influence during the period 1921-1956, one would expect lawyers to have been influential in the particular case of the Hindu Code Bill, as in fact they were. Although women's organizations, orthodox organizations, and other nonlawyers were very important legislative forces in the bill's history, on the whole lawyers

28. Rajagopaul, *supra* note 25, at 19.

29. The bill itself was divided into separate measures to fragment the opposition, submitted first to the upper House to secure its more ready approval, and delayed to obtain a cooling of passions (delay accidentally also secured the advantage accruing from the intervening death of certain great opposition figures). Pataskar, Minister of State for Law, conducted frequent informal meetings to encourage accommodation. Interview with Pataskar, 1966.

30. 2 CONSTITUENT ASSEMBLY (Legislative) DEB. pt. 2, 832-33 (1949); *but see* 15 LOK SABHA DEB. pt. 2, 2942 (1951). Indeed, Ambedkar, an untouchable (as such prohibited, according to the Hindu texts, from reading them) who became a lawyer-politician, not only stressed the textual argument but seems to have been the only Law Minister/Member publicly to invite pandits themselves, as well as lawyer-scholars and practitioners, to discuss the Hindu Code Bill (from which informal conference emerged a major bill compromise regarding joint family property. Rajagopaul, *supra* note 25, at 13; interview with V. V. Deshpande, 1968).

tended to give the legislative consideration of the Hindu Code its major direction.

Lawyers were influential more as lawyer-scholars under the British and more as lawyer-politicians after independence, particularly after 1952.[31] Merely, or primarily, by their general influence as political leaders, lawyers would probably not have moved the British to accept the code idea in 1941. As professionals, but more so as scholars and above all as scholars of Sanskrit, they were able to persuade Government to take this formidable step. After independence, in the Constituent Assembly-Provisional Parliament,[32] the professional expertise of the lawyers carried weight in regard to the bill. But after 1952, as professionals, lawyers at most might occasionally intimidate nonlawyers in debate and, more often, affect the disposition of technical details of the various provisions. The post-1952 drastic decline in the influence of lawyers as lawyers was signified by and directly related to the commensurate decline in the prominence of the Sanskritic argument. With only, or primarily, their influence as professionals or scholars, lawyers would probably not have persuaded the Congress Party to prosecute the bill through to enactment. As the legal professional-Sanskritist flourished under the British by successfully claiming expertise about tradition and the past, the lawyer-politician thrived after independence by successfully claiming expertise about modernity and the future.[33]

It is tempting to conclude that with all their genuine care for the preservation of traditional Hindu family law, the British did train Ilbert's hoped-for generation of Hindu lawyers to administer to Hindu family law the final stroke of wholesale reform as well as comprehensive codification—after British administration had not only altered its content

31. The difference between these sources of influence has been emphasized to clarify the difference in lawyers' influence at different periods of the Hindu Code Bill legislative history. However, the possible connections between professional legal experience and general political influence should not be neglected. For instance, lawyers' expertise is related to oratorical skill, with the aid of which Indian elections may possibly be more easily won. For an argument that lawyers are influential in all regimes but especially in democracies, *see* 1 A. TOCQUEVILLE, DEMOCRACY IN AMERICA 285-86 (1945).

32. A large majority of the "inner circle" and "oligarchy" found by Austin to have led the Constituent Assembly were lawyers. G. AUSTIN, CONSTITUTION OF INDIA 18-19 (1966); Times of India, 1948-51.

33. Discussion of the precise influence of lawyers over the general substantive content of the bill as enacted, and over the substantive positions taken prior to its enactment, is outside the scope of this study. For such a discussion see the writer's forthcoming dissertation, *Modernization by Legislation: the Hindu Code Bill in British and Independent India.*

and structure but also had already divorced it from its indigenous practitioners, tribunals, and jurisprudence and from much of its customary and textual well-springs. In the same sense, the British also trained the large numbers within that professional generation who sought to preserve the half-a-loaf of surviving Hindu family law, to resist or postpone this stroke with the use of lawyer-like means. If Mitter's painstaking 1945 estimate[34] of Hindu opinion is any indication, only a minority of that entire professional generation were supporters of the bill. To the extent that a reformist or modernist minority, without professional training and experience, could not have persuaded the British Indian Government to change its own mind, and could not have come to constitute a crucial fraction of postindependence political leadership, the conclusion acquires persuasiveness. In the context of the Hindu Code Bill, while lawyers (or a minority of them) certainly came into their own in terms of legal scholarship under the British, their success was largely the result of their capacity to affect the British conception of them. Lawyers (or a minority of them) came into their own in terms of broad political leadership after independence in leading their own Parliament to enact the bill.

34. This was accepted by T. R. Venkatarama Sastri, Joshi's replacement on the revived Rau Committee, who nevertheless supported its 1947 Report on the draft code's merits; Rau, *supra* note 24, at 25f.