

9th July, 1923

THE  
LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

VOL. III

PART VI

(2nd to 12th July, 1923.)

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THIRD SESSION  
OF THE  
LEGISLATIVE ASSEMBLY, 1923

Chamber Fumigated... 18.10.73.



SIMLA  
GOVERNMENT CENTRAL PRESS  
1923

# LEGISLATIVE ASSEMBLY.

*The President.*

The Honourable Sir FREDERICK WHYTE, KT.

*Deputy President.*

“ Sir JAMSETJEE JEEJEEBHOY, BART., K.C.S.I., M.L.A.

*Panel of Chairmen.*

Maulvi ABUL KASEM, M.L.A.

° Sardar Bahadur GAJJAN SINGH, M.L.A.

° Mr. N. M. SAMARTH, M.L.A.

° Colonel Sir HENRY STANYON, KT., C.I.E., V.D., M.L.A.

*Secretary.*

Mr. L. GRAHAM, M.L.A., I.C.S.

*Assistants of the Secretary.*

Mr. W. T. M. WRIGHT, I.C.S.

Mr. S. C. GUPTA, BAR.-AT-LAW.

Mr. G. H. SPENCE, I.C.S.

*Marshal.*

Captain SURAJ SINGH, Bahadur, I.O.M.

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# LEGISLATIVE ASSEMBLY.

Monday, 9th July, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

## STATEMENTS LAID ON THE TABLE.

**Mr. L. Graham** (Secretary, Legislative Department) : Sir, I lay on the table the information\* promised in reply to an unstarred question by Mr. Raghubir Sinha on the 2nd July, 1923, regarding the Resolutions adopted by the Council of State and the Legislative Assembly during the Delhi session, 1923, and the action taken by Government thereon.

*Statement showing the Resolutions adopted by the Legislative Assembly during the Delhi Session, 1923, and action taken by Government thereon.*

Serial No.	Date on which moved.	By whom.	Subject of Resolution.	Department concerned.	Action taken by Government.
1	24th January.	Mr. R. Venkateswaraiah.	Grant of 25 scholarships to Indians for Research work.	Department of Education, Health and Lands.	No action taken on account of financial stringency.
2	1st February.	Mr. A. H. Ley.	Workmen's compensation in agriculture.	Department of Industries and Labour.	In accordance with the terms of the Resolution the Government of India decided to take no further action at the present stage in respect of the draft convention relating to workmen's compensation in agriculture and the recommendation relating to the protection before and after child-birth of women wage-earners in agriculture. This decision has been communicated to the Secretary General of the League of Nations.
3	Ditto ...	Ditto ...	Protection before and after child-birth of women wage-earners in agriculture.	Ditto ...	
4	1st and 10th February.	Mr. J. Hullah.	Emigration to Ceylon	Department of Education, Health and Lands.	Notification embodying the terms and conditions of emigration of unskilled labour to Ceylon, the Straits Settlements and the Malay States were issued on the 17th February 1923 in the form in which they were approved by the Legislative Assembly and emigration is taking place in accordance with them.
5	10th February.	Ditto ...	Emigration to Straits Settlements, Malay States, etc.	Ditto ...	
6	10th February.	Mr. Jammadas Dwarkadas.	Adoption of a policy of protection for India.	Department of Commerce.	In pursuance of part (d) of the amended Resolution as finally adopted by the Legislative Assembly, a Tariff Board is under constitution to institute the necessary enquiries.
7	22nd February.	Raj Bahadur G. C. Nag.	Equality of status for Indians in Kenya.	Department of Education, Health and Lands.	The Resolution was communicated by telegram to the Secretary of State for India on the 24th February 1923.

\* Vide page 4142 of these Debates.

Serial No.	Date on which moved.	By whom.	Subject of Resolution.	Department concerned.	Action taken by Government.
8	27th February.	Maulvi Miyan Asjad-ul-lah.	State management of all railways in India.	Railway Department.	The motion as adopted in the Legislative Assembly was in the following terms:—  This Assembly recommends to the Governor General in Council that he may be pleased, on expiry of their leases, to take over both the East Indian Railway and the Great Indian Peninsula Railway for management by the State.  The contracts of these two lines expire on 31st December 1924 and 30th June 1925 respectively and meantime preliminary questions are being considered.
9	9th March	Mr. J. Hullah	Emigration to Mauritius	Department of Education, Health and Lands.	Notification embodying the terms and conditions of unskilled labour to Mauritius was issued, on the 22nd March 1923 in the form in which it was approved by the Legislative Assembly.
10	10th March	Mr. K. M. Nayar.	Communal representation.	Home Department.	A copy of the Resolution as adopted by the Assembly has been forwarded to all Departments of the Government of India and the Subordinate Offices with the request that the policy of Government announced in the course of the debate should be borne in mind when making recruitment for services under their control.

*Statement showing the Resolutions adopted by the Council of State during the Delhi Session, 1923, and action taken by Government thereon.*

Serial No.	Date on which moved.	By whom.	Subject of Resolution.	Department concerned.	Action taken by Government.
1	31st January 1923.	The Hon'ble Mr. D. T. Chadwick.	Workmen's compensation and social insurance in agriculture.	Department of Industries and Labour.	In accordance with the terms of the Resolution, the Government of India decided to take no further action at the present stage in respect of the draft convention relating to workmen's compensation in agriculture and the recommendation relating to the protection before and after child-birth of women wage-earners in agriculture. This decision has been communicated to the Secretary General of the League of Nations.
2	Ditto	Ditto	Protection of women and children wage-earners in agriculture.	Ditto	
3	15th February 1923.	The Hon'ble Rao Bahadur Sir B. N. Sarma.	Terms and conditions of emigration of unskilled labour to Ceylon.	Department of Education, Health and Lands.	Notifications embodying the terms and conditions of emigration of unskilled labour to Ceylon, the Straits Settlements and the Malay States were issued on the 17th February 1923 in the form in which they were approved by the Council of State and emigration is taking place in accordance with them.
4	Ditto	Ditto	Terms and conditions of emigration of unskilled labour to Straits Settlements and Malay States.	Ditto	
5	16th February 1923.	The Hon'ble Mr. Vaman Govind Kale.	Industrial finance and industrial banks.	Department of Industries and Labour.	The Government of India have decided to take no action on this Resolution, as the subject of industrial finance is primarily a matter for the provinces, some of which have already taken action on the lines suggested by the Industrial Commission by means of legislation regulating the grant of industrial loans.

Serial No.	Date on which moved,	By whom.	Subject of Resolution.	Department concerned.	Action taken by Government.
	4 19th February 1923.	The Hon'ble Sir Dinshaw E. Wacha.	Census of production of British India.	Department of Commerce.	The proofs of the first issue of the collection of statistics in consolidated form have already been received and most of them have been checked. The publication should not now be much delayed.
7	28th Febru- ary 1923.	The Right Hon'ble V. M. Srinivasa Sastri.	Appointment of Indians as Secretary, Joint Secretary and Deputy Secretary to every Department of the Government of India Secretariat.	Home Depart- ment.	A copy of the Resolution has been forwarded to all local Governments and Departments of the Government of India with the decision of Govern- ment that, while no fixed ratio could be agreed to, the principle of appoint- ing Indians in increasing numbers was accepted and that for this pur- pose the possibility of obtaining suitable and competent Indian Offi- cers from Provincial Secretariats should be definitely considered on the occurrence of vacancies in the appointments in question.
8	Ditto	The Hon'ble Rai Bahadur Lala Ram Saran Das.	Appointment of Indians to the Traffic Inspec- tor cadre (Transporta- tion Section) on State Railways.	Railway De- partment.	Railway Administrations were advised to look into the matter so that quali- fied Indians may be advanced to the position of Traffic Inspector along with Anglo-Indians and Europeans.
9	5th March 1923	The Right Hon'ble V. S. Srinivasa Sastri.	Rights and status of Indians in Kenya Colony.	Department of Education, Health and Lands.	The Resolution was communicated by telegram to the Secretary of State for India on the 6th March 1923.
10	21st March 1923.	The Hon'ble Rao Bahadur Sir B. N. Sarma.	Terms and conditions of emigration of un- skilled labour to Mau- ritius.	Ditto	Notification embodying the terms and conditions of emigration of unskil- led labour to Mauritius was issued on the 22nd March 1923 in the form in which it was approved by the Council of State.

QUESTIONS AND ANSWERS.

RETRENCHMENTS, ETC., DUE TO INCHEAPE COMMITTEE'S REPORT.

142. \*Sir D. P. Sarvadhikary : Will the Government be pleased to state :

- How many Indian Superintendents, clerks and menials have been retrenched as a result of the Incheape Committee's recommendation ?
- How many European and Anglo-Indian Superintendents, Assistants and clerks have been similarly retrenched ?
- The names of European and Indian officers of and above the status of Assistant Secretary who have been retrenched ?
- Will the Government be pleased to state the designations of new appointments which have been created in the Government of India Secretariat and Attached Offices since the 1st January 1923 and the names of those who have been appointed to fill them, the pay of such appointments and the respective reasons for making the same ?
- Will the Government kindly state the names and qualifications of officers in the Government of India Secretariat and

Attached Offices who as a result of the reorganisation following the Inchcape Report have been provided with posts carrying higher salaries than those which they drew in posts occupied by them on January 1st, 1923 ? How many of these are Europeans and how many Indians ?

- (f) Will the Government kindly state how many vacancies there have been in the Government of India Secretariat and Attached Offices since the 28th February 1923 ? How many of these have been filled by Indians and how many by Europeans ?

**Mr. C. W. Gwynne :** (a) and (b). The information is as follows :

Indian Superintendents :

Permanent	5
Temporary	Nil.

European and Anglo-Indian Superintendents—

Permanent	9
Temporary	1

Indian Assistants and Clerks—

Permanent	175
Temporary	61

European Assistants and Clerks—

Permanent	23
Temporary	11

Menials—

Permanent	247
Temporary	61

These figures include not only retrenchments effected as a result of the Inchcape Committee's report, but also retrenchments carried out during the year preceding the publication of the report, that is, since about May 1922 when departments began retrenchment operations. Retrenchment of permanent men was, wherever possible, effected by the retirement of those who had reached or were very near the age of superannuation or who were unfit physically or were less efficient than those retained. Of the permanent clerical establishment retrenched, other than those who have been retired on these grounds, 40 have been re-employed, in vacancies effected by distributing retirements over departments, in order that departments where retrenchment was greatest might not be prejudicially affected. Of those 6 are Europeans and Anglo-Indians and 34 are Indians. Of the temporary men retrenched, *viz.*, 73 as shown above *plus* 46 men who were acting in leave vacancies and who were also retrenched, altogether 94 have so far been found re-employment by the Staff Selection Board. Of the 94 men re-employed 6 are Europeans and Anglo-Indians, and 88 Indians.

(c), (d), (e) and (f). The information is being supplied separately to the Honourable Member. I summarize it as follows. In a list referred to in (c) there are 33 posts of which 29 were held by Europeans and 4 by Indians. List (d) there are 18 posts including Assistant Secretaries



outside the ministerial establishments. In list referred in (e) there are really only two names, the other four names representing officers who receive allowances or higher pay for doubling up the work of two posts and the like. List (f) is difficult to analyse ; but there have been about 20 real vacancies in the Civil Secretariat, *i.e.*, vacancies of posts not subsequently brought under retrenchment, of which fourteen have been filled by Indians.

**Sir Deva Prasad Sarvadhikary :** Is the Government in a position to state the total amount of savings under the recommendations of the Inchcape Committee as distinguished from the voluntary retrenchments—if I may so call them—made by the Government before the Committee's recommendations ?

**The Honourable Sir Basil Blackett :** I will have the matter looked into and see if it is possible to give such figures, but in a great many cases retrenchments were made temporarily pending the result of the Inchcape Committee and then became permanent as the result of that Committee. So the question is obviously a little difficult to answer.

**Mr. S. C. Shahani :** Is the Government aware (1) that what is true of the Government of India Secretariats and attached offices is true of other Departments ? (2) that Deputy Superintendents of Police and Deputy Collectors are serving no useful purpose and that these posts may even be abolished ? And (3) that the present is the right time for issuing orders that as far as possible the number of policemen should be reduced ?

**The Honourable Sir Malcolm Hailey :** I am not disposed to answer that question, as it does not arise out of the question relating to the Government of India Secretariat.

**Dr. Nand Lal :** May I ask why a very large number of clerks and menials have been brought under retrenchment and why posts carrying very fat and high salaries have not been reduced in number ?

**The Honourable Sir Basil Blackett :** Sir, I think probably that is for me to answer. It is usually the position that an officer on high salary—a Secretary, for example,—is employing more than one clerk and that between them they are employing a good many peons. It would be rather pointless to double the number of peons and abolish the top post, which seems to be what Dr. Nand Lal suggests.

**Dr. Nand Lal :** Have you fixed any ratio, *e.g.*, that to one officer drawing a very big salary, in proportion to that reduction so many clerks should be retrenched ?

**The Honourable Sir Basil Blackett :** My impression is that we have reduced all possible posts without respect to any ratio between peons and Secretaries.

**Dr. Nand Lal :** Does the Honourable the Finance Member remember the suggestion which was offered by this Assembly on the occasion of the Budget that the reductions mentioned should not affect only the clerks and menials and that the principle of reduction should also be applied to high-salaried officers ?

**The Honourable Sir Basil Blackett :** Yes, Sir.

**Dr. Nand Lal :** Has that principle been brought into practice ?

**The Honourable Sir Basil Blackett :** Yes, Sir.

**Dr. Nand Lal :** How many officers have been served with notice, Sir ?

**The Honourable Sir Basil Blackett :** I think I had better refer the Honourable Member to the answer that was just given.

**Dr. Nand Lal :** May I respectfully submit that that answer is not adequate.

**Mr. N. M. Joshi :** May I ask a small question, Sir ? Is it a fact that one peon in the Secretariat died by the shock of the retrenchment proposals ?

**The Honourable Sir Malcolm Hailey :** I believe, it was the case that a duffry did die, but whether it was directly connected with the retrenchment proposals or not, I am not aware.

#### HARDSHIPS OF INCOME-TAX.

143. **\*Dr. Nand Lal :** 1. Is Government of India aware that the present heavy rate of income-tax has worked a great hardship on the Income-Tax assesses in the Punjab ?

2. Will Government of India be pleased to state the number of Income-Tax assesses in the Punjab who are defaulters ?

3. Is Government of India aware that this heavy rate of income-tax has materially affected the commercial classes and the trade in the Punjab, specially in Amritsar, Lahore, Rawalpindi, Multan and Gujranwala ?

**The Honourable Sir Basil Blackett :** The answer to the first part of the question is in the negative. The information asked for in the second part of the question is not available at present, but will be supplied to the Honourable Member at a later date.

The answer to the third part is in the affirmative or negative according to the interpretation put on the words " materially affected."

**Dr. Nand Lal :** Will the Honourable the Finance Member enlighten the Assembly whether the Government of India has been in receipt of representations from the assesses of Amritsar that they have been very hard hit on account of this very exorbitant rate of income-tax ?

**The Honourable Sir Basil Blackett :** No doubt, complaints have been received.

**Dr. Nand Lal :** May I ask the Honourable the Finance Member what effective steps have been taken by the Government of India to redress those grievances ?

**The Honourable Sir Basil Blackett :** I think if the Honourable Member will refer to the debate which took place on the demand for grants in connection with the income-tax, and to the understanding which he was given on that occasion he will not require a further answer.

**Dr. Nand Lal :** My submission is, what steps have been taken subsequent to the receipt of the complaints from Amritsar ?

**The Honourable Sir Basil Blackett :** Representatives of the Board of Revenue are always available to receive complaints. They are in the habit of travelling round and making themselves available to see assesses who have a grievance, and I am not aware that there is any serious case to which attention has not been fully given.

**Dr. Nand Lal :** May I ask the Honourable the Finance Member whether he has received a telegram purporting to show that the citizens of Dera Ismail Khan held a meeting at which they passed a Resolution purporting to say that the Income-tax Department is treating them very badly and levying income-tax indiscriminately, and that assumptions are being made with regard to percentage profits which are very heavy ?

**Mr. President :** Dera Ismail Khan is not referred to in the original question and the question is therefore out of order.

**Dr. Nand Lal :** It refers to the main head " Income-Tax."

**Dr. H. S. Gour :** May I ask the Honourable the Finance Member to state for the information of this House what is the maximum income *cum* super-tax in this country and what is the maximum in the United Kingdom now ?

**Mr. President :** This question refers to rates of tax and not to the yield.

**Dr. H. S. Gour :** I submit the yield is connected with the rates.

**Mr. President :** No doubt ; but notice should be given of the question if he wants an answer.

**Mr. K. Ahmed :** Is not the eliciting of further facts on the matter in issue a ground for a supplementary question, Sir ?

**The Honourable Sir Basil Blackett :** I would refer the Honourable Member, if he wants to know the rates of tax in the United Kingdom and in this country, to many published documents which contain those facts.

**Dr. Nand Lal :** With your permission, Sir, may I ask a few questions which are of the greatest possible importance in these days ? They relate to.....

**Mr. President :** They are not on the paper.

#### RELEASE OF MISS ELLIS : STEPS TAKEN BY GOVERNMENT.

144. **Mr. Ahmed Baksh :** (a) Will the Government please state as to what steps were taken to effect the release of Miss Ellis ?

(b) Whether or not any force was sent for the purpose ?

(c) If the answer to (b) is in the affirmative, will it also be stated as to how much money was spent on such expedition and to what head such expenses were debited ?

**Mr. Denys Bray :** With your leave, Sir, I will take advantage of the question to explain the political significance of the Kohat Tragedy. The public interest in it has been great ; the public sympathy with the victims has been great, and the public admiration of the heroism it evoked has been great. The political significance of it has in the meanwhile been somewhat overlooked.

(a) The Kohat tragedy was not an isolated crime : it was the last link in a definite chain of tribal events. It linked up with the murder of Colonel and Mrs. Foulkes at Kohat in October in 1920 ; the theft of 46 rifles from the Kohat Police Lines last February ; and their recovery in a counter-raid into the Kohat pass three weeks later. With all these events the perpetrators of the Kohat tragedy were directly or indirectly concerned. In the Foulkes murder they were heavily involved. The Afridi jirga had recently undertaken to coerce the Tirah Jowakis to settle up their share in that grave case ; and an early date had been fixed for the final settlement in Peshawar. Now such a tribal settlement involving, as it of course would, the payment by the tribes of a heavy fine in money and rifles, would have placed these ruffians once and for all beyond the pale. They therefore resolved to render a tribal settlement with Government impossible by the commission by an act against Government of such a nature as would drive Government into hostility with the whole tribe, force Government into extending to themselves a free pardon against the release of Government hostages, and, finally, deter Government in future from exacting redress for tribal raids into British India by means of counter raids into tribal territory. Their first plan was to kidnap two British Officers from Kohat. This miscarried owing to the bungling of one of their members. The Kohat tragedy followed a few weeks later. There is no reason to believe that the murder of Mrs. Ellis was part of their premeditated plan. On the contrary, the mother would in all probability have shared her daughter's vicissitudes and like her have been alive to-day, had she not laid down her life in the attempt to save her daughter by raising the alarm.

Fortunately a large body of Afridi and Orakzai opinion was incensed against the ruffians from the very outset. This was partly due to the peculiar brutality of the crime but chiefly no doubt because they had deliberately set out to perpetrate a crime that would be a definite challenge to Government and drive Government into open hostilities with the whole tribe. Government's efforts therefore were concentrated on consolidating tribal opinion against the murderers and enlisting tribal pressure to secure Miss Ellis' release. The task was rendered the more difficult because the murderers had carried their captive into the heart of Tirah and claimed the protection of that powerful trans-frontier Mullah, Mahmud Akhunzada. Under tribal and Government pressure the Mullah was induced to denounce the miscreants and to order them to surrender their captive. But success might have been impossible, and would certainly have been dangerously delayed, but for the hazardous journey into the heart of Tirah of a gallant English lady and two gallant Indian Officials.

(b) The challenge to Government was answered and the attempt to embroil Tirah with Government was frustrated without a single sepoy.

or soldier crossing the frontier except for a march along the Kohat pass road.

(c) therefore does not arise.

**RELEASE OF MISS ELLIS : EXPENSES OF.**

145. \***Mr. Ahmed Baksh** : Will the Government please state as to whether :

- (a) Any money was paid to the captors of Miss Ellis for her release and if so, what is the amount of such money and to whom was it paid and from what source ?
- (b) Any and if so how many rifles were given and returned to anybody for the above purpose, and if so, to whom and whether they were Government property or tribal ?
- (c) Major Ellis had to pay anything from his own pocket ?

**Mr. Denys Bray** : (a) Government paid no money to the captors. To Mullah Mahmud Akhunzada, who had to organise and conduct tribal deliberations and entertain a great number of people, Rs. 15,000 was paid from political funds, a sum that falls far short of what is being recouped by fines imposed on the tribes concerned.

(b) No rifles, Government or tribal, were handed over.

(c) Major Ellis incurred no expenditure beyond the large expenditure involved in the enforced break-up of his home and his enforced departure with his daughter to England.

**Dr. Nand Lal** : May I ask a supplementary question, Sir ? Did the Government of India take any effective steps or any action before this in cases in which Indian girls and Indian women were kidnapped or abducted ?

**Mr. Denys Bray** : I think the Honourable Member will find part of the answer at any rate in an answer I shall presently give.

**RELEASE OF MISS ELLIS : TERMS OF.**

146. \***Mr. Ahmed Baksh** : (1) Will the Government please lay on the table the terms on which the release of Miss Ellis was secured ?

(2) Was it also one of the terms to release some under-trial prisoners belonging to the tribe of the captors of Miss Ellis, and if so, what were the offences they were charged with ?

**Mr. Denys Bray** : I will take (1) and (2) together. The only terms were the release of one trans-frontier tribesman arrested on suspicion of having taken part in the theft of the Kohat police rifles and of another tribesman arrested on suspicion of having harboured the rifle thieves.

**MURDER OF MRS. ELLIS : PUNISHMENT OF CRIMINALS.**

147. \***Mr. Ahmed Baksh** : Whether any measures have been taken to punish the murderers of Mrs. Ellis ?

**Mr. Denys Bray** : The murderers have been driven from their homes and their homesteads have been burnt and their fellow-tribesmen have undertaken to capture them should they return. They have fled to

Afghanistan and are now endeavouring to elude arrest by the Afghan authorities. Tribal and territorial responsibility has been enforced by the imposition of fines on their fellow-tribesmen and on sections which gave them passage. And the opportunity has been taken to turn this tragedy to the public good by forcing the tribesmen to expel outlaws from their limits and to accept a tighter Government control over the Kohat pass.

**Dr. Nand Lal :** Has the Government of India tried to find out whether any local man was or any local men were also in conspiracy with these raiders, so far as the kidnapping of Miss Ellis goes ?

**Mr. Denys Bray :** The whole case has been subjected to the most careful investigation.

**Dr. Nand Lal :** What has been the result ?

**Mr. Denys Bray :** As far as I am aware, no local men have been found to be connected with the affair.

**Dr. Nand Lal :** Not connected ; but having any part in the conspiracy ?

**Mr. Denys Bray :** I used the widest word I could find.

#### ABDUCTIONS BY TRANS-BORDER PEOPLE.

148. **\*Mr. Ahmed Baksh :** Will the Government please state as to how many Indians were carried away by the Trans-border people during the last 3 years and what amount was paid to their captors by the Government by way of ransom to secure their release ?

**Mr. Denys Bray :** Exact up-to-date figures of Indians carried away into the trans-frontier during the last three years will be supplied to the Honourable Member as soon as they are obtained from the Local Government. Government have paid nothing in ransom, but foremost among the reasons that forced Government into the Waziristan operations, on which so much money has been expended, was of course this orgy of kidnapping.

#### KIDNAPPING OF K. S. MOHAMMAD HAYAT KHAN.

149. **\*Mr. Ahmed Baksh :** Is it a fact that one K. S. Mohammad Hayat Khan, an Assistant Political Officer, was kidnapped by the tribesmen and eventually released ? Will it be stated as to what amount of money was paid by the Government by way of ransom for his release ?

**Mr. Denys Bray :** Yes. K. S. Muhammad Hayat Khan with others was kidnapped by Mahsuds while we were still at war with them and was released some 8 or 9 days later under Government and tribal pressure, exerted largely through two Indian Officials who ventured into tribal country in response to the call of public duty. Government paid no ransom but of course incurred expenditure over the negotiations.

**Dr. Nand Lal :** Has the Government of India shown its kindness in cases of non-official men who were kidnapped or abducted by these ruffians and raiders of the trans-border of the North-West Frontier Province ? The gentlemen referred to in the answer were officials.

**Mr. Denys Bray :** I feel inclined to read out again a portion of the answer :

“ Foremost among the reasons that forced Government into the Waziristan operations on which so much money has been expended was of course this orgy of kidnapping.”

And I may add this : Kidnapping northwards of Waziristan is now practically extinct, thanks to the very elaborate and drastic arrangements which have been instituted and prosecuted during the last two or three years. In Waziristan also, thanks to the military operations, the evil is, I trust, becoming obsolescent.

**Mr. Harehandrai Vishindas :** Is it a fact that it is mainly owing to Dr. Nand Lal's Resolution in 1921 that these operations have been conducted or quite independently ?

**Dr. Nand Lal :** May I ask at this juncture, because the question has got great relevancy, is the Government of India prepared to give free licences, for arms, to the people in this part of the country—I mean to say the North-West Frontier Province—to defend themselves against these raiders who have made themselves a perpetual menace to the loyal subjects of His Majesty in that province ?

**Mr. President :** I am afraid that does not arise out of this question.

#### COMPENSATION TO MAJOR ELLIS.

150. **\*Mr. Ahmed Baksh :** Whether or not any money has been paid to Major Ellis by the Government for the loss of his wife and the abduction of his daughter and if so, what amount ?

**Mr. Denys Bray :** Not a penny.

#### KHYBER RAILWAY.

151. **\*Mr. Ahmed Baksh :** Will the Government please state the following :

- (a) Total estimated length and cost of Khyber Railway under construction ?
- (b) The length of the line completed and the expenses incurred thereon ?

**The Honourable Mr. C. A. Innes :** (a) The estimated length and cost of the Khyber Railway are 27 miles and Rs. 1.97 crores, respectively.

(b) No portion of the line has been entirely completed. The expenditure on the line up to 31st March 1923 amounts to Rs. 1,39,00 thousands.

**Dr. H. S. Gour :** May I inquire of the Honourable Member for Commerce whether this amount has been included in the military expenditure ?

**The Honourable Mr. C. A. Innes :** No, Sir.

#### FRANCHISE IN NORTH-WEST FRONTIER PROVINCE.

152. **\*Mr. Ahmed Baksh :** (1) Will the Government please state as to whether franchise has been given to the municipalities and the District Boards in the North-West Frontier Province ? If not, whether it is intended to do so ?

(2) Is it a fact that the late Sir George Rooskeppel had a scheme to give powers of election to Peshawar Municipality ? If so, what happened to the same ?

**Mr. M. S. D. Butler :** (1) The answer to the first part of the question is in the negative. As regards the second part Government are not in a position to make any statement.

(2) Efforts were made in 1919 to come to an arrangement acceptable to all parties but without result. The unsettled conditions which have since prevailed have prevented any further action in the matter.

**Dr. Nand Lal :** Will the Government of India enlighten this Assembly as to when they are going to publish the Report in connection with the North-West Frontier Inquiry Committee ?

**Mr. President :** I don't think that question arises out of this.

**Dr. Nand Lal :** With due deference, I may submit that the question relates to the safety and tranquillity of the people of that part of the country.

#### NOMINATIONS TO FINANCE AND AUDIT DEPARTMENTS.

153. **\*Mr. K. Ahmed :** (a) Will the Government be pleased to state the number of candidates who were nominated each year to appear in the competitive examinations for the Indian Finance and for the Indian Audit and Accounts Service for the last 5 years, and the number of appointments made on the result of those examinations ?

(b) Will the Government be pleased to explain the principle on which the nomination of candidates for the above examination is made, and the reason why only a small number of candidates are nominated to appear in the above examination ?

(c) Is it a fact that owing to the small number of nominations, many brilliant students are prevented from appearing in the above competitive examination ?

(d) Will the Government be pleased to consider the desirability of nominating every year a larger number of candidates to sit for the competitive examination for the Indian Audit and Accounts Service, in similar proportion to the number of candidates allowed to appear in the I. C. S. Examination held in India ?

(e) Will the Government be pleased to consider the desirability of altering the syllabus and rules for the above examination so as to make it similar on principle to those of the I. C. S. Examination held in India ?

**The Honourable Sir Basil Blacket :**

(a)

				Number nominated.	Number appointed.
1918	..	..	..	35	3
1919	..	..	..	38	7
1920	..	..	..	62	6
1921	..	..	..	56	8
1922	..	..	..	49	4

(b), (c) and (d). The rule is that a register of candidates is kept by the Finance Department from which not less than three candidates for



each vacancy will be nominated. As the figures just given show, the number nominated is much larger than the minimum. The nominations for each examination depend upon the number of vacancies and the number of candidates on the register, possessing the necessary qualifications. The Government consider it undesirable to nominate a larger number irrespective of the number of vacancies, and they have no reason to think that many brilliant students are prevented from appearing in the competition under the present system.

(e) The Government have considered the question of altering the syllabus recently, but decided that no change was called for.

**Mr. S. C. Shahani :** Will the Government be pleased to state if the principle of communal representation is observed to any extent in the nomination or appointment of candidates for the Indian Finance Audit and Accounts Services ?

**The Honourable Sir Basil Blackett :** I don't think that question arises out of the answer which I have just given.

#### **MEDICAL EXAMINATION FOR INDIAN CIVIL SERVICE EXAMINATION.**

154. **\*Mr. K. Ahmed :** (a) Is it a fact that owing to the very strict medical examination, a large number of candidates were not allowed to appear in the I. C. S. Examination held in India during the last two years ?

(b) Is it a fact that the instructions of the Civil Service Commissioners were that the candidates for the I. C. S. Examination should not be declared medically unfit simply because they are slenderly built, unless they are suffering from incurable diseases or serious constitutional defects or bodily infirmities ?

(c) Do the Government propose to bring to the notice of the Medical Board of each province the above instructions of the Civil Service Commissioners ?

(d) Is it a fact that a new rule has been made for the candidates for the Indian Civil Service competitive Examination held in India which requires that " Every candidate shall satisfy the Civil Service Commissioners that his character is such as to qualify him for employment in the Indian Civil Service " ?

(e) Will the Government be pleased to state the reason for making this change in the above rule ?

(f) Will the Government be pleased to state what is precisely meant by the above new rule, and what qualities must a candidate possess to satisfy the Civil Service Commissioners that his character is such as to qualify him for employment in the Indian Civil Service ?

(g) Is it a fact that the Montagu-Chelmsford Report recommended that the percentage of Indians recruited from India for the Indian Civil Service should be increased every year ?

(h) Are the Government prepared to consider the desirability of increasing the number of recruits for the Indian Civil Service on the results of the next competitive examination in India, in accordance with the above recommendation in the Montagu-Chelmsford Report ?

**The Honourable Sir Malcolm Hailey :** (a) Local Governments have been asked for information. A reply will be given after their reports have been received.

(b) The instructions of the Civil Service Commissioners are that the Medical Boards should bear in mind that the table of physical measurements was originally framed for Europeans and should be applied with discretion in the case of Indians.

(c) This has already been done.

(d) Yes ; and a rule in the same terms is to be included in the regulations for the examination in London.

(e) The rule was suggested by the Civil Service Commissioners but the reasons seem sufficiently obvious.

(f) The attention of the Honourable Member is invited to the note explaining rule 11 appended to the regulations, a copy of which is laid on the table ; but Local Governments are entitled to make such further inquiries as they may consider necessary.

(g) Yes.

(h) The recommendation of the Montagu-Chelmsford report refers to Indian recruitment from all sources and is being followed.

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*Character (Rule 11).*—A candidate must send in with this form copies of three certificates (and not more) of good private character, one from his University or College and two from responsible persons unconnected with his University or College. Copies only are to be supplied at this stage ; they will be retained by the Civil Service Commissioners and not returned. Successful candidates will be required to produce the originals.

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#### RETURN TICKETS ON EASTERN BENGAL RAILWAY.

155. **\*Mr. K. Ahmed :** (a) Is it a fact that in the Eastern Bengal Railway, the period for which the ordinary return tickets are available for distances exceeding 50 miles but not more than 65 miles have been recently reduced from 14 days to 2 days ?

(b) Is it a fact that this change is causing great hardship to the travelling public ?

(c) Will the Government be pleased to state the reason for this sudden change by the Eastern Bengal Railway ?

(d) Will the Government be pleased to state the income which the Eastern Bengal Railway expect to derive in a year as a result of this change, and the proportion it bears to the total yearly income of the Eastern Bengal Railway ?

(e) Do the Government propose to consider the desirability of re-introducing the old rule regarding the return tickets in the Eastern Bengal Railway, so that ordinary return tickets for distances over 50 miles may be available for return in 14 days ?

**The Honourable Mr. C. A. Innes :** (a) The answer is in the affirmative.

(b) Government are not aware that this is the case.

(c) The change was made because the zone of local trains extends to 65 miles from Calcutta and fraudulent use was being made of tickets available for the longer period within this zone.

(d) The change has not been made with a view to getting Revenue but with a view to prevent abuse as already stated.

(e) The re-introduction of the old rule is not considered desirable.

**Mr. S. C. Shahani :** Is the Government in a position by now to state if return tickets or no return tickets mean more revenue to Railways ?

**The Honourable Mr. C. A. Innes :** I must ask for notice of that question.

#### APPRENTICES IN BENGAL NAGPUR RAILWAY WORKSHOPS.

156. **Mr. K. Ahmed :** (a) Is it a fact that in the Bengal-Nagpur Railway, no Indians are admitted for training as apprentices in their Mechanical and Electrical Workshops at Kharagpur and elsewhere, while Anglo-Indians and Europeans are admitted ?

(b) Will the Government be pleased to state the cause of this distinction in the Bengal-Nagpur Railway ?

(c) Do the Government propose to consider the desirability of asking the Bengal-Nagpur Railway to make arrangements for proper training of a suitable number of Indian apprentices every year in their Mechanical and Electrical Workshops at Kharagpur and elsewhere ?

**The Honourable Mr. C. A. Innes :** (a) It is not the case.

(b) and (c) do not therefore arise.

**Mr. S. C. Shahani :** Will Government be pleased to state if any other Railways too exclude Indian apprentices from their workshops ?

**The Honourable Mr. C. A. Innes :** As far as I am aware, the answer to the question is in the negative.

#### SAVINGS BANK AND MONEY-ORDER DEPARTMENTS : HOURS OF CLOSING.

157. **Mr. K. Ahmed :** (a) Is it a fact that in the post offices in Bengal, the Savings Bank and Money-order Departments are closed at 3 P.M., and no deposits or money-orders are accepted after that hour ?

(b) Is it a fact that owing to this early closing of these departments, there is always a very great rush in the windows of the post offices, and the public are suffering great inconvenience and hardship in consequence ?

(c) Do the Government propose to send instructions to the post offices in Bengal to close the Savings Bank and the Money-order Departments later than 3 P.M. ?

**Mr. G. E. Clarke :** (a) Yes.

(b) There has always been a rush at closing time in big cities and it is no greater at present than when the closing time was 4 P.M. No complaint of inconvenience and hardship has been received from the public.

(c) Postmasters-General have been instructed to alter the hours of business whenever necessary in order to suit the local convenience and Government do not intend to interfere with the existing arrangement which obtains throughout India.

## METEOROLOGICAL DEPARTMENT REPORTS.

158. **\*Mr. K. Ahmed :** (a) Is it a fact that Meteorological observations of a particular day are taken at 8 A.M. on the following day, and the reports are published in the newspapers on the morning of the third day ?

(b) Are the Government prepared to consider the desirability of taking the meteorological observations in the evening, instead of in the morning, and sending the observations and forecasts for publication in the newspapers at night, so that they may be published in the following morning ?

(c) Will the Government also consider the desirability of expediting the publication of these forecasts and observations in the newspapers in any other way ?

**The Honourable Mr. A. C. Chatterjee :** (a) The observations are taken at 8 A.M. daily, and represent current conditions *plus* the last occurring maximum and minimum temperatures and the rainfall of the preceding 24 hours. Newspapers in general receive forecasts by telegram at about 2 P.M. the same day, and publish them in the issue printed the same afternoon or evening.

(b) and (c). Government have considered these suggestions, but have decided that a change in the hour of taking the observations is undesirable.

## PASSENGER AND PLATFORM TICKETS, HOWRAH.

159. **\*Mr. K. Ahmed :** (a) Is it a fact that in Howrah Railway Station, no platform tickets are issued to the friends and relations of the Inter class and third class passengers, who wish to enter the platform from which the Bombay and the Punjab Mails are about to start ?

(b) Are the Government aware that this restriction in the issue of platform tickets is causing great inconvenience to the travelling public and their friends and relations ?

(c) Are the Government aware that the platforms in the Railway stations are public places where the public ought to be freely admitted ?

(d) Do the Government propose to ask the East Indian Railway authorities to abolish this restriction in the issue of platform tickets, and to allow the public freely to enter the platforms from which any train is about to start ?

(e) Are the Government aware that owing to the insufficiency in the number of windows for selling third class tickets in the Howrah Railway Station, great inconvenience is felt by the travelling public in buying third class tickets ?

(f) Do the Government propose to consider the desirability of asking the East Indian Railway authorities to provide more windows for selling third class tickets in the Howrah Railway Station ?

**The Honourable Mr. C. A. Innes :** (a) There is no such restriction in connection with the two mail trains mentioned.

(b), (c) and (d) therefore do not arise.

(e) and (f). Rearrangements and improvements of the third class booking facilities at Howrah have already been sanctioned.

**Dr. Nand Lal :** A supplementary question, Sir. Is it true that the title holders are allowed to go to the platform without purchasing platform tickets?

**The Honourable Mr. C. A. Innes :** Not that I am aware of, Sir.

# PRICE OF KEROSENE OIL.

160. **\*Mr. B. Venkatapatiraju :** Will the Government be pleased to state :

- (a) Whether it is a fact that the price of a tin of kerosene oil was Rs. 2-4-0 in 1914 and is now Rs. 3-14-0, an increase of 72 per cent. ?
- (b) Whether there was an Anti-profiteering Act in England to kept down the price of kerosene at a reasonable level ?
- (c) Do the Government propose to introduce an anti-profiteering measure to afford relief to the people in India ?

**The Honourable Mr. C. A. Innes :** (a) It is not clear from the Honourable Member's question to what particular brand of kerosene oil he refers. Before the war the price for inferior yellow kerosene in bulk was Rs. 2-14-0 per unit of 8 gallons. To-day it is Rs. 4-4-6 per unit which if the excise duty of 8 annas be deducted is equivalent to Rs. 3-12-6 per unit of 8 gallons bulk, an increase of 32½ per cent. over pre-war rates. As explained to the House on March 6th the Burmah Oil Company have maintained their price for this brand of kerosene at Rs. 2-14-0 per unit since 1905, and still so maintain it, using it by means of the pooling arrangement to lower the cost of the kerosene which owing to the increasing consumption in India must be imported. If it were not for this arrangement, the price of Burma Kerosene would be governed by the price at which kerosene of the same quality can be imported and the price of inferior yellow kerosene in India would be very much higher.

(b) There was a profiteering Act in England, but the Government of India do not know whether the Board of Trade applied that Act to kerosene oil.

(c) The answer is in the negative.

**Mr. B. Venkatapatiraju :** A supplementary question, Sir. Is there a combination between these three companies, the Asiatic Petroleum Company, the Burma Oil Company and the United States Standard Oil Company ?

**The Honourable Mr. C. A. Innes :** As I explained on March 6th, there is a pooling arrangement, but I am not aware that that is a combination.

**Mr. S. C. Shahani :** Will the Government be pleased to state, if it be in a position to do so, whether anti-profiteering Acts are not a great hindrance to trade and secondly, whether they ought not to be passed only in abnormal times ?

**The Honourable Mr. C. A. Innes :** I have noted the Honourable Member's opinion with very great interest.

## PRICE OF PETROL.

161. \***Mr. B. Venkatapatiraju** : Will the Government be pleased to state :

- (a) Whether it is a fact that the price of petrol per gallon was 14 annas in 1906 and is now Rs. 1-8-0, exclusive of 6 annas excise ?
- (b) Whether the Burma petrol is sold in England at the same price or lower price than in India in spite of additional transport charges ?
- (c) Whether the Government propose to take any and if so what action to reduce the price to a reasonable level ?

**The Honourable Mr. C. A. Innes** : (a) The Government have no record of the price of petrol in 1906, but undoubtedly it was very much lower than it is now. The present price in Calcutta is as stated by the Honourable Member.

(b) The prices of petrol in England and India are very similar if the excise duty be left out of consideration.

(c) The Honourable Member is referred to my speech in the Assembly on March 6th last when I explained fully the implications of this problem. The Government do not propose to take any action.

**Mr. Harchandrai Vishindas** : Is it not a fact that the price of petrol in other places is much higher ? For instance, in Delhi, it was Rs. 2-7-6 per gallon and the prices are high elsewhere.

**The Honourable Mr. C. A. Innes** : I am not quite sure to what places the Honourable Member refers.

**Mr. Harchandrai Vishindas** : First of all, I said Delhi. During the last session petrol was sold at the rate of Rs. 2-7-6 per gallon.

**The Honourable Mr. C. A. Innes** : The price of petrol in up-country stations is very largely governed by the cost of transport from the port.

**Dr. H. S. Gour** : Has the Honourable Member verified the statement which was made in the House about the time the Honourable Member refers to that the prime cost of petrol is Re. 0-1-6 and the rest is profits and that all these companies have combined to sell petrol at a uniform rate ?

**The Honourable Mr. C. A. Innes** : I have made many attempts to verify the point to which the Honourable Member refers. I think I am in a position to say that the statement that the cost price of petrol is Re. 0-1-6 per gallon is ridiculously untrue. But I don't think that anybody outside the petrol trade knows what the exact cost of producing petrol is. Moreover, that cost varies from country to country.

**Mr. K. Ahmed** : Is it not a fact that the Government of India or the Finance Department got memorial after memorial for the reduction of the price of petrol from the town of Calcutta ?

**Dr. H. S. Gour** : And is it not a fact that the Automobile Association have memorialised the Government and stated there that the prime cost of petrol is Re. 0-1-6 and that statement has never been contradicted by the producing companies ?

**The Honourable Sir Malcolm Hailey :** But not proved.

**The Honourable Mr. C. A. Innes :** There have been many such memorials printed in the press and sent to the Government of India and otherwise. As my Honourable Colleague has just remarked, the statement about the cost price of petrol in those memorials, though it has not been challenged by the Oil Companies, has not been proved by those who made the statement.

**Mr. K. Ahmed :** Are the Government going to consider the complaint that the price should be reduced, and if so, what action are they going to take ?

**The Honourable Mr. C. A. Innes :** I have already answered that question.

**Dr. H. S. Gour :** What action does the Government propose to cheapen the production of motor fuel ?

**The Honourable Mr. C. A. Innes :** I have already said that the Government do not propose to take any action.

! APPOINTMENT OF PRESIDENT, TARIFF BOARD.

162. **\*Mr. B. Venkatapatiraju :** Will the Government be pleased to state :

- (a) Whether Mr. George Rainy, Chief Secretary of Bihar and Orissa Government, is appointed as President of the Tariff Board ?
- (b) Whether the Fiscal Commission recommended an appointment of a High Court Judge ?

**The Honourable Mr. C. A. Innes :** (a) Yes.

(b) No. The majority of the Members of the Fiscal Commission in their Report made no such recommendation.

**Mr. K. C. Neogy :** Is it a fact that the Fiscal Commission recommended that the Board must be one which will command the confidence of the country ?

**The Honourable Mr. C. A. Innes :** I think the Honourable Member is correct.

**Mr. K. C. Neogy :** What special qualifications has Mr. Rainy to be appointed President of the Tariff Board ?

**The Honourable Mr. C. A. Innes :** I will refer the Honourable Member to the press notice which has already been issued on the subject.

**Mr. S. C. Shahani :** Will the Government be pleased to state categorically which of the recommendations of the Fiscal Committee have been accepted and which rejected ?

**The Honourable Mr. C. A. Innes :** I do not think that that arises out of this question.

**Mr. Harchandrai Vishindas :** Is it a fact that the minority report of the Fiscal Commission recommended a High Court Judge ?

**The Honourable Mr. C. A. Innes :** Yes, Sir.

(Mr. President then called upon Mr. P. L. Misra in whose name stood questions Nos. 163—171 and the Member was absent.)

**Procedure in regard to Questions of absent Members.**

**Mr. Harchandrai Vishindas :** If it is correct that anybody can ask the questions in the absence of the Member, I put the questions for Mr. P. L. Misra.

**Mr. President :** Has the Honourable Member got the authority for asking the questions ?

**Mr. Harchandrai Vishindas :** I have no authority.

**Dr. H. S. Gour :** Will you refer to the Standing Order which allows any Member to ask the question in the absence of the person who gave notice. It refers to no particular Member.

**Mr. President :** In the absence of the author of the question I must take it for granted that unless he has issued special instructions to any particular Member, he does not particularly want it to be put. But if any Member of Government desires to answer any of these questions 163—171, he is entitled to do so.

**Mr. W. M. Hussanally :** I have been asked by Mr. Pyari Lal to ask questions on his behalf.

**SAW BUSINESS IN AMBALA.**

172. \***Mr. Pyari Lal :** (a) Is it a fact that some two or three years ago the Head Clerk and the Octroi Superintendent of Ambala Cantonment started a joint business of Saws ?

(b) Is it a fact that these saws were ultimately given to one Lala Kundan Lall Iron Merchant of Ambala for disposal on behalf of the partners ?

(c) Is it a fact that the sale proceeds of these Saws were given by Lala Kundan Lall to the Head Clerk and the Octroi Superintendent respectively ?

(d) Will the Government be pleased to state if cantonment servants are authorised to carry on business ?

**MAJOR DOCKRELL'S ASPERSIONS ON ALL-INDIA CANTONMENTS ASSOCIATION.**

173. \***Mr. Pyari Lal :** (a) Is it a fact that in connection with the Association's demand for compelling Pundit Shugan Chand, Head Clerk, Ambala Cantonment to vindicate his character in a Law Court, Major Dockrell left a note in which he has cast a slanderous aspersion on some of the local members of the All-India Cantonments Association ?

(b) Is it a fact that this note was read by Major Paterson, the present Cantonment Magistrate in an ordinary meeting of the Cantonment Committee held on 3rd May 1923 ?

(c) Is the Government aware that the Secretary, All-India Cantonments Association requested the Cantonment Magistrate to furnish him with a copy of the note to enable the Association to take such legal action as may be necessary about the defamatory remarks made therein against some of its members ?



(d) Is it a fact that in spite of several reminders the copy of the note has not yet been supplied to the Association?

(e) Do the Government propose to direct the Cantonment Authority, Ambala to supply the Association with a copy of the note without any further delay?

**Mr. E. Burdon :** With your permission, I propose, Sir, to answer questions 172 and 173 together.

The Government of India have no information on the subject but are inquiring. I will let the Honourable Member know the result as soon as possible.

**CORRESPONDENCE FROM HONORARY SECRETARY, ALL-INDIA CANTONMENTS ASSOCIATION.**

174. \* **Mr. Pyari Lal :** (a) With reference to the letter No. 677-B-2, dated 5th December 1922 from the Honorary Secretary, All-India Cantonments Association, will the Government be pleased to state if the Government has arrived at a decision in the matter?

(b) If so, will the Government be pleased to inform the House of their decision?

(c) If not, do the Government propose to take immediate action in the matter?

**Mr. E. Burdon :** (a)—(c). In the absence of information as to the subject of the letter and the person to whom it was addressed, I regret that I am unable to answer this question. If the Honourable Member will give me the necessary particulars I shall be glad to go into the matter.

**BUILDING LEASES.**

175. \* **Mr. Pyari Lal :** (a) Has the attention of the Government been drawn to an article headed "An Indefensible Act" published in the "Cantonment Advocate" of 25th January 1923?

(b) Is it a fact that a lease is demanded when an old site is sub-divided or is extended or when a building is used for a purpose different from one for which it is constructed?

(c) Is it a fact that the Cantonment Reform Committee has declared the demand of leases in such cases to be illegal and unjustifiable?

(d) Will the Government be pleased to state under what law the demand is being enforced and why the recommendation of the Cantonment Reform Committee in this connection is ignored?

**Mr. E. Burdon :** (a) Government have seen the article referred to :

(b), (c) and (d). The attention of the Honourable Member is invited to the reply given on the 11th September 1922 to starred question No. 285. It has been laid down that a fresh lease should only be demanded in cases where it is desired to put the site to a use which is not covered by the terms of the original grant. Government have been advised that this procedure is legally correct.

Procedure in regard to Questions not on the Agenda Paper and of which Private Notice has not been accepted.

LALA LAJPAT RAI.

**Dr. Nand Lal :** Is the Government of India aware that Lala Lajpat Rai is in the present state of his health being detained in prison under a charge as to which the Government's own Law Officer had admitted in court that it had not been proved against him and which he did not press ?

**The Honourable Sir Malcolm Hailey :** I wish to ask whether the Honourable Member has obtained your permission, to put this question.

**Mr. President :** The Honourable Member handed these questions to me and I said that I was prepared to allow them provided Government desired to answer them ; but in the general terms in which they are couched they are matters in which the Local Governments are primarily concerned.

**The Honourable Sir Malcolm Hailey :** I think it is the practice of this House, if an Honourable Member desires information, either to put the question down in due course as provided by the rules, or to give private notice of it, and if private notice is given, the question is asked only if that notice is accepted. The question has not been put in the ordinary form nor has private notice been accepted. I fail therefore to understand why the Honourable Member is asking the question.

**Dr. Nand Lal :** It is quite true that the Honourable the Home Member did not accept the private notice, but I think I am entitled to ask the question.

**Mr. President :** Order, order. I think in that case the Honourable Member had understood from me before that if the Honourable the Home Member consented to the question being asked I would waive the provisions of the Standing Orders but not under any other condition.

**Dr. Nand Lal :** Quite true. Subsequent to that I made a special request to the Honourable the Home Member that the question being important should be answered and that private notice might be accepted, but he declined to accept that request.

**The Honourable Sir Malcolm Hailey :** Then I beg to call your attention to the action of the Honourable Member in putting this question, leaving you under the misapprehension that I had accepted private notice.

**Dr. Nand Lal :** Sir, I never said you accepted it.

**Mr. President :** The interpretation put by the Honourable the Home Member on the action of the Honourable Member from the Punjab is correct. The Honourable Member by his action in rising did lead me to suppose that he had obtained the assent of the Honourable the Home Member and I hope he will desist from practices of that kind in the future.

My attention has been drawn to the fact that I was acting under the unamended Standing Orders, but under the new Standing Orders Mr. Harchandrai Vishindas or any other member has a right to ask questions standing in the name another member.

**Dr. H. S. Gour :** Do I understand, Sir, that I was correct.....

**Mr. President :** Order, order. Mr. Harchandrai Vishindas.

**Mr. Harchandrai Vishindas :** That was exactly the point I was going to draw your attention to, but I am glad you have put that interpretation under the new Standing Orders.

(Mr. Harchandrai Vishindas then put Question 163 on the Agenda Paper.)

#### RAILWAY FINANCE.

**163 \*Mr. P. L. Misra :** With reference to paragraph 3568 of the evidence tendered before the Committee on Indian Railway Finance and Administration, 1907, will Government kindly state what decision was arrived at in the matter of publishing the powers of the Board to Railway Audit Officers ?

**Mr. G. G. Sim :** As all sanctions accorded by the Railway Board are audited by the Accountant General, Railways, before issue, a schedule of the Board's powers is of no practical interest to the other Railway Audit Officers and hence they have not been furnished with copies thereof.

#### RAILWAY COMMISSION.

**164. \*Mr. P. L. Misra :** With reference to the reply given to unstarred question No. 210 last Delhi session, regarding the expenditure proposed to be incurred on the Railway Commission, will Government kindly state when they expect to refer the proposals to the Assembly ?

**The Honourable Mr. C. A. Innes :** The question of the reconstitution of the Railway Board is under correspondence with the Secretary of State.

#### RAILWAY ESTABLISHMENT ROLLS, ETC.

**165. \*Mr. P. L. Misra :** With reference to the reply given on 29th January 1923, to starred question No. 282, will Government kindly state :

- (a) how many copies of the establishment rolls and working estimates are printed when copies are printed for the use of the railway ;
- (b) what is the cost of printing the copies ; and
- (c) what additional expense will be entitled by supplying copies to members of the Legislature ?

**Mr. G. G. Sim :** (a) A list is laid on the table giving the information asked for.

(b) and (c). Information is being collected from Railway Administrations and will, when received, be furnished to the Honourable Member.

*List showing the number of copies of Establishment Rolls and Working Estimates printed by Railways.*

Railways.	No. of copies.
Great Indian Peninsula Railway .. ..	150
Madras and Southern Mahratta Railway .. ..	100
Bengal-Nagpur Railway .. ..	100
Eastern Bengal Railway .. ..	100
North-Western Railway .. ..	100
South Indian Railway .. ..	90
Burma Railways .. ..	90
Assam Bengal Railway .. ..	82
East Indian Railway .. ..	90
Oudh and Rohilkhand Railway .. ..	75
Rohilkund and Kumaon Railway .. ..	60
Bombay, Baroda and Central India Railway .. ..	56
Bengal and North-Western Railway .. ..	40

#### SARA SERAJGANJ RAILWAY LOAN.

166. \***Mr. P. L. Misra** : With reference to the answer given on 6th September 1922, to unstarred question No. 85, will Government kindly state :

- (a) what is the period for which the loan of Rs. 7½ lakhs has been granted to the Sara Serajganj Railway Company ; and
- (b) why a lower rate of interest is charged to the company than what Government pays for its own loans ?

**Mr. G. G. Sim** : (a) The loan has not been given for any definite period but the Branch Line Company has been advised to arrange for the repayment of the loan as soon as market conditions permit of funds being raised for the purpose on reasonable terms.

(b) The rate of interest is in accordance with the terms of the contract between the Secretary of State and the Company.

**Mr. S. C. Shahani** : What is the rate of interest charged ?

**Mr. G. G. Sim** : The rate is 5 per cent.

#### TRAINING OF INDIANS FOR RAILWAYS.

167. \***Mr. P. L. Misra** : With reference to item 2 in the Statement printed at page 2606 of the Legislative Assembly Debates, Volume III, do Government propose to furnish members of the Central Legislature with a copy of the report on the training of Indians for both superior and subordinate grades of all Departments of Railways ?

**The Honourable Mr. C. A. Innes** : Copies of Mr. Cole's Report have been placed in the Library.

#### ALLOCATION OF INTEREST ON CAPITAL COST OF RAILWAYS.

168. \***Mr. P. L. Misra** : With reference to the reply given on 20th January 1923, to starred question No. 209, will Government kindly state why interest on that portion of the capital cost of a railway which is left unproductive by dismantlement is charged to the Indian Government and what is the total amount of such interest ?

**Mr. G. G. Sim** : In the case of State-owned lines the cost of dismantlement and the estimated cost of replacement were realised from the Imperial Government and no further claims could equitably be made.

COAL RATES ON RAILWAYS.

169. \***Mr. P. L. Misra** : With reference to the answer given on 15th January 1923, to unstarred Question No. 80 (a), will Government kindly state (a) whether the differential rates came into effect from 1st April 1920, as a result of the rates for public coal having been enhanced or as a result of the lowering of the rates for railway coal, and (b) why the cheaper rates are granted to railways in the working of which the State is not financially interested ?

**Mr. G. G. Sim** : (a) As a result of the enhancement in rates for public coal.

(b) The Honourable Member is referred to the answer given on the 6th September 1922 to Question No. 25 asked by **Mr. N. M. Joshi**. Railways not owned by the State are required under the terms of their contracts to carry Government stores at the rates fixed for State Railways. Consequently State Railways carry the coal required for those Railways at the rates fixed for Railways generally.

PROGRAMME FOR REHABILITATION OF RAILWAYS.

170. \***Mr. P. L. Misra** : With reference to paragraph 12 of the report of the Railway Finance Committee published in the Supplement to the Gazette of India, dated the 17th December 1921, will Government kindly state when the capital programme of Rs. 150 crores for the rehabilitation of the railways during the five years commencing with 1922-23 will be available for the information of the Assembly ?

**Mr. G. G. Sim** : The programmes for the years 1922-23 and 1923-24 have already been placed before the Legislative Assembly as Appendix C to the detailed estimates and demands for grants.

As recommended by the Retrenchment Committee the remainder of the programme is being overhauled and re-examined from the financial point of view.

EXPENDITURE ON NEW RAILWAYS.

171. \***Mr. P. L. Misra** : With reference to the reply given on 15th January 1923 to starred Question No. 27, is it permissible for Government, according to their rules of audit, to spend on new lines which were not specifically included in the Railway Capital Budget as passed by the Assembly ?

**Mr. G. G. Sim** : The reply is in the affirmative.

Reductions in the Strength of the Army.

**His Excellency the Commander-in-Chief** : Sir, with your permission I desire to make an announcement to the House on the subject of the reductions in the strength of the Army, which were recommended by the Incheape Retrenchment Committee, and which have recently been under consideration.

His Majesty's Government, after reviewing the recommendations of the Government of India, have agreed to the following measures :

- (1) Reduction in the strength of each of the 45 battalions of British Infantry by 130 men. This I may say has been previously announced.

- (2) Reduction of one battery of Royal Horse Artillery and its Ammunition Column.
- (3) Reduction in the Royal Field Artillery establishment of men and horses on a scale sufficient to secure a financial saving approximately equivalent to that which would be obtained by the abolition of one Royal Field Artillery brigade.
- (4) Reduction of one Cavalry Brigade Headquarters.
- (5) Reduction of one full Field Troop of Sappers and Miners.
- (6) Reduction of 64 men in each active Infantry and Pioneer battalion of the Indian Army other than Gurkhas and Hazaras, coupled with the addition of 77 Class I reservists per battalion.
- (7) Withdrawal from India of two British Cavalry Regiments.

The withdrawal of a third British Cavalry Regiment had been recommended by the Retrenchment Committee and the Government of India. This proposal is still under discussion, and a final decision has not yet been reached.

On the other hand, in order to compensate for the cavalry reductions which have actually been approved, it has been agreed that steps should be taken as soon as possible to complete the establishment of Armoured Car Companies in India up to the authorized number, namely, 8, which is already laid down in the post-war organization of the Army in India, as a measure complementary to the large reduction of cavalry, both British and Indian, which formed part of the first post-war re-adjustments, and had been carried out before the Retrenchment Committee was appointed. At present only 6½ companies of Armoured Cars are in being.

In giving my support to the proposals of the Retrenchment Committee for the reduction of combatant troops, I made it clear that my acquiescence must not be construed as meaning that I reject once and for all as unnecessarily high the standard of defence which had previously been adopted in the post-war organization of the Army in India. I held, and I still maintain, that the reductions have been determined primarily by financial considerations, and I accepted them in order to balance the budget.

I have from the first advised that, if and when the resources at the disposal of the Government of India increase, the Government of India, as they will aim at making more liberal provision for schemes of social and material betterment, should also be prepared to allot funds for increasing the strength of the fighting troops. His Majesty's Government have signified that they attach special importance to those views, and they have sanctioned the reductions on the understanding that the Government of India will do their utmost to give effect to my advice when the financial situation improves. It is perhaps hardly necessary to explain that the reductions which I have just announced are without prejudice to the other retrenchments of military expenditure which have been proposed by Lord Inchcape's Committee. These are being dealt with separately, but the annual saving involved by the reductions in combatant troops, which I have to-day announced, amounts to rather more than Rs. 2½ crores.

In conclusion, I trust that the House will realise and appreciate the fact that, with the exception of the reduction of one cavalry regiment, which is still under consideration, His Majesty's Government have given effect to all the reductions of troops recommended by the Government of India on the advice of the Inchcape Committee and myself.

STATEMENT RE ALLIANCE BANK.

**Dr. Nand Lal :** Will the Honourable the Finance Member give us the nature and the extent of the guarantee given by the Government of India to the Imperial Bank in respect of the liability of the Alliance Bank. The Honourable the Finance Member had told us that he will kindly enlighten us with a statement on Monday.

**Mr. President :** Has the Honourable Member given notice of that ?

**Dr. Nand Lal :** The Honourable the Finance Member himself had told us that he would make a statement on Monday.

**Mr. President :** The question is whether the Honourable Member has informed the Finance Member that he was going to put this question ?

**The Honourable Sir Basil Blackett :** This is the first time that I became aware either that any question on this subject was to be put to-day, or that I had fixed the 9th as the date on which I should make an epoch-making announcement.

**Mr. President :** This is the second time that the Honourable Member has committed this indiscretion and I warn him.

UNSTARRED QUESTIONS AND ANSWERS.

RAILWAY ANNUITIES.

**99. Mr. P. L. Misra :** Will Government kindly state in sterling the total amounts of annuities that will remain to be paid between 31st March 1924, and the date of their termination in respect of the different railways ?

**Mr. G. G. Sim :** A statement containing the information asked for by Mr. P. L. Misra is placed on the table.

*Statement showing in sterling the total payments due in respect of annuities after 31st March 1924.*

Railways.	Amounts. £
Eastern Bengal Railway (including Bengal Central) ..	3,953,450
North-Western Railway (including old Sindh Punjab and Delhi).	12,997,641
East Indian Railway .. .. .	33,642,833
Great Indian Peninsula Railway (including Indian Midland).	31,245,461
Madras and Southern Mahratta Railway (including old Madras Railway).	15,872,893
<b>Total ..</b>	<b>97,711,777</b>

**X'MAS CONCESSIONS.**

100. **Mr. P. L. Misra :** With reference to the reply given on 29th January 1923, to starred Question No. 292 will Government kindly lay on the table a statement shewing the increase both in the number and the amount obtained on account of the X'mas concession as compared with the latest year in which the concession was not allowed ?

**Mr. G. G. Sim :** The Government regret that the required figures are not available. They would prefer not to put Railway Administrations to the trouble of compiling them.

**STRATEGIC RAILWAYS.**

101. **Mr. P. L. Misra :** With reference to the reply given last Delhi session to starred Question No. 170, will Government kindly lay on the table a copy of the proceedings of the Central Advisory Council regarding the separation of strategic railways and state what decision has been arrived at on the recommendation made by the Council ?

**Mr. G. G. Sim :** (a) An extract of the proceedings is placed on the table.

(b) The recommendations of the Council are still under consideration and no decision has yet been arrived at on the subject.

*Extract from Proceedings of the 3rd Meeting of the Central Advisory Council held on 1st September 1922, at 2-45 P.M. on the subject of " Strategic railways "*

It was agreed that the Council should recommend that in future the railway capital budget should show under distinct sub-heads the expenditure proposed for :

- (a) strategic railways,
- (b) other lines.

As a necessary preliminary to this being done it was recommended that the list of lines now classed as strategic should be reconsidered, and this classification should in future be applied only to lines which had been constructed and were still worked mainly for military as distinguished from commercial purposes.

2. It was agreed that it would be impracticable to recommend that a similar distinction should be carried into revenue budget, but that the existing procedure in respect of accounts should be maintained, that is to say, that separate figures relating both to earnings and expenditure of railways which on the above principle were in future classed as strategic should be shown both in the administration report and in the financial accounts of the railway itself and in the published accounts of the Government of India.

**RAILWAY APPOINTMENTS REQUIRING ENGINEERING QUALIFICATIONS.**

102. **Mr. P. L. Misra :** With reference to part (d) of the reply given on 12th February 1923, to starred Question No. 338, regarding posts in the Railway Board which require engineering qualifications, will Government kindly state the names of the railway administrations of whom inquiries were made on the last occasions when the posts fell vacant by the incumbents going on leave or otherwise ?

**Mr. G. G. Sim :** In 1921 on a vacancy occurring owing to an officer of the Railway Board's staff going on leave the services of a suitable officer to replace him were obtained from the Bengal-Nagpur Railway.



The Railway Board receive and have on record annual reports on all officers of the Indian State Railways. They also have histories of their services, and it is therefore, generally speaking, an easy matter to select a suitable officer for appointment without making inquiries of Railway Administrations. The Board, however, do not intend to restrict appointments in the Railway Department Secretariat to State Railway Officers, and Company-worked lines will be addressed in cases where it may be considered that the services of a more suitable man may be obtained.

#### R. AND K. RAILWAY CLAIM FOR WOOD FUEL.

103. **Mr. P. L. Misra :** With reference to the reply given on 17th January 1923, to starred Question No. 152, regarding the Rohilkund and Kumaon Railway claim for wood fuel, will Government be pleased to state the total liability involved and the amount of the claim preferred by the Company ?

**Mr. G. G. Sim :** The total liability involved is Rs. 2,40,000 or Rs. 7,30,000 according as the existing contract is determined in 1932, by notice of purchase or terminates in 1981 by efflux of time.

The Company did not prefer a claim for any specific sum of money ; they claimed the enforcement of the terms of their contract or a reference to arbitration.

#### MINIMA PASSENGER RATES.

104. **Mr. P. L. Misra :** Will Government kindly state the basis on which the minima rates, particularly for first class passengers traffic, were last fixed ?

**Mr. G. G. Sim :** The basis was the estimated average cost of the service rendered.

#### RAILWAYS UNDER CONSTRUCTION.

105. **Mr. P. L. Misra :** Is it a fact that the railway lines at present under construction will involve an estimated expenditure of only Rs. 512.35 lakhs out of the capital programme of Rs. 150 crores ; if so, what other specific lines are contemplated for construction against the allocation of Rs. 1,449 lakhs given in paragraph 31 of Part II of the Report of the Indian Retrenchment Committee of 1922-23 and what return is anticipated from each of them ?

**Mr. G. G. Sim :** The expenditure out of the Rs. 150 crores programme on lines under construction is now estimated at Rs. 607.95 lakhs.

The distribution of the 150 crores given in paragraph 31 of the Retrenchment Committee's report was provisional and the whole of the allocation and all the proposals for capital expenditure are now being re-examined.

#### NUSHKI EXTENSION RAILWAY.

106. **Mr. P. L. Misra :** Has the attention of Government been drawn to the note on " The Nushki Extension Railway " appearing at page 71 of " The Indian Railway Gazette " for March 1923 ? Who has paid the cost of building the Nushki-Duzdap Railway ? Is there any truth in the rumour referred to therein ?

**Mr. G. G. Sim :** Government have seen the note referred to. The cast of the section from Nushki to Mirjawa was met by the Government of India and that of the remaining section to Duzdap by His Majesty's Government. The whole question of the future of the extension is at present under consideration.

#### PILFERAGE OF LETTERS.

107. **Dr. H. S. Gour :** (1) Is the Government aware that since the enhancement of postage there have been numerous complaints of the pilferage of letters and their non-delivery to the addressees ?

(2) Will the Government be pleased to state what action it has taken to prevent the pilferage of letters ?

(3) Is it a fact that in the Post Office at Nagpur no record is made of the postmen employed to clear the letter boxes ?

(4) Is Government aware that in Nagpur there have been wholesale thefts of letters and packets and that the delinquents have not been traced ?

(5) Do the Government propose to institute an inquiry through an independent officer into the causes of these thefts ?

**Mr. G. R. Clarke :** (1) No.

(2) Does not arise. All complaints are always investigated carefully.

(3) Letter-boxes at Nagpur are cleared by letter-box peons and not by postmen. Every letter-box peon has a fixed number of letter-boxes to clear at fixed hours.

(4) Five complaints regarding the loss of unregistered articles posted in Nagpur have been received by the Postmaster-General since October 1922. Inquiries into these cases were unfortunately unsuccessful. Beats of letter-box peons have in some cases been changed and their work carefully watched.

(5) No.

#### THE LEGAL PRACTITIONERS (AMENDMENT) BILL.

**MR. NEOGY ADDED TO SELECT COMMITTEE.**

**Mr. N. M. Samarth** (Bombay : Nominated Non-Official) : Sir, I rise to make a motion in regard to the Legal Practitioners (Amendment) Bill which was referred to the Select Committee on the 27th March last. As the House will remember that Bill was introduced by my friend Mr. K. C. Neogy who was the Member in charge of that Bill. Subsequently he resigned his seat in this House with the result that the Member in charge of the Bill was not on the Select Committee. He has now been re-elected as a Member of this House and I move that his name be added to the Select Committee on that Bill.

**Mr. President :** The question is :

“ That the name of Mr. K. C. Neogy be added to the Select Committee on the Legal Practitioners (Amendment) Bill.”

The motion was adopted.

#### THE ABOLITION OF TRANSPORTATION BILL.

**The Honourable Sir Malcolm Hailey** (Home Member) : I move :

“ That the Report of the Select Committee on the Bill to provide for the abolition of the punishment of transportation in respect of criminal offences be taken into consideration.”

The report of the Committee is before the House, and I do not desire to make any remarks of any length on it. Some comment is, however, I think, required from me as representing Government. We stand bound by our previous declarations to repeal the law relating to transportation, and frankly, I do not wish that we as a Government should be under any imputation of a desire to delay in implementing our undertaking. Let me explain shortly how we have arrived at our present position. The problem which we had to face arose under the following circumstances. We had originally in our criminal law provision for sentences of imprisonment graduated by the framers of the Code in varying degrees of severity to suit the nature of the offence. To that we added transportation. Now, however, transportation was viewed by the original framers of the Code, it is in the present age somewhat different in nature from imprisonment, that is to say, its most important aspect is that of a measure of reclusion, a means, that is, of removing a criminal from the society to which he might be a danger. The original framers of the Code provided practically everywhere for transportation for life and they did not attempt themselves to graduate the term of transportation to suit the nature of the offence. The consequence is that you will find in our Code, that transportation is given as an alternative or combined punishment for a large number of offences. It is given as an alternative to a sentence of death, to sentences of imprisonment which vary from 14 to 3 years. In only a very few cases, and those exceptional, such as the crime of being a Thug, is it a substantive punishment in itself. There is another consequence also flowing from that fact. A certain number of offences, and grave offences at that, were left with terms of rigorous imprisonment and no alternative sentence of transportation was provided. Thus you will find in one instance that a term of 14 years' rigorous imprisonment can be given for highway robbery at night, and no alternative term of transportation is provided. The consequence is that under the terms of the Act the courts are confined to long sentences of rigorous imprisonment for certain offences which judging by the ordinary standards would be better met, or at all events suitably met, by long terms of reclusion from society. (We have now decided to abolish transportation. I am not going back into the merits of that question save otherwise than to remark this, that transportation, whatever its other disadvantages, had one advantage from the penal aspect, that is to say, that you could exclude from society criminals for a long term of years without necessarily at the same time attaching to their reclusion all the incidents of jail life—hard labour, solitary confinement and the like. In fact in other words transportation to the Andamans had this advantage, that in itself it almost automatically provided for the graduation of punishment. But having decided to abandon it, we have now to readjust our law and to find in terms of imprisonment suitable substitutes for transportation as now provided in the Code. That has been a work of great difficulty, not on account perhaps of any purely legal or technical reason but for the reason of substance, to which I have already referred, namely, that transportation is in itself a different kind of punishment from imprisonment. If we simply take the maximum term of transportation and convert it into the maximum term of imprisonment, there is little

[Sir Malcolm Hailey.]

doubt that it would now be held that the substituted term, for instance imprisonment for life was more severe than transportation for life. It is true that transportation for life has come in practice to mean 20 years and the ordinary maximum of imprisonment in practice is 14 years. But even so, there is little doubt that 14 years' rigorous imprisonment

12 Noon.

would now be considered a more severe punishment than 20 years' transportation, or so it would be held at all events in the greater part of India, for there are parts of India where the mere fact of transportation is considered a punishment in itself. Our attempts to find a solution of this somewhat difficult problem have been criticised from two aspects. There were those who claimed that in attempting to find a substitute for transportation in terms of imprisonment we fell into the error of rendering criminals liable to long sentences of rigorous imprisonment which are in themselves a far more severe punishment than the preceding sentence of transportation.) It was criticised also from the opposite aspect, namely, that in order to meet this difficulty we had in some cases actually reduced the terms of imprisonment, and it was felt by some judicial authorities that we were in danger of reducing their powers or ordering a criminal to be excluded from society for a sufficient length of time. Now, I should at once deprecate any criticisms based on the supposition that rigorous imprisonment in an Indian jail is throughout the term of that imprisonment, necessarily a penalty of a very severe nature. It is not, I think, comparable to what is known as hard labour in the English jails. Still, even taking that fact into consideration, one must admit that there was some substance in the first part of the case which was levelled against the solution we proposed in our draft Bill. In those circumstances we ourselves had already come to the conclusion that it was necessary to go somewhat deeper into the matter. We were as a matter of fact considering a proposal for dividing rigorous imprisonment into two classes, that is to say, rigorous imprisonment with hard labour and rigorous imprisonment with less severe conditions. In England of course the problem to which I have been referring was met by the institution of penal servitude. I think you will find in England that the maximum imprisonment with hard labour which is ordinarily given is a term of two years; after that, if a longer period of punishment is required, the sentence begins with three years' penal servitude. Now, it was impossible for us at the moment to consider this solution, because the institution of penal servitude in India would mean the construction of penal settlements. They must essentially be different from jails; and that would involve Local Governments in an amount of expenditure which we could not force on them in their present financial circumstances. We fell back therefore as I say on the proposal to divide rigorous imprisonment into two classes, and that coincides, in essence at all events though not necessarily in detail, with the proposal which our colleague on the Select Committee, Sir Henry Stanyon, put before us. Now I feel myself that, undesirable as delay may be in this matter, the difficulties are so great that it is necessary for us to go further back than was proposed in our Bill and to reconsider the possibility of re-adjusting the whole system of our penal provisions. As for Sir Henry

Stanyon's precise proposal, I should like to say that for myself I regard it as an open question ; we do not accept its details, especially as regards simple imprisonment, but we look on it as a proposal which we are willing to examine and examine with great sympathy. The Select Committee recognized that, whatever the delay involved, we could not undertake a step of this importance without referring the matter to Local Governments ; for the construction of jails, the maintenance on jails, and their administration and management, are all concerns of the Local Governments. (It is possible that the division of rigorous imprisonment into two classes may involve structural changes in the jails ; at all events it would certainly mean a very considerable change in rules affecting jail discipline, jail work and the like. We recognized therefore that it was necessary to consult Local Governments on the subject, and I say again, that if as a result of this consultation and reconsideration of the question we can make a substantial advance in penology, then there is no disadvantage in the delay, on the contrary there is a gain.) For the present, of course, delay would not affect our actual practice in regard to transportation. We have closed transportation, save for exceptional cases such as those of the Moplahs which cannot be provided for elsewhere. The Act would stay as at present, the practice would remain as at present ; but it is possible that we may, as a result of re-consultation and re-consideration of the question, be able to put before the House what would be a substantial advance in the penal treatment of our convicts.

**Mr. P. E. Percival** (Bombay : Nominated Official) : Sir, as the only official Member on the Select Committee besides the Honourable the Home Member, I would like to make a few observations on the report of the Select Committee. I wish just to emphasise two points. Possibly there will be some criticism of the report of the Select Committee, not so much by Honourable Members inside this House as by officials outside the House, such as Inspectors General of Prisons. They will say, " well, here is a Select Committee which has no special knowledge of jail administration, and the Members have proposed drastic changes in the jail administration of the country." To that criticism, Sir, I would say, as a Member of the Select Committee, that the course we adopted was one which we were driven to adopt. We tried all the other possible alternatives, and we found that none of them was workable. In the first place, as has already been stated, transportation to the Andamans has definitely been abandoned.

The next proposal was contained in the original Bill of the Government of India which substituted rigorous imprisonment for transportation. Now the great objection to that proposal, as has been particularly pointed out by the Madras High Court, was that the courts would have to pass a sentence of rigorous imprisonment for life, that is, practically for 20 years, which would be a very severe sentence. What we want to arrange is that the courts, in passing a sentence of rigorous imprisonment for a long period, should know exactly what they are passing : They would know, if the proposal of my friend Sir Henry Stanyon is carried out, that the maximum term of rigorous imprisonment of the first class will be for a period of three years only, and that the rest of the term of imprisonment will be of a much milder character. It was

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really the criticism of the Madras High Court, and especially that of Mr. Justice Coutts-Trotter, which was the main cause why it was found impossible to proceed with the Bill as originally proposed. Moreover it is not possible by merely altering the Bill to get over the difficulty. What you want is a long sentence, in order to get rid of a dacoit, for instance, and put him away from society ; but at the same time you do not want to treat him with undue severity. That was the main objection to the Bill as originally proposed. A mere sentence of rigorous imprisonment in place of transportation cannot therefore meet the requirements of the case.

The third proposal was that of penal servitude, that is, servitude in a penal settlement. Now I venture to suggest that that is really the best solution of the difficulty ; and if in time the Report of the Select Committee leads to the institution of a penal settlement in the country, then it will have a very good judicial and penal result. But unfortunately at the present moment we are not in a position to carry out that proposal, because there is no penal settlement ; nor could a penal settlement be instituted for a long period. So, that alternative, although a very desirable one, is also impossible. The result was that, after taking all the various alternatives into consideration, we were finally driven to the alternative proposed by my Honourable friend, Sir Henry Stanyon as being the only practical one in the circumstances of the case. It was, I may mention, very similar to the proposal made by the Madras Government, which was to the effect that there should be three kinds of imprisonment ; the Honourable Sir Henry Stanyon goes a little further, and he proposes four kinds of imprisonment. (At any rate the present arrangement cannot be continued, I think, and we must have an alternative scheme consisting of at least three kinds of imprisonment, namely two kinds rigorous and one kind simple ; or, if possible, two kinds of rigorous and two kinds of simple imprisonment, as proposed by Sir Henry Stanyon and approved by the Select Committee.)

The other point, which I wish to emphasise, is one that has already been referred to by the Honourable the Home Member. I wish to say that speaking for myself and the other Members of the Select Committee, and I think also for Sir Henry Stanyon himself, we merely approve generally of the principles laid down by Sir Henry Stanyon. What we say in the Report of the Select Committee is this :

“We are of opinion that the only practical solution at present is a system developed on the lines suggested by our colleague, Sir Henry Stanyon.”

What we suggest is that a scheme should be worked out, no doubt after consulting the Inspectors General of Prisons of the various Provinces, which should be generally based on the scheme of Sir Henry Stanyon.

I should like to take this opportunity to ask Sir Henry Stanyon one or two questions which he might be able to answer for the benefit of the House, because there are a few points in his note which, I think, are somewhat ambiguous. The first point I would ask is whether he proposes that these various kinds of imprisonment should apply to short

sentences also, namely, sentences of 6 months or of two years say,—because that point is not quite clear from his note. Another point I would like to ask him is, how he would distinguish rigorous imprisonment of the second class from simple imprisonment of the first class. That, I think, is going to be the chief difficulty. The jail authorities will probably say :

“ Well, we can provide three kinds of imprisonment, but we find it difficult to provide four kinds.”

Then there is another point which is not quite clear, I think, from the Honourable Member's note, and that is this. Does he intend that the Courts, when they pass their order, should specify the exact amount of the different kinds of imprisonment of the different classes ? What I mean is this. Suppose a Court sentences a man to 20 years' imprisonment, should it specify that there should be three years' imprisonment of the first class rigorous, four years of the second, and so forth, or is that to be left to the rules ? It seems to me that the whole thing should be settled by the Courts,—that the Courts should specify definitely the different periods of the different classes of imprisonment.

On the whole I venture to suggest that the details in Sir Henry Stanyon's note are a little bit too elaborate. What has struck me is this. Suppose you take the case of a literate man sentenced to 20 years' rigorous imprisonment. Well, he is given writing work to do. Now, if you follow very strictly the provisions in the note, you have to say under what class writing work comes. Suppose you regard writing work as rigorous imprisonment of the second class. In that case you could employ that man on writing work only for 4 years out of the whole 20 years ? (The point I want to make is that, while we entirely agree with the proposals of Sir Henry Stanyon, I think they should only be taken as a general guide and not pressed upon the Inspectors General of Prisons, if they find out that they are too elaborate to work out. It seems to me that the main basis of our proposals is roughly as follows :—that the period of imprisonment should be the same as the period of transportation, say 20 years. That is the first point. The second point is that there should be at least three kinds of imprisonment, if possible four, but at any rate three kinds. That is the second point. The third point is that in no circumstances should a man undergo more than three years' rigorous imprisonment of the first class, so that the Courts may know that they will not be charged with passing a brutal sentence in any case. That is what Sir Henry Stanyon has proposed, and that is also in accordance with the proposals of the Madras Government. The fourth point is that the order in which the various kinds of imprisonment should be fixed should be the same as that laid down by Sir Henry Stanyon, namely, that the more severe kinds of imprisonment should come first, and the milder kinds should come afterwards.)

In regard to the remaining question, namely the delay in the abolition of transportation, as has already been pointed out by the Honourable the Home Member, executive orders have been given that the sentence of transportation should be abolished ; and the Local Governments are

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using section 55 of the Indian Penal Code. Under that section they can substitute 14 years' rigorous imprisonment for transportation for life. Well, that is a rough and ready method of doing away with transportation ; it is not a desirable plan as a permanency ; but it is a method which will work more or less satisfactorily for the next few months until this Bill has been amended and put into correct form.

For these reasons, I support the proposals contained in the report of the Select Committee.

**Colonel Sir Henry Stanyon** (United Provinces : European) : Sir, when I drew up my note less than a month ago, I had no idea whatever that it would be honoured with criticisms in this Assembly. It was written to save a certain amount of time in talking on the Select Committee, and in order to put into a form better than one could do in *ex tempore* conversation certain difficulties which the proposal to substitute imprisonment for transportation seemed to me to involve. The problem before us was not only one of criminals in the future ; there was also the question, though it was not specially mentioned in my note, of what we were to do with those transportees who are to be brought back from the Andamans. There are persons there undergoing transportation for life who have served various terms of that sentence. I thought it would be a matter of difficulty to bring them back to imprisonment in India, if all that we had to substitute for transportation was rigorous imprisonment, which is either *rigorous* imprisonment, *i.e.*, imprisonment with hard labour as defined in the Indian Penal Code, or *simple* imprisonment, which is supposed to be only confinement without any compulsory labour. The Select Committee have been good enough to take a favourable view of my poor note. I claim no originality for it ; the principle of penology which is embodied in it comes from the Honourable Judges of the Madras High Court while, as the Honourable the Home Member has mentioned, the idea of dividing rigorous imprisonment into two classes as is done in England, notwithstanding the provision of penal servitude, had already occurred to the Government of India. Therefore I did not intend to speak on this motion to-day. But as Mr. Percival has asked me certain questions, I rise to answer them. The note that I have put up is not a Bill ; it is not even a proposal which I ask to be accepted as it stands. It is merely a note containing suggestions of the lines upon which I think we might proceed in abolishing transportation. It will be seen from the concluding paragraph of the note that I framed a rough draft of a Bill in which many of the questions which Mr. Percival has asked will be found answered. That Bill recommends the maximum term of each class of imprisonment to be combined in a long sentence ; it also provides for a discretion being left to the Court to vary such term. But I will say at once, that my note was not intended to suggest any graduation of short sentences ; though here also I would not unduly fetter the discretion of the Court. Even in a short sentence a Court should be able to order rigorous imprisonment of the second class.

It might, for example, be expedient to direct rigorous imprisonment of the second class only in the case of a criminal whose physique made it



evident to the Court that rigorous imprisonment of the first class in his particular case would be too severe a punishment. My idea is that in long sentences where the Court gives no direction otherwise there should be a gradation of punishment by fixed terms; while in short sentences in cases calling for rigorous imprisonment, rigorous imprisonment of the first class should generally be used as a sharp punishment to operate as a deterrent, in the way mentioned by Mr. Justice Coutts-Trotter in his opinion from which I have quoted. The only point upon which I would control the Court is the *order* in which the several forms of imprisonment should be imposed. I would not allow a Court to give imprisonment of the second class or simple imprisonment of the first class before rigorous imprisonment of the first class. Then, as to the difference between rigorous imprisonment of the second class and simple imprisonment of the first class. I think that would be a perfectly easy matter of jail administration. The two class of rigorous imprisonment would be imprisonment with *labour*, as we understand that term; the labour might be exactly of the same kind in both classes, but in the second class might be imposed for fewer hours per day. The oil mill, extracting aloes fibre and earth work, and whatever else is recognised as severe labour, could easily be arranged and put into two classes of severity in jail. But simple imprisonment of the first class would be a much lower grade of punishment, a form of penal servitude, if I may use that term. In this form you would exact work, literary work, or other sorts of work, but merely work. With regard to the fourth form suggested by me, which I have called simple imprisonment of the second class, that is really a special provision, the idea of which was suggested to me by present day conditions. It is a class by itself. It is called simple imprisonment of the second class for convenience of retaining the two *descriptions* of punishment, so often referred to by use of the words "imprisonment of either description" throughout the Indian Penal Code. But it is a different thing altogether from the other three forms. It is intended to be reserved for a class of offenders for whom the degradation of jail, such as wearing jail clothes and undergoing other degrading rules in the jail, is not suitable and would offend the public sentiment. My idea was that taking advantage of this reform in our system of imprisonment we might provide for that special class of offenders. It would present no difficulty; properly speaking it would not be a fourth class in gradation from the other three forms. Those three are in a gradient; but simple imprisonment of the second class would be a form quite apart from the rest. Then, with regard to the question of periods, I think the Act itself when it comes into force should provide that where the Court does not exercise its discretion, imprisonment in long sentences shall be suffered in a particular way. I have indicated that way in a scale set out in my note; but again, I would leave the Court, by a provision in the enactment itself, with a discretion to alter and vary the extent of the period of each class of imprisonment. But, I repeat, Sir, that my note is nothing except a mere suggestion to enforce a principle of penology which is recognised in England, America and other countries. At this date I do not see why the Indian criminal should in that respect be in a worse position than the criminal in England or in America.

**Dr. H. S. Gour** (Nagpur Division : Non-Muhammadan): Sir, all the previous speakers have referred to the Transportation Bill and have

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drawn analogies from English law. I wish to point out to the House that while English law has been advancing in distinct stages towards the leniency of sentences, Indian Criminal Law remains stationary, and I further point out that the remedy suggested by the previous speakers will only mitigate cases of offences punishable with transportation for life, that is to say, only 50 offences in the Indian Penal Code which are so punishable, and if we were to accept the view of the Select Committee that the provinces should be addressed on the subject on this short Bill, we shall leave intact a very large number of serious offences punishable under the Indian Penal Code with long terms of imprisonment which will remain unaffected even if the provinces and the Government of India were to decide to substitute an equation more humane than what was suggested in the original Bill. Honourable Members will remember that in England the sentence of transportation was legal for a very long time and it was brought under the Statute by an Act passed in 1824. It lasted till 1853 when by the Penal Servitude Act, the sentence of transportation was abolished and penal servitude substituted in its place. By an Act of 1891, the sentence of penal servitude was further mitigated, for it is provided in section 1, sub-clause (2) of the Act that whenever a sentence of penal servitude is passed, it shall be commuted into imprisonment, but no imprisonment involving hard labour shall be inflicted for a period more than two years. Consequently, since the enactment of the Penal Servitude Act of 1891, it is not legal for the Courts in England to inflict a sentence which involves hard labour for more than two years. The Honourable the Home Member has pointed out that there are offences in this country punishable with rigorous imprisonment which may extend to seven years and more than seven years (*A Voice* : "14 years") to 14 years. Now, the point, therefore, that I wish to make is this. When the Indian Penal Code of 1860 was enacted, Lord Macaulay was influenced by the then existing English law and when he recommended the introduction of the sentence of transportation, it was not merely with the object of excluding the offender from society, as was pointed out by the Honourable the Home Member, but also with the object of striking terror in the minds of the family and other persons with the then prevailing dread of crossing the *kalapani*. Let me give to the Honourable Member the exact words of Lord Macaulay's Committee on that subject. They wrote as follows :

"The consideration which has chiefly determined us to retain that mode of punishment is our persuasion that it is regarded by the natives of India, particularly by those who live at a distance from the sea, with peculiar fear. The pain which is caused by punishment is an unmixed evil. It is by the terror which it inspires that it produces good, and perhaps no punishment inspires so much terror in proportion to the actual pain which it causes as the punishment of transportation in this country. Prolonged imprisonment may be more painful in the actual endurance, but it is not so much dreaded beforehand, nor does a sentence of imprisonment strike either the offender or the bystanders with so much horror as a sentence of exile beyond what they call the Black Water."

That is what induced Lord Macaulay's Committee to introduce a sentence of transportation. He was not moved by the feeling that the offender should be excluded from society, and his mere exclusion from society would not attack the mischief. His object was, as I have pointed out, in a note which he penned as Chairman of the Committee which framed

the Penal Bill. Now Honourable Members will find that he also wanted that Europeans and Americans should be likewise transported, and he deprecated the sentence of imprisonment on the ground, as he said, that it would place them in a most degrading situation, stigmatised by the court of justice and engaged in the ignominious labours of the jail. But the passing of the English Statute in 1849 left the Indian Legislature with no option, but to confine the sentence of penal servitude upon Europeans and Americans, with the result that we find two sections in the Indian Penal Code which are very relevant to our present purpose. As regards the commutation of the sentence of transportation, our Code provides that a sentence of transportation may be commuted with the consent of the offender to a term of imprisonment not exceeding 14 years. That is section 55 of the Indian Penal Code. Then we have a section dealing with Europeans and Americans, that is section 56. It is there provided that whenever a person, being a European or American, is convicted of an offence punishable under this Code with transportation, the court shall sentence the offender to penal servitude instead of to transportation according to the provisions of Act XXIV of 1855. Honourable Members will thus see that, while Lord Macaulay's Committee began by prescribing one uniform sentence, of transportation, for all offenders, the interposition of an English Statute compelled the English Legislature to discriminate between Indians and European and American offenders, with the result I have already stated. (In that view I welcome the present Bill, which abolishes the sentence of transportation. I venture to submit, and I hope I have the whole House with me, that this sentence should have been abolished long ago. But then comes the next question, and a question of very great importance. Having abolished the sentence of transportation, what shall be its exact and equal substitute? Well, the Select Committee were at one time inclined to commute the sentence of transportation in accordance with a set rule of seven years as equal to four and so on. But it was pointed out to them, and they now agree that the criticism is just, that the equivalent sentence recognised as equal to the sentence of transportation is more severe than the sentence for which it is provided as a substitute. This raises the question as to what is an exact equivalent for the sentence of transportation, and I have no doubt that, after consulting the authorities and the public concerned, the Government of India would be in a position to modify the provisions of the Bill now before this House.) But I submit that that amendment alone will not deal with the general question of sentences, and if you were to provide that in all cases where the offence is punishable with transportation for life, the maximum sentence of rigorous imprisonment was not to exceed two years, there would still remain a large number of cases which are punishable under the Penal Code with sentences of 7 to 14 years' rigorous imprisonment, and for which you provide no solution. The result would be that, while cases of a most heinous character will be dealt with by the Bill and their rigour mitigated, a very large number of cases which would equally and logically require a corresponding reduction of sentences remain unaffected. I therefore submit that the terms of reference to the Provinces on this general law of sentence should be enlarged and the Government should address a more general request to the Provinces to state whether the time has not come when the large sentences of rigorous imprisonment should not be reduced,

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and Indian law on the subject of rigorous imprisonment brought into line with that which prevails in England, where sentences of hard labour for more than two years cannot be passed in substitution for penal servitude. That I submit is a question of a more general character upon which the Government should invite the opinion of the public and the Provinces. I do not think that the Government will be justified in confining their reference merely to the question of asking the Provinces for their opinions on what they regard as a suitable substitute for a sentence of transportation. That I submit is interlinked with the large question of general penology to which the Indian Legislature must address itself now. I have pointed out to Honourable Members how the English law has been marching in the direction of greater humanity and larger leniency, and how the Indian law has remained stagnant ever since 1860 when the Penal Code was enacted. Honourable Members will remember that Members of this House have from time to time asked the Government to revise the Indian Penal Code. When Lord Macaulay's Committee sat they pointed out that in the disturbed state of the country, with a civilization different to that of the framers of the Penal Code, rigorous sentences were necessary, and it was then pointed out by the Committee that, as soon as the people of this country become more settled and more civilized, the sentences which they had suggested for all the crimes in the Indian Penal Code might suitably be revised. Now, I ask, Sir, has that been done? I submit it has not, and I think that this opportunity should be taken by Government not merely to deal with the short question of the transportation sentence but with the larger question referred to by my Honourable friend, the larger question of penology, the adequacy of sentences under the Indian Penal Code and other allied penal laws.

Now, my Honourable friend Mr. Percival, whilst supporting the motion of the Honourable the Home Member, seems to have struck a somewhat discordant note by alluding a little frequently to a gentleman called the Inspector General of Prisons. There seems to have been an undertone in his speech that the Legislature had better leave the consideration about the substitution of these sentences to the executive authorities. Well, Sir, if that was the implied intention and the undercurrent of my Honourable friend's speech, I would strongly deprecate it. I think it is not the business of the Inspector General of Prisons or indeed of the executive Government but of the Central Legislature to state what they consider to be the true scope and measure of punishment for offences described in the Indian Penal Code and other penal statutes of the land. It is true that the Indian Penal Code contemplates transportation for life and it is equally true that the executive Government under their general administrative authority have laid down that the sentence of transportation for life shall mean a sentence of transportation for 20 years. So far, we are obliged to the executive Government, but I ask what is there to prevent the executive Government from rescinding that executive rule and laying down that what is prescribed in the Penal Code as a sentence of transportation for life shall be literally carried out. I therefore suggest that what the executive Government has established as a practice should now be embodied in an Act of the Legislature, and it should be published to all and sundry that the Central Legislature regards the maximum punishment of transportation

as equivalent to 20 years and that its equivalent in terms of rigorous and simple imprisonment are such as the Legislature may hereafter decide upon and fix.

Then, Sir, a suggestion has been made by my Honourable and learned friend Colonel Sir Henry Stanyon regarding the gradation of sentences and Mr. Percival asks, "What are you going to do? Are you going to have rigorous imprisonment in two divisions and two degrees?" And my Honourable friend the Home Member I have no doubt quite casually mentioned that the sentence of rigorous imprisonment in this country is not so severe as penal servitude in England (*The Honourable Sir Malcolm Hailey* : "I said 'hard labour,' Sir.") well, as hard labour in England. I must respectfully differ from both of them. Turning to the Honourable the Home Member I beg to ask what sentence could be severer than a sentence of rigorous imprisonment in this country. He must also pay due regard to the climatic conditions of this country. Is he prepared to suggest a greater and severer sentence than the sentence which constitutes rigorous imprisonment in this country? I submit, Sir, that the sentence of rigorous imprisonment in this country is far too severe, far too humiliating and does not serve the true purpose of modern penology, the object of which is that incarceration in jail should serve a double purpose of not merely correcting but reforming the criminal. To imprison these people, ask them to crush aloë fibre, to break stones or to grind corn whilst standing for eight hours a day (*Lieut.-Colonel H. A. J. Gidney* : "No, it is never done in the jails."). (*Mr. K. B. L. Agnihotri* : "It is.") Well, my friend Colonel Gidney may have a closer acquaintance with the jails than my Honourable friend who says that grinding corn whilst standing for eight hours a day is an established form of rigorous imprisonment. I repeat this, Sir, on the authority of my learned friend unless my friend on the other side is able to correct him from his personal experience.

Then, Sir, turning to my Honourable friend Mr. Percival, he asks in what way are you going to grade rigorous imprisonment? Might I ask my Honourable friend to turn to the English Statutes on the subject and he will find that there the sentences are graduated and sub-divided into three divisions according to their rigour and clemency. And what is possible in England is equally possible in this country. I beg further to suggest that the sentence must be such as is suitable to the social condition and life of the prisoner. Fancy a man of the highest education, of the greatest refinement and culture, sentenced, it may be for a political offence, to rigorous imprisonment for the long term of six or seven years, compelled to undergo the degrading and demoralising penalty of grinding corn or crushing stones. Would such a thing be tolerated by public opinion in England? I have known cases in which educated men in England have been sentenced to long terms of imprisonment and I have visited jails and seen with my own eyes the sort of punishment they undergo. I submit, Sir, that it is not desirable that we in this country should have one measure of punishment for all sorts and conditions of men, and I think the time has come when a discrimination should be made between the kinds of labour which the offenders in the Indian jails should be made to perform.

With these words, Sir, I support the motion and hope that the Honourable the Home Member will enlarge the terms of his reference

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and ask the provinces generally to pronounce upon the general law of sentence in this country and their mode of execution.

**Mr. W. M. Hussanally** (Sind : Muhammadan Rural) : May I rise to inform my friend Colonel Gidney that a friend of mine who served as a Member of the Jails Committee tells me that corn is ground in jails whilst standing.

**Colonel H. A. J. Gidney** (Nominated : Anglo-Indian) : Sir, I know very little about the law of penology, but Dr. Gour's apparent knowledge of this commands admiration. Indeed he seems to know something of everything, his fund of knowledge ranging from measles to murder. But he evidently knows very little about the administration of Jails and the apportioning of labour in them. I have been Superintendent of jails including a very big central jail, so I can talk from personal experience about jail administration. (*Mr. K. B. L. Agnihotri* : "In which part of the country, please ?") In Bengal and in Assam. Sir, before I deal with the question of jail administration, I rise to support the motion before the House, and I wish to offer a few remarks on Sir Henry Stanyon's note on this subject. I fear that Sir Henry Stanyon, who has tried to evolve a substitute for transportation, so far as the nature of labour to be given to long term prisoners is concerned, has allowed his heart to get the better of him. He has evolved a substitute which any officer of the Jail Department will tell him is not workable. His views of criminology are to my mind antithetical to the well known and accepted theory as expounded by Mercier.

Mercier divides criminals into three broad classes—the first offender, the chronic or habitual criminal who takes the line of least resistance, and the moral degenerate, or the man who really requires the attention of a Doctor rather than detention in a jail. The division or separation of labour to long term prisoners, as suggested by Sir Henry Stanyon in his note on this Bill, would so upset the present system of labour as practised in our Jails, as to render its introduction impracticable. It would moreover allow a free intercourse between the first offender and the chronic offender and this would have a ruinous moral effect on the juvenile and first offenders whose reformation is our primary duty. Apart from that, I consider, from my experience of jails, that it would not be workable at all.

I now come to what Dr. Gour, the Honourable Member who hails from the land of oranges, says. He asks "Why consult the executive in this matter ?" I wonder whether Dr. Gour wants us to consult only himself ! How could you possibly introduce such a new and radical measure like this without consulting the executive—I mean the Jail administrative officers ?

**Dr. H. S. Gour** : Sir, I rise to a point of order. I never said that the Government should not consult the Executive. My friend is unconsciously misrepresenting me.

**Lieut. Colonel H. A. J. Gidney** : I am glad to be corrected, but I believe I did hear Dr. Gour say "Why should we refer to and consult

Inspectors General of Prisons ? ” Well, I think this is a subject which should and must be referred to them, for their opinion would be of the greatest value as they administer our Jails in India.

I stand here, Sir, to repudiate, with all the emphasis at my command, that labour as allotted in our Indian Jails, is such a severe thing as Dr. Gour tries to make out ; and, as regards the labour given to political prisoners, why, they are so well treated that I would not be surprised if we had a question asked in this House to-morrow as to whether ice-cream was served up hot to them in the Jails. I repeat Sir, the labour exacted from prisoners in the jails is not of a severe and terrifying form, and to state that prisoners are made to grind corn for hours in a standing posture is a travesty of fact. Prisoners in the Indian jails, I know from experience, are treated in many ways much better than at their homes. They are fed better, clothed better, and looked after better ; so much so that some of them are most sorry to leave. And some of them have been only too glad to come back when the police have had occasion to recharge them.

Sir, I support this measure very strongly as it is a distinct advance in the right direction.

**Mr. J. N. Mukherjee** (Calcutta Suburbs : Non-Muhammadan Urban) : Sir, as a non-official member of the Select Committee the report of which is now before the Assembly, I think, I should say a word or two in order to clear the atmosphere of certain misconceptions which seem to exist with reference to the report itself and the course of action which it suggests.

Sir, the question before the House is, that after the Jails Committee have recommended that transportation should be abolished, and after Government have accepted their suggestion, that is to say, after they have decided that transportation should be abolished, what should be the course the central legislature should adopt with reference to the creation of a substitute in place of transportation ? That, I submit, Sir, is the short question before the House now ; and therefore any consideration of details before opinion is taken from local Governments and from other bodies entitled to pronounce an opinion on the fundamental issues, must, I submit, be considered as premature. The Resolution before the House is that the Report of the Select Committee be taken into consideration. This, I suppose, means that the report should be taken into consideration in the light of the suggestions made therein. I take the Resolution to mean that before further action is taken in the matter, the House should give us a mandate as to the line that should be adopted with reference to the solution of the problem before it. That is the only question for consideration ; and we have got to justify before the House the course which the Select Committee have suggested. Now, in the fourth paragraph of the Report, the Select Committee have said :

“ We have considered the possibility of substituting for the present sentence of transportation, a sentence of penal servitude, and we think that in some respects legislation on these lines might be a satisfactory solution.”

We are faced, therefore, with the question, can we solve the problem before us straight off by substituting a term of penal servitude for an equal term of transportation ? Then, again, we have got a very able note

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put up by Sir Henry Stanyon which suggests a more or less satisfactory solution of the whole question of punishment by imprisonment ; not merely of the question of penal servitude, but of all punishments where imprisonment with hard labour is prescribed by law. Now, Sir, it has been very exhaustively demonstrated by the Honourable the Home Member, as well as by my Honourable friend Dr. Gour, that the time is now ripe for a reconsideration of the general question of punishments as provided by the Indian Penal Code and other correlated Acts which prescribe rigorous imprisonment, so far as it is incidental to the question of abolition of transportation. Let us see whether it is possible for us to avoid consideration of a somewhat comprehensive question like the above. My submission is that it is impossible now to avoid the consideration of the larger question in the spirit in which the Report suggests it should be considered. And why ? There is always great difficulty whenever we have to find out an equivalent for transportation in terms of rigorous imprisonment. And this difficulty we cannot obviate by merely substituting penal servitude, generally, for transportation. Even there, we have to meet the question of gradation of punishments in relation to imprisonment. In connection with penal servitude in England, we find a system of gradation of punishments actually in existence. Various instances have been given demonstrating the necessity for taking up the larger outlook with reference to gradation of punishments, and I fully lend my support to the inference deducible from those instances which have been pointed out by Honourable Members who have preceded me. And the very able and painstaking note of Sir Henry Stanyon deals with that larger question also. Now, let us see, whether the simple process of substitution of penal servitude for transportation without any further elaboration, I mean to say, whether the solution of the question of abolition of transportation, as it was effected in India in 1855, by the mere substitution of penal servitude without further statutory elaboration can now afford us a self-contained solution of the whole question. My idea is, that it cannot. It is not as if the question has presented itself for solution in India for the first time now. The Government had to solve the problem when transportation was abolished in India, with reference to Europeans and Americans, in 1855.

Although, no doubt, we can say, as it was said in Act XXIV of 1855,

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that we should substitute a period of penal servitude for an equal period of transportation, we cannot follow, in the present instance, the course that was taken by that piece of legislation, namely, enact that the Local Governments be empowered to frame rules for the purpose of disposing of questions of detail regarding penal servitude, that is to say, determine how such people who are sentenced to penal servitude are to be dealt with, or where they are to be kept or confined in serving out their term of penal servitude. The question that was dealt with by Act XXIV of 1855 was a small question because it dealt with the question of penal servitude in the case of Europeans and Americans only—quite a handful of men. As has been pointed out by my Honourable friend Dr. Gour, this Act of 1855 followed the English procedure on the subject, though I may add not to the fullest extent. Transportation was abolished in England in the Fifties ; and because in respect of the English people it was abolished, it became



incumbent upon the Government in this country to consider the question with reference to those very people who, if in England, would have been subjected to the law of England of that time, and therefore the Government of India solved the question in respect of the Europeans and Americans in India, somewhat in the same way as the Parliament of England solved it for the British people, namely, by prescribing a period of penal servitude in lieu of an equal period of transportation but leaving all details to be dealt with by rules to be framed by Government. Now, the question has arisen again, not with reference to a very small section of the population, but with reference to the entire population of India, and by simply saying—let penal servitude be substituted for transportation,—we shall not be able, to my mind, to remove the difficulty. We shall have to make provision for work and detention in cases where the sentence of penal servitude is given in lieu of transportation. This means an extensive organisation in order that a new situation may be met and for that purpose the opinion of Local Governments on a new situation will have to be taken, and perhaps the country will have to be consulted also before the proposed step is taken. According to the English Penal Servitude Act, however, I may state, it is not necessary always that there should be a penal settlement for the accommodation of persons sentenced to penal servitude. The English Act provides :

“ In such cases every person who under this Act shall be sentenced or ordered to be kept in penal servitude may during the term of the service be confined in any such prison or place of confinement in any part of the United Kingdom or in any river, port or harbour of the United Kingdom in which persons under sentence or order of transportation may now be liable to be confined or in any other prison in the United Kingdom or in any part of His Majesty's Dominions beyond the seas or in any port or harbour thereof, as one of His Majesty's principal Secretaries may from time to time direct.”

Therefore, Sir, my submission to the House is that, although it may not be absolutely necessary to have a penal settlement, something in the nature of an extensive organisation is, in any event, indispensably necessary. The question as a whole has to be considered over and above the question of gradation of punishments. I mean to say, that even in the case of persons sentenced to penal servitude, if they be employed in some dock or harbour or port, in respect of them also some separate arrangement will have to be made and that can only be made after consulting Local Governments and by taking the line of action suggested in the Report. So that, whatever point of view may be taken, I submit the solution offered by the Select Committee seems to be the only solution—making allowance, of course, for the fact that one is always partial to his own opinion. To me as a non-official member of the Select Committee—it seems to be the only way in which the whole question can be satisfactorily approached. Therefore, Sir, my submission to the House is that it should take into consideration the practical suggestions which have been made by Sir Henry Stanyon as a member of the Select Committee,—should take also into consideration the other solution of the question which at one time engaged public attention and which bear the impress of Legislative action in the enactment of 1855. Take all these into consideration, and reconsider the whole situation. Instances have been referred to—and I do not wish to repeat them—where 14 years hard labour has been prescribed as a punishment in the Indian

[Mr. J. N. Mukherjee.]

Penal Code, but where, according to modern penology, a different treatment would suggest itself. The time has arrived now for a reconsideration of the whole subject. The Indian Penal Code was passed in 1860. More than 60 years have elapsed since then. In Europe and America, a more humane system of punishments than is to be found in the Indian Code has been developed during this interval. I think, Sir, the time has come when the line of action suggested by the Select Committee and that suggested by my Honourable friend, Sir Henry Stanyon, should be taken into consideration. The details cannot certainly be solved here, in this House; the preliminary constructive work must be done elsewhere; but we want a mandate from this House to the effect that the course suggested by the Select Committee be adopted, and that, I submit, Sir, is the point now before the Assembly; and I take it the House is prepared to consider it in that light.

**Sir Deva Prasad Sarvadhikary** (Calcutta : Non-Muhammadan Urban) : Sir, the report of the Select Committee now before us is a refreshing departure from ordinary methods, upon which I think, it is up to the House to congratulate the Government. The report is signed by a number of Members of the Select Committee headed by the Honourable the Home Member, and is a concession to public opinion, as brought out by the Select Committee with regard to the whole question of punishments. Sir Malcolm Hailey has told us that the Government itself intended to take up some of the matter that the Select Committee had brought out, and it is unfortunate that that was not done earlier. The Bill came before the House in a way that in the light of the investigations of the Select Committee had absolutely no justification. The Government has taken the right step in graciously acknowledging this. Unfortunately, unless a Bill of the kind that is indicated in the last but one paragraph of the Select Committee's report is immediately, of course after investigation by the Local Governments, brought before this House, the position of affairs will be much more difficult for those who have been transported than it will be by the passing of this Bill into Act. Under section 55 of the Indian Penal Code, without the consent of the offender, the punishment of transportation can be turned to one of imprisonment of either description for a term not exceeding 14 years. That was present in the minds of the framers of the Bill when the Bill was framed, though we have the statement by the Leader of the House that the Government had pressed upon itself the question of easing the situation with regard to punishment under the penal law of the country. This was not reflected in the Bill that was framed. I say, therefore, that it was unfortunate that the Bill was brought before the House in the way it has been done, and I do think that it is a very important concession to public opinion that the Honourable Sir Malcolm Hailey has made in signing this report and in agreeing to the suspension of a measure of this imperfection and to consider the whole question of punishments which has long stood in need of reconsideration in the light of modern experience—the doctor and the school-master are more useful than the jailor. I do not think it is necessary. We have practically decided to postpone the question and I do not think we need go very elaborately into the details of the measure that is to

replace the Bill and in the case of the Assembly turn its imprisonment from simple to rigorous for the time being.

**Mr. N. M. Joshi** (Nominated : Labour Interests) : Sir, I do not wish to inflict any rigorous imprisonment upon the House as suggested by my Honourable friend Sir Deva Prasad Sarvadhikary. I am also aware that I am neither an Inspector General of Prisons nor a Superintendent of Jails nor a Judge nor a Lawyer. Still, Sir, as a citizen. I claim some knowledge of the conditions of prisons in India and in Europe as well as America. I also claim some acquaintance with the mentality and character of the class of people who are considered to be criminals. Still, Sir, I do not propose to go into the details of this question. I am glad that the Select Committee has recommended that the Government should consult Local Governments as regards the whole question of the system of punishment by imprisonment. I agree with my Honourable friend, Dr. Gour, that our system of punishment by imprisonment requires a great deal of improvement. It is an antiquated system. Therefore, I am very glad that the system is going to be examined.

But I should like to know from Government information on one or two points. They appointed an Indian Jails Committee which has already reported. In that Report the Committee has recommended that when a prisoner is sent to jail, if he shows signs of improvement while in jail, he should be released on probation and that while on probation he should be placed under the supervision of some special officers known as probation-officers. Sir, this system of probation is followed by all advanced countries. I therefore feel that we should also introduce that system in our country. The Indian Jails Committee has recommended that although the system cannot be introduced in all parts of the country, still it can be introduced in large cities and towns in this country. I therefore want to know from Government whether, while they are consulting Local Governments on the question of punishment by imprisonment, they are going to consult them on the question of the practicability of introducing a system of probation. Sir, the Indian Jails Committee has also discussed the subject of indeterminate sentence. My Honourable friend, Dr. Gour, has already told the House that the object of punishment is not so much to frighten away other people into not committing crimes, but to reform the individual who commits the crime. Sir, judging from this criterion, punishment with a limited period of hard labour or simple imprisonment is not suitable. It has been found by all advanced countries that the indeterminate sentence is much better suited for that purpose. If a man goes to jail and shows signs of improvement, when the jailor finds that the man is no longer a danger to society but when released he will be a good citizen, he ought to be released whatever be the period of sentence pronounced by the Judge. I am aware that the Indian Jails Committee has come to the conclusion that India is not yet quite suited for these advanced principles of penology. I do not know what is there in the climate of India or in the mentality or in the character of the Indian people that this system should not be suitable for our country. But, Sir, I do feel that it is a system which will do a lot of good, which will tend to improve the criminal classes in our country. After all, by sending people to jails you are not

[Mr. N. M. Joshi.]

detering other people from committing crimes. That has been the experience not only of this country but of the whole world. When a man commits a crime he does it as a habit and these people are called habitual prisoners. Therefore, I want to know from Government whether they are going to consult Local Governments on the system of indeterminate sentence. Then, Sir, the Indian Jails Committee has also recommended that the Government of India should introduce the system of periodical revision of the sentences given. I hope the Government will give their consideration to this matter and will also consult Local Governments on this subject and that when they introduce their next legislation the proposals which I have put forward before the House will be embodied in that legislation.

**The Honourable Sir Malcolm Hailey :** If the House will allow me to do so, I will begin with the last speaker first and supply as far as I can the information which he has asked. With regard to the question of releasing prisoners on probation he asks whether it is our intention to consult Local Governments on this point also. I do not think that this is a point arising out of the Report of the Select Committee, but I may say that we already have the opinions of the Local Governments on the Jail Committee's Report. The question was very carefully considered by the Local Governments, and they found that the chief difficulty in adopting the system now so widely used in America and elsewhere, the system of releasing prisoners on probation, is that of finding suitable probation officers, nor do the Local Governments at the present moment find themselves in a financial position to appoint officers on any considerable scale for the purpose. We have however accepted the principle, and recommended to Local Governments to adopt it when and where they can. That is as far as we ourselves can go. It is the Local Government which has to release on probation, and not ourselves, for even if we could under the powers which we possess in the Criminal Procedure Code direct the release of an offender, we should have ourselves no means of seeing that the probation conditions are properly carried out.

**Mr. N. M. Joshi :** Is no legislation necessary ?

**The Honourable Sir Malcolm Hailey :** No. The Local Government can at present under section 401 release a prisoner on such terms as it desires. Then again as regards the indeterminate sentence, that was also dealt with as a result of the Jail Committee's Report. I think the Honourable Member will find that the amendments that were made in section 562, Criminal Procedure Code, last March will go far to effect the purpose he has in view. Finally he asked me for information regarding the periodical revision of sentences. We suggested to Local Governments, following the report of the Jail Committee, that they should appoint advisory committees which would go through the sentences of convicts and advise whether in all the circumstances the sentence could be revised. At least two Local Governments, and I think three, have appointed such committees and they are now at work. Coming to the main question ; we had an interesting discussion this morning revealing a very considerable study and knowledge of the question, and on the whole I think that the proposals of the Select Committee have been thoroughly approved in the

House. I shall not therefore attempt to go into the various opinions that have been expressed. On such points as the comparative gravity of sentences of hard labour in England and here, I admit that a variety of considerations arise, such as climatic and social conditions ; it would perhaps be difficult to establish any definite equation between the two. I would only refer to the well known fact that there are in Indian jails many milder forms of labour, such as carpet making, lithography, chick making and the like, on which prisoners can be employed, but which are nevertheless classified as hard labour. I refer to that fact only in justification of the statement that a sentence of 14 years' rigorous imprisonment does not necessarily mean that throughout that period a prisoner must be given labour as hard as he would get in England on a sentence of two years' hard labour. I confine myself merely to that statement, and it is unnecessary for the moment to draw any further comparison of the two, for we have admitted in principle the advisability of dividing rigorous imprisonment into two classes. I only wish, therefore, at this stage to make clear the limits of the inquiry, for it was on that point I think that most of the remarks were addressed to us. My Honourable friends who have spoken on our side have I think fully justified our proposal to consult both Local Governments and executive officers. Let me add that I should be very unwilling to decide a question of this kind without taking into consultation those officers who are in actual charge of the administration of jails. Not only are many of these officers skilled in penology, not only have many of them visited numbers of American and European jails in order to bring their knowledge up to date on the subject, but they are the officers who can give us first-hand information as to how far it would be possible in existing circumstances to carry out any prescription, of the law regarding division of rigorous imprisonment into two classes. But it is also necessary to define the limit of our proposed inquiry. It was never the intention I think of the Select Committee, certainly it was never my intention, that the discussion with Local Governments should range over the whole subject of the adequacy or inadequacy of punishments now provided in the Penal Code. It was not the object of this particular inquiry that we should take the whole Code and inquire into the scale of punishments provided by that Act or its allied Acts. After all, our inquiry arose out of the abolition of transportation, and the attempt to find a definite and properly graduated substitute. If in the course of our inquiry we may have to deal with punishments provided in the Code for which there is no alternative sentence of transportation, that would arise not from any intention of reconsidering the whole question of our penal sections, but merely from our desire to see that long sentences of rigorous imprisonment provided in the Code were adequately graduated. To that extent therefore, but only to that extent the inquiry would range over a somewhat wider sphere than the immediate question of the substitution of other punishments for transportation. Nor again could I myself agree to the proposal that the reference to Local Governments should be made the occasion for a re-inquiry into the whole of the management of jails, the system of discipline followed therein and the cognate questions to which Dr. Gour referred. We have just had one extended inquiry of that nature, and it would be unjustifiable, on the important but somewhat limited reference that we now have suggested, to demand that

[Sir Malcolm Hailey.]

Local Governments should again go into the whole question of the manner in which imprisonment sentences are executed in Jails. If, therefore, the House will accept the inquiry in the terms that I have stated—and they are of course exactly the terms that you will find in the Report of the Select Committee,—then we will do our best to make the inquiry as thorough as possible within the scope I have laid down ; and I have no doubt that as a result of this discussion, we shall be able to put forward before the Assembly important changes of law. If the House will accept this, then, Sir, if you will allow me to do so, I will make a formal motion, that the House approve of the action which it is proposed to take in paragraph 6 of the Report of the Select Committee ; and if the House approves this, it will for the time being dispose of the motion before it.

**Mr. P. E. Percival :** May I inform Mr. Joshi that the Committees mentioned by him have existed for a long time in the Bombay Presidency, —for the last six months at least.

**Mr. President :** Do I understand by the Honourable Home Member's motion that he intends it to take the place of the similar motion ?

**The Honourable Sir Malcolm Hailey :** Certainly, Sir ; Yes. The House having now considered the matter and having, as I understand, decided to accept our proposals, I suggest that all it need do now is to approve of the action which the Committee propose to take in paragraph 6 of their Report.

**Mr. President :** The present motion is, by leave, withdrawn.

**The Honourable Sir Malcolm Hailey :** I beg to move :

“ That this House approve of the action set forth in paragraph 6 of the Report of the Select Committee.”

**Mr. President :** *Proposed* action ?

**The Honourable Sir Malcolm Hailey :** Yes.

**Mr. President :** The question is :

“ That this House approve the proposed action set forth in paragraph 6 of the Report of the Select Committee on the Bill to provide for the abolition of the punishment of transportation in respect of criminal offences.”

**Dr. H. S. Gour :** May I suggest, Sir, a simpler course to that suggested by the Honourable Home Member,—that the Report of the Select Committee be circulated to the provinces, and the Select Committee be advised to reconsider the Bill after collecting the opinion of the provinces—that the Bill be re-circulated for the opinion of the provinces ?

**The Honourable Sir Malcolm Hailey :** I am afraid, that the Select Committee will not be in existence when the opinions of the provinces come back to us : it will be necessary probably for us to frame an entirely new Bill and to have an entirely new Select Committee.

**Dr. H. S. Gour :** Then, Sir, I would suggest a simple course, that the Bill be re-circulated for eliciting public opinion. That I think will meet all that the Honourable the Home Member has suggested, and the speeches

of the Honourable Home Member and of the other Honourable Members of the House will be sent out and a general report of the opinion of the public will be obtained, and then the Bill might be proceeded with.

**The Honourable Sir Malcolm Hailey :** Public opinion would probably be confused by this proposal. If we send out for opinion the old Bill, with a great number of speeches on it, I am afraid that it would not receive the same attention as a definite carefully-worded statement of the points on which we seek opinions.

**Mr. President :** Do I understand the Honourable Member to move that amendment ?

**Dr. H. S. Gour :** Yes, Sir.

**Mr. President :** The original question was :

“ That this House approve the proposed action set forth in paragraph 6 of the Report of the Select Committee on the Bill to provide for the abolition of the punishment of transportation in respect of criminal offences.”

“ Since which an amendment has been moved :

“ That the Bill be re-circulated for the purpose of eliciting opinion.”

The question I have to put is that that amendment be made :

The motion was negatived.

**Mr. President.:** The question is :

“ That this House approve of the proposed action set forth in paragraph 6 of the Select Committee's Report.”

The motion was adopted. ✓

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 10th July, 1923.

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