# THE

# LEGISLATIVE ASSEMBLEY DEBATES

## (Official Report)

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## FIRST SESSION

OF THE

## SECOND LEGISLATIVE ASSEMBLY, 1924

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# LEGISLATIVE ASSEMBLY.

*Thursday, 28th February, 1924.*

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

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## QUESTION AND ANSWER.

THE COLONIES COMMITTEE AND THE KENYA IMMIGRATION BILL.

**Khan Bahadur Sarfaraz Hussain Khan:** Sir, I put the questions* which I had put the other day regarding the Colonies Committee, and, if the Honourable Member in charge is prepared to reply to them, he will please do so.

**Mr. M. S. D. Butler:** Sir, I had hoped to be in a position by to-day to make a statement with regard to the personnel of the Committee, which is the matter dealt with in the Honourable Member's first question. But delay has occurred and I am afraid I must ask my Honourable friend to wait a little longer.

With regard to his second question, the position as regards the Immigration Bill is that it has been returned to the Kenya Government to be redrafted, and that the redraft is not expected to reach London until the end of March. An opportunity will then be given to the Secretary of State for India and the Government of India to express their views before any decision is taken by the Colonial Office. The Government of India expect that the Colonies Committee will assemble in London by the end of March It follows that the Committee will be in ample time to make representations before a decision is reached.

**Mr. Devaki Prasad Sinha:** Have the Government of India received any assurance either from the Colonial Office or from the Kenya Government that the Kenya Immigration Bill will not be placed before the Kenya Legislative Council until the Indian Committee has made its recommendations?

**Mr. M. S. D. Butler:** The Bill has not been introduced into the Kenya Legislative Council. Our information is that it has been returned to the Kenya Government to be redrafted, and that it will not reach England again for the approval of His Majesty's Secretary of State for the Colonies before the end of March.

**Mr. Devaki Prasad Sinha:** Do I understand that there is so far no assurance from the Colonial Government that the Bill will not be taken up by the Kenya Legislative Council until the Indian Committee has made its recommendation? At present it is only a matter of surmise.

**Mr. M. S. D. Butler:** As I have already explained, Sir, it cannot well be taken up before it has been approved by His Majesty's Secretary of State for the Colonies.

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*Vide* questions Nos. 389 and 390 on page 686 of L. A. Debates, Vol. IV.

## UNSTARRED QUESTION AND ANSWER.

### Cost of the Satara Koregaon Railway.

168. **Sardar V. N. Mutalik:** Will Government be pleased to state:

(*a*) the approximate cost of the Satara Koregaon branch of the M. and S. M. Railway, under the present conditions?

(*b*) what amount has been spent on the project up to now, and when was it spent?

(*c*) when do Government intend to take up the construction of the project?

(*d*) whether Government intend to execute the project?

**Mr. A. A. L. Parsons:** (*a*) An up-to-date estimate of the cost of the Satara Koregaon Railway has not been prepared. The 1918-19 estimate amounted to Rs. 10½ lakhs, but this is likely to be exceeded under present conditions.

(*b*) A total expenditure of Rs. 80,417 on survey charges, land and earthwork has been incurred during the years 1915-16 to 1921-22. The earthwork done was sanctioned in 1919 as a measure of famine relief.

(*c*) and (*d*). The project was estimated in 1918-19 to yield only about 1½ per cent. on its capital cost. It is not possible to say whether and, if so, when this project will be executed.

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## THE INDIAN PENAL CODE (AMENDMENT) BILL.

### Amendment of Section 375.

**Dr. H. S. Gour** (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move:

"That the Bill further to amend the Indian Penal Code (Amendment of section 375) be referred to a Select Committee consisting of the Honourable the Home Member, Colonel Sir Henry Stanyon, Diwan Bahadur M. Ramachandra Rao, Sir P. S. Sivaswamy Aiyer, Mr. M. A. Jinnah, Sardar Gulab Singh, Mr. N. M. Joshi, and myself, with instructions to report on or before the 15th March 1924."

I need not take the Honourable Members through the history of this piece of legislation because only the other day, when introducing this Bill, I gave a resumé of the facts leading up to its introduction. The opinions of the provinces have already been collected and it will be for the Select Committee to examine those opinions and to suggest such amendments as they may consider advisable. I shall not, therefore, weary the House by reading the opinions collected on this measure by the Government from the provinces. I therefore, Sir, move my motion.

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

"That the Bill further to amend the Indian Penal Code (Amendment of section 375) be referred to a Select Committee consisting of the Honourable the Home Member, Colonel Sir Henry Stanyon, Diwan Bahadur M. Ramachandra Rao, Sir P. S. Sivaswamy Aiyer, Mr. M. A. Jinnah, Sardar Gulab Singh, Mr. N. M. Joshi, and Dr. H. S. Gour, with instructions to report on or before the 15th March 1924."

**The Honourable Sir Malcolm Hailey** (Home Member): Sir, I do not desire to oppose this motion. But there are some facts and considerations which I should like to put before the House, particularly in view of the attitude which was taken up by my predecessor when Bakshi Sohan Lal's measure, which is practically identical, was considered by the Assembly. Our attitude was not, of course, then one of direct opposition.

We felt it to be a matter of great public importance and one on which we ought to be guided by public opinion. Sir William Vincent indicated, however, that in his opinion the enhanced age should not apply to a connection within the marital relation. He also suggested that, if the age were increased, then, in view of the provisions of the English law, it was no longer reasonable to apply to the offence the same penalty as for rape. Those were the considerations which he then placed before the Assembly. Since then, we have carefully reconsidered the whole question. We ourselves believe that some advance is now possible and reasonable; we hope that it would secure a sufficient measure of public support to make it effective. We are not clear in our own minds whether the advance should be up to 14 years, or a more cautious advance up to 13 years. We do not hold now that the enhanced age should not apply to a connection within the marital relation. Indeed our view is that, if there is to be an effective raising of standard in this matter, the enhanced age should apply to every case of connection, even within the marital relation. We still think, however, that it may be an advantage purely from the point of view of making the law more effective to reconsider the nature of the penalty to which the offence is liable. That is our present attitude. In view of the very great controversy that has prevailed on this subject in the past, we still think that caution is necessary, and although the previous Bill was circulated and we obtained public opinion on the question, yet nevertheless we feel that it would not be justifiable for the House to proceed to the final stages of legislation without giving the public at large some further time to consider the question. Therefore, Sir, if the Bill proceeds to a Select Committee, and that Committee is to report by the 15th of March next, I would suggest to the House that it be on the understanding that we do not proceed further with the Bill until next Session. That would give time for the Members of the House both to consider the report of the Select Committee and the previous opinions received and any further comments that may be made on the subject in the press or by public associations. I suggest this merely as a matter of caution.

I have one further suggestion for the House. Since the Select Committee will have to consider not drafting or technical details, but questions which amount almost to matters of principle, I suggest to the House that a somewhat larger Committee would probably give more satisfactory results to the House.

**Mr. B. C. Allen** (Assam: Nominated Official): In view of the attitude taken up by the Leader of the House, the House will, I hope, allow me to detain it for a few minutes while I call attention to the extreme gravity of the question now under their consideration. The subject might be dealt with under three heads: Is the existing practice harmful? Is it so harmful that it must be changed? And is there really likely to be any serious difficulty in working the law if modified? As to the harmfulness of the existing practice, it seems to me so self-evident that it might almost be accepted as an axiom. Unfortunately, however, it has existed for so many years that one cannot assume that its disadvantages are fully appreciated, even if by Members of this House, by the public outside. I would therefore like to call the attention of Honourable Members to what is said on the subject of early marriage in the last Census of India Report. The author of that Report, Mr. J. T. Marten, says:

"It implies cohabitation at an immature age, sometimes even before puberty and practically always immediately on the first signs of puberty, resulting in grave physical effects upon the girl and in all the evils of premature child-birth."

[Mr. B. C. Allen.]

He quotes in support of this opinion a work by Dr. Lankester, who writes as follows:

"Many people seem to think that such excess (sexual excess) is only harmful if unlawful, forgetting the fearful strain upon the constitution of a delicate girl of 14 years or even less, which results from the thoughtless incontinence of the newly married boy, or still more, the pitiless incontinence of the remarried man."

Doctor Lankester, I may add, does not merely advocate an increase of the age to 14 years, he thinks 16 years would be the proper age to lay down as the age of consummation of marriage in this country. He states:

"The result would be an incalculable gain in the health of the women of India and also in that of the children whom they bear."

As to the effect upon the womanhood of India of the present practice of early marriage, we must turn to such statistics as are available. The mortality from child-birth in England, where the figures can be regarded as practically accurate, is 3·9 per thousand births. Just under four mothers per thousand died when bringing children into the world. The figures for India are not equally reliable, but where they err at all, they err doubtless on the side of defect. What do we find is the recorded death rate in the towns of Calcutta and Bombay in 1921? In both cases the mortality from child-birth is 25 for every thousand babies born; twenty-five per thousand mothers. The mortality of the children of course is vastly greater. Now what do those figures mean? It is a difference of 21,000 per million. That sounds a very small thing, but work those figures out. We are all of us proud of what India did in the great war; we are rightly proud of what India did. How many Indians lost their lives? 47,000. That is a great figure. We are all of us proud of what Great Britain did in the great war. How many residence of the British Isles paid the last sacrifice? It was, I think, 668,000. That is a solemn figure; but what does this difference of 21,000 per million mean for the mothers of India in the course of a single generation? A difference of 10,000 per million means that in India between three and four million mothers lose their lives, who would have been saved had we been able to maintain the same standards of mortality here as we do in England. A difference of 20,000 per million means that it is between 6 and 7 million mothers' lives. I do not for a moment suggest that the whole of this deplorable mortality is due simply to the practice of early marriage. But it is, I believe, admitted by every stage of medical opinion that early marriage must of necessity have the most deplorable effect upon the life of the mother, and also upon the chances of surviving of the child she bears. I hope and I think that the House will agree with me that we are justified in taking almost any steps to put an end to such a deplorable condition of affairs.

**Haji Wajihuddin** (Cities of the United Provinces: Muhammadan Urban): I move that the name of Maulvi Muhammad Yakub be added to the Select Committee.

**Dr. H. S. Gour:** Sir, with reference to the remarks that have fallen from the Honourable the Home Member, I can only express my gratitude for the very sympathetic speech he has made on this occasion. I am quite willing to enlarge the Committee, and I would suggest not only the name of Maulvi Muhammad Yakub, but that of any other Member who may be

willing to come on to that Committee. I therefore suggest that the Select Committee be enlarged by the addition of the following names:

Mr. Muhammad Yakub,
Pandit Madan Mohan Malaviya,
Sardar V. N. Mutalik,
Mr. B. C. Allen,
Mr. Bipin Chandra Pal,
Mr. Darcy Lindsay,
Mr. K. Rama Aiyangar, and
Mr. S. C. Ghose.

I think we have a sufficiently large Committee and I, therefore, confine myself to those names. Mr. B. C. Roy is not willing to serve on the Committee.

**Mr. President:** I have eight names.

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

**Mr. Amar Nath Dutt** (Burdwan Division: Non-Muhammadan Rural): Sir, I beg to rise to oppose the Bill going to the Select Committee and my reasons are these. A Bill of this nature was introduced at the last Session and it was thrown out. If the Bill goes to the Select Committee we shall have to invite the opinion of the public. And it is certain the public will hold protest meetings because they are opposed to it. I may tell the House that, strictly speaking, I myself am not a very orthodox Hindu, but knowing, as I do, the feelings of the orthodox Hindus, I say that they would be opposed to the introduction of any Bill like this or to its going to a Select Committee. Everybody will remember the stream of opposition that was raised when the age of consent was raised from 10 to 12 years about 30 years ago, when Sir Andrew Scoble was in charge of the Bill, and I think it is a useless waste of public time once more to try to legislate to raise the age. Not only that, I may also tell the House that the law which has increased the age from 10 to 12 is almost a dead letter, and it is no use having legislation on social matters and I am opposed to such legislation on social matters being introduced in this House on principle. So I beg to oppose the Bill going to the Select Committee.

**Sir Campbell Rhodes** (Bengal: European): Sir, I think it is a matter for great regret that a question of this nature involving such serious consequences to so many millions of the people should be debated in a half empty house. I think it a matter of great regret that so many of our Indian friends are absent to-day and thus show that they are not keenly interested in a question which goes right down to the fundamental basis of human society. You, Sir—if you will excuse a personal reference—have taken a very prominent part lately in what is known as Baby Week. You have met throughout the country a very ready response which shows that public opinion in this country is moving rapidly. If it were not moving, Sir, I would be the last to get up and speak in support of any attempt to force the pace against the wishes of any considerable body of opinion. But, Sir, I think in the present state of India this matter is now ripe for consideration. We propose to appoint a very strong Select Committee. That Committee may decide to let the matter stand over for the

[Sir Campbell Rhodes.]

expression of public opinion till September, but I do think that we should give this House through its Select Committee an opportunity of going thoroughly into the question and, if possible, bringing about the passing of this very desirable Bill.

**Dr. L. K. Hyder** (Agra Division: Muhammadan Rural): Sir, I had no mind to intervene in this debate and I am sorry that I do not possess any books with me; but it has been my lot to study these figures. I did not know, since I am not a lawyer, what the Bill was about, but now realising the awful nature, the awful meaning of the figures quoted from the Census Report, I support wholeheartedly this measure. I shall, without hurting the religious feelings of any person in this House or of any section of the community outside—I shall simply extract the essence of those figures quoted from the last Census Report, and also from the Census Reports of other years. This is their meaning—that the generations in India are very short-lived; there is a high infant mortality; the frames of Indian women are soon exhausted; that no Indian possessed of capacity and leadership lives to a good old age. If you consider the lives of many Indians who have taken a prominent part in public life, you will find that they did not live to a ripe old age. Well I ask you, Sir, and through you the Members of this House to consider what this means, as regards loss of energy, as regards loss of capacity, as regards loss of ability, and the full meaning of these awful figures will become at once apparent.

That is not the only side of the matter. I ask you gentlemen—through you, Sir—to bring before your mind's eye a poor Indian home and to consider what happens there. This is what happens—that when there is infant mortality, there are costs involved. When the mother dies, the children die. To obtain a few miserable votes, are you going to tolerate this kind of thing—that your generations are so short-lived, that your children die and an appalling waste of human material takes place. I say with all due respect for the feelings of people who are religiously inclined—I say that this appalling human waste in this country is a very tragic phenomenon, and it is high time that efforts were made to put into the law the reformed public opinion of this country. If the objection is raised that public opinion is not ripe, I say this—Are you going to wait for public opinion? You know the extent of the evil—is it not wise for us to go ahead and avoid this appalling loss of human material? You say—wait for public opinion. Very good. I have often heard that in the course of ages these forests grew up; but is it not wise for a gardner to plant good seed himself and not leave it to the action of the winds to carry the seed or, in this case, leave it to the action of public opinion till your ideas of what is good come up for incorporation in the law? I say: Do it now, in view of the appalling loss of human material which is taking place every year in India. Read what the Director of the Labour Bureau in Bombay has to say about the waste of human material in Bombay. Why, there are any number of children born on the pavements of streets. That is what happens in Bombay. That is what is happening in every hamlet in India, and I ask those Members who are orthodox or very religious to consider whether it is not right and proper for the health of this country, for the good of this country, that the quality of the people should be improved. By passing this Bill you will be improving the quality and there need be no check on the quantity of the people either.

**Diwan Bahadur T. Rangachariar** (Madras City: Non-Muhammadan Urban): Sir, I have great pleasure in supporting the motion of Dr. Gour. I do not think there is really any question of religion involved in a matter of this kind. If really there was a question of religion involved in it,—I am speaking of the Hindu religion,—I do not think that people would practice what they are doing now. Really there is no question of religion involved in this matter at all. It is only a few members of the Hindu sect who really consummate marriages at a very early age. The large bulk of the Hindu population consummate marriages at a somewhat later age than 14. Take the Kshatriya class, take the Sudra class and take the Vaishyas and the great Kayastha community in Bengal. They do not consummate marriages so early as the few Brahmin communities who resort to that practice and even they, Sir, in recent years have been extending the age on account of public opinion being felt in this direction. Therefore, I do not think there is any danger of offending any religious sentiment, religious notion or religious principle in enacting this law.

At the same time, I should warn this House against certain dangers which underlie the provisions which are proposed to be enacted in this Bill. There is nothing like moving with caution in a matter of this sort, and there is a great deal of force in what the Honourable the Home Member said, whether the age should be at once extended to 14, whether we should not take an intermediary stage at 13 and stop there, and again, whether we should make it such a serious offence in the case of married people as to make it rape punishable with 7 years or over. These are matters which, I think, should be considered carefully, and I am glad that we have got a comprehensive Select Committee to go into this matter.

Sir, speakers who have preceded me seem to think that the whole of the infant mortality in this country is due to marriages consummated between the ages of 12 and 14. I am afraid it is claiming too much credit for this measure to attribute all the ills in this country to the early consummation of marriages. How many children who are born of mothers between the ages of 12 and 14 die as compared with the infants who are born of adult mothers? I think infant mortality and mortality amongst mothers are traceable to other causes, and not alone or mainly to this. There is of course no doubt in what my Honourable friend says, but it is the great poverty and insanitary surroundings which really contribute to the large mortality. It is also due to the ignorance of the people. These are the causes which really contribute to the appalling infant mortality. Therefore, let us not claim that all the ills of this land are due to the early consummation of marriages. Therefore, Sir, while I advocate this measure, I wish to warn the Assembly against being led away from the real issue in the case by appeals which may be made on other platforms and in other directions. This is not going to cure infant mortality at all, nor is it going to stop the death of mothers under child birth. You must take other remedies and in other directions, and I do not think this measure is going to help us materially in that direction. Sir, with these few words, I support the motion.

**Mr. Bipin Chandra Pal** (Calcutta: Non-Muhammadan Urban): I belong, Sir, to a section of the community, according to the personal law of which the minimum marriageable age for girls is 14. So, personally, even if it is raised to 16, I would not object, but 14, it seems to me, is the reasonable minimum. In 1870-71 this question of the minimum marriageable age of girls in India was thoroughly discussed by lawyers,

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social reformers and eminent medical men, and while I was listening to my Honourable friend Diwan Bahadur Rangachariar and to his remarks on the medical aspect of the case, I was reminded of the opinion of one of the most competent medical men we had at that time in Calcutta, Dr. Mahendra Lal Sircar. In his note on the Bill which subsequently passed as the Civil Marriage Act of 1872, Dr. Sircar made it absolutely clear first that, though the age of puberty, generally speaking, might be 14, the age of puberty could not be accepted from the medical point of view as the minimum marriageable age. Dr. Sircar said that, if 14 were the average minimum age of puberty for Indian girls, 16 at least ought to be the minimum marriageable age. That was competent medical opinion. Now going back to our own ancient Scriptures, we find 16 to be the marriageable age for girls practically laid down in the old Hindu medical books,—16 for girls and 28 for men. Even Manusmriti says that those girls who are not given in marriage by their parents after or before they attain puberty, should remain unmarried for three years and after these three years they might marry themselves, even if their parents did not get them married. But I will not enter into ancient medical or ancient scriptural authorities. This piece of legislation follows, as all social legislation ought to follow, public opinion, and more than public opinion, public practice. Public opinion is very slow to move. We know it. And, if this Bill were presented to a large gathering of my orthodox Hindu friends, they would throw it out. (*Mr. K. C. Neogy*: " Hear, hear ".) I know it. But what is the practice even among these orthodox people to-day? My friend, Mr. Neogy, says. ' Hear, hear ' when I say that the orthodox Hindus would throw it out. But I ask my Honourable friend, Mr. Neogy, I hope he will give us the pleasure and the benefit of his opinion on the subject—what I ask him is this: What is the average marriageable age for girls practically in his community and in the other communities of Bengal? (*Voices*: " 11 or 12 ".) I join issue with my Honourable friend, Mr. Dutt, in regard to this matter. I know as much as he does that the actual marriageable age for girls not only among Kayasthas, but among Brahmins in Bengal is much later than 14 . . . .

**Mr. Amar Nath Dutt:** No, Sir, I belong to the advanced section of the orthodox community. I have married my daughter according to the orthodox rites, while my Honourable friend, Mr. Pal, is a member of the Brahmo Samaj.

**Mr. Bipin Chandra Pal:** I am not ashamed to admit that I am a member of the Brahmo Samaj. But my Honourable friend said that he was not an orthodox Hindu, when he started speaking. Now that is not the question. I say that it is a matter of common knowledge in Bengal that girls in orthodox families also are married now much later than 14, and the reason of it is not that our friends have much advanced in their opinion socially, but that economic pressure has commenced to work upon the Hindu community in Bengal in regard to these marriages. My friends complain of the dowry system. They cannot get a bridegroom for their girls without paying a heavy price. If the bridegroom is a B.A., he wants perhaps Rs. 5,000. If he has passed his Master of Arts examination, he goes higher up. This is the state of things in Bengal. And owing to the impossibility of, not finding bridegrooms, but finding bridegrooms along with the money that will be necessary to buy them, the marriageable age of girls has gone up considerably of recent years. The marriageable age

of girls has gone up considerably among orthodox Bengalee Hindus. Parents do not admit it. But our unmarried girls in Bengal remain now at 16 from 16 to 20. That is the truth and the honest truth about it. (*Mr. Amar Nath Dutt*: "Not amongst the Kshatriyas of Bengal".) I wish my Honourable friend, Mr. Bhupendra Nath Basu, was here. He is as much a Kshatriya, as much a representative of the Kshatriyas as Mr. Dutt, and he might have enlightened us on this subject. But, in regard to this matter, if it is necessary, the Select Committee might ask for the circulation of the Bill before they make their Report. They might ask it—I leave it to the Select Committee to decide that. But I say from my own personal knowledge that in Bengal a very large number—much larger than is known to the outside world—a very large number of orthodox Hindu girls, Brahmin girls, Kshatriya girls and Vaisya girls, are married at an age later than 16 now, and owing to the reason which I have already stated. When we had the Age of Consent Bill in 1891, we had the same trouble. "Don't raise it, don't raise it. It will bring trouble. Religion is in danger, society is in danger." And those who supported that measure came in for a good deal not only of unpopularity but something more serious than unpopularity. I remember those days. But the heavens did not fall when the Age of Consent Bill of 1891 was passed into law; and I do not remember to have heard of a single case where society had any trouble over that law, because the age of consent was raised from 10 to 12. And I think, Sir, the same thing will happen even to-day. If we are able to come to some understanding upon the details of this measure and if we can pass this law, my friend there and his orthodox friends outside will go on as merrily as they are going on now, marrying their daughters at 20 and saying that they are 16. So I support this measure; Sir, on grounds of practical utility. It will remove the divergence between practice and opinion in regard to this matter. That will be a distinct moral gain. Then it will remove the physiological difficulties for the improvement of the race in regard to this matter. (*Mr. K. Ahmed*: "What about the dowry?") The dowry will settle itself. We cannot remove the dowry system by legislation in this House. And lastly, Sir, as long as these Acts were passed by a Government which was not our own Government really, though in theory they were our own Government, as long as these social legislations were undertaken by a foreign Government, we opposed it. But now this House is fully representative of the different communities of India and if this House were to pass this legislation, then it would be national legislation and not foreign legislation. I am glad that this Bill has been brought forward not by our friends opposite but by Dr. Gour who belongs to the Hindu community and is as much a representative of the educated Indian community, Hindu and Mussalman, as any other Member of this House. And for these reasons, Sir, I lend my humble support to this essentially good and beneficial measure.

**Mr. M. A. Jinnah** (Bombay City: Muhammadan Urban): Sir, I have great pleasure in supporting this motion of Dr. Gour. There is not the slightest doubt that on the ground of humanity this plea is very powerful. Also I think this House will agree with me when I say that the advanced opinion of society also demands that the age should be increased. The only question which this House has to consider and which we must all consider is this: whether this piece of legislation is going to infringe the injunctions of the Hindu religion. The discussion that has preceded may create an impression abroad that this piece of legislation is in direct conflict with the injunctions of the Hindu religion. Sir, if I were satisfied on

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that point, however much I may desire to advance, I should certainly not be a party to any measure which is likely to come in conflict with the injunctions of the Hindu religion. But for the present moment I will try and put before the House my views regarding the significance of this amendment that is proposed by this Bill. Section 375 is a section which defines the offence of rape as follows. We are only dealing now with two: the first is:

"A man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:

* * * * * * *

*Fifthly.*—With or without her consent, when she is under twelve years of age."

Sir, if there is sexual intercourse committed with or without the consent of a woman who is below the age of 12, it is an offence of rape. Dr. Gour's Bill desires that that age should be increased; that instead of 12 it should be 14. Now I ask the House, is that against the Hindu religion? Does that conflict in any manner with the Hindu religion? (*Cries of*: "Yes" "No".) Now, let us take the second amendment which is sought. That amendment is with regard to the *Exception*. The *Exception* says this:

"Sexual intercourse by a man with his own wife, the wife not being under twelve years of age, is not rape."

Now I am not standing here as one who is learned in the Shastras or the Hindu religion. I can understand it may be accepted by the Hindu religion and the Shastras that a girl ought to be married before she attains her puberty or as soon as she attains her puberty, if you like. But, Sir, I should like to be convinced whether there is anything in the Shastras or the Hindu religion that marriage should be *consummated* before she reaches the age of 12 or before she reaches the age of 14. That is the point which I want this House to understand. Where is it laid down? I am open to conviction, and, as I said, I shall be the last person to be a party to infringe any injunction of the Hindu religion or the Shastras. But I should like to be convinced where is it laid down in the Hindu law or the Hindu religion that a man must consummate a marriage with a woman at a particular age. Now, if we wish to raise this age from 12 to 13 or 14, does it in any way conflict with the Shastras and the Hindu religion? If it does not, then, Sir, I think a strong case is made out by the previous speakers—a case which is unanswerable. In the name of humanity—in view of Dr. Hyder's powerful speech to which I listened, Mr. Allen's speech to which I listened, and the speech of Mr. B. C. Pal to which I listened, I appeal to the House. There is no doubt society is progressing, and, further, India is advancing, and surely it is high time that on those pleas this House should send this Bill to the Select Committee. Therefore, Sir, I support this motion.

**Maulvi Abul Kasem** (Bengal: Nominated Non-Official): Sir, I very much regret that I have to join my friend, Mr. Amar Nath Dutt, in opposing the motion of Dr. Gour. I do not wish to go into the merits of the case as it affects Hindu religion or Hindu society, but I say that from the statement which Sir William Vincent made in the House some time back, it appears that there has been no case during these 30 years since the age was raised from 10 to 12, and so, I think that there is no necessity

for fresh legislation on this point. The age was raised from 10 to 12, because there was a sad case in which it was found that the law was defective. But since then, no such cases have cropped up which demand that there should be a change in the law. Not that I personally object to it; but when there is no demand for it, I do not see why we should rush into a social legislation. Sir, I am, as you all know, not a Hindu, but as a Bengalee I have to say with due deference to Mr. Bipin Chandra Pal that he was not entirely correct when he said that my fellow-countrymen in Bengal marry their daughters at 29 or 25 and say they are only 16.

**Mr. Bipin Chandra Pal:** Not 29. I said sometimes at 20, and say they are only 16.

**Maulvi Abul Kasem:** You said that they remained at the age of 16 from 16 to 29. But I want to ask him one question: Why is it that Hindu fathers misrepresent the age of their daughters? Is it not to avoid a social stigma that they do it? If they have to tell a lie, which I do not think they generally do, but sometimes they may have to do it, is it not on account of the social tyranny that is exercised over them? A Hindu father in my part of the country, who remains in Hindu society, tries to marry his daughter as early as he can, and if he delays the marriage, it is entirely due to the price of the bridegroom in the market. In one case, one bridegroom was sold at an auction for Rs. 19,000. (Laughter.)

**Mr. Bipin Chandra Pal:** Was it in Burdwan?

**Maulvi Abul Kasem:** Yes.

**Mr. Bipin Chandra Pal:** Say so.

**Maulvi Abul Kasem:** It was in Burdwan. Otherwise how could I know it? Babu Bipin Chandra Pal in his impassioned and eloquent speech said that, if this Bill was placed before a large gathering of orthodox Hindus, he was sure it would be thrown out. He thereby makes a statement that public opinion, as expressed at large gatherings, is not always correct. I disagree with him in that. If we think that if this Bill, which deals with social matters, is placed before a large body of Hindu orthodox men, they will throw it out, then what is there to make us rush into this legislation when there is no demand for it? Babu Bipin Chandra Pal further said that, if this Bill was introduced by people who were foreigners, certainly we would oppose it as it was opposed in 1891, but because it is introduced by one of our countrymen, therefore, we must support it, because it will be a sort of national legislation. I find no argument of logic in this Cicero-like policy that they will have nothing to do with any movement started by others. At the same time I submit, Sir, that the volume of agitation that was conducted against Sir Andrew Scoble's Bill in 1891 made a great journalist convert his paper which was a weekly into a daily. The "Amrita Bazar Patrika" had to be run as a daily paper to protest against it, and, when a similar legislation was introduced by Bakshi Sohan Lal, the "Amrita Bazar Patrika" came out again with its protest though not in such a vehement style. Public opinion is no doubt advancing and I think we ought to wait for public opinion to advance a little further so that there may be no protest. From the speeches that I have heard, the speeches of Dr. Hyder and Mr. Pal, I gather that the real idea is not to raise the age of marriage amongst the Indian people. If that is to be done, that will have to be done by society itself and not by legislation.

[Maulvi Abul Kasem.]

One other point, Sir, and I have done. I am afraid that, as the offence is a cognizable one, you will place a power in the hands of the police of unnecessary interference with the domestic life of the people, which may sometimes cause trouble in our daily life. Therefore, Sir, I beg to support my friend Mr. Dutt in opposing this motion.

**The Honourable Sir Malcolm Hailey:** May I interrupt for a moment on a question of fact? I do not think it is correct to say that Sir William Vincent asserted, when the case was argued before, that no case of prosecution had ever occurred since the age was raised. He did indeed point out the fact that prosecutions were very rare indeed, and he quoted a letter from the District Magistrate of Dacca citing a lady doctor's opinion in which it was stated that "the provisions of law are at present habitually violated." We have no record ourselves of the number of cases of prosecutions under the law as amended in 1891. But before this case comes on for discussion on the floor of the House again, I will attempt to obtain figures for the information of Honourable Members. It is of course an important item of consideration whether the law as it at present stands is effectual, because that would have some bearing on the question whether the modified law is likely to be of any effective value. At the same time, one of the considerations which influenced us in modifying our own view on the subject was that even if the law at present is not effectual, yet we may still hope to do something by setting before the public a higher standard for adoption in considering the age at which parents should arrange for the consummation of marriage.

**Mr. President:** Amendment moved:

"That the following names be added to the Select Committee:

Maulvi Muhammad Yakub,
Pandit Madan Mohan Malaviya,
Mr. B. C. Allen,
Sardar Vishnu Narayan Mutalik,
Mr. Bipin Chandra Pal,
Mr. Darcy Lindsay,
Mr. S. C. Ghose, and
Mr. K. Rama Aiyangar."

The motion was adopted.

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

"That the Bill further to amend the Indian Penal Code (Amendment of section 375) be referred to a Select Committee consisting of the Honourable the Home Member, Colonel Sir Henry Stanyon, Diwan Bahadur M. Ramachandra Rao, Sir P. S. Sivaswamy Aiyer, Mr. M. A. Jinnah, Sardar Gulab Singh, Mr. N. M. Joshi, Maulvi Muhammad Yakub, Pandit Madan Mohan Malaviya, Mr. B. C. Allen, Sardar Vishnu Narayan Mutalik, Mr. Bipin Chandra Pal, Mr. Darcy Lindsay, Mr. S. C. Ghose, Mr. K. Rama Aiyangar and the Mover, with instructions to report on or before the 15th March, 1924."

The motion was adopted.

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## THE HINDU RELIGIOUS AND CHARITABLE TRUSTS BILL.

**Dr. H. S. Gour** (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move:

"That the Bill to make provision for the better management of Hindu religious and charitable trust property and for ensuring the keeping and publication of proper accounts in respect of such properties, be circulated for the purpose of eliciting opinion thereon."

I do not propose to detain the House on this motion. On the last occasion when I introduced this Bill, I explained to the House the reasons which led me to introduce it. While my Honourable friend, Maulvi Abul Kasem, has blessed my measure, he instructed me on the last occasion to say that the Hindus of Bengal were anxious that a measure of this character should be passed by the Central Legislature. That was the day of introduction. To-day is the day for the further progress of the Bill and I hope that he will now explain to the House how essential it is that the measure which has been passed to protect the Mussalman trust property should be extended also to the Hindu public trusts. Sir, I do not wish to rush through this measure. I only desire that the Hindu public opinion should be taken and, if after the opinions have been received this measure comes once more before this House, it will be time for the House to express its views. For the present I move this motion.

12 Noon.

**The Honourable Sir Malcolm Hailey** (Home Member): I do not know if it is to the convenience of the House, but I have lately attempted to adopt the practice of giving it some idea in advance of what the attitude of Government is likely to be on the private measures introduced from time to time. Maulvi Abul Kasem's was a measure dealing with a subject which in the provinces is transferred and there were many of us who felt at the time that a measure of this nature ought to have been brought forward under provincial auspices and not in the Central Legislature. We did not, however, oppose it on that account, though we did our best in Select Committee to so remove many features which seemed to us objectionable. It will interest the House, in view of what Dr. Gour has just said, to know that so far no Local Government has found its way to give effect to the Mussalman Wakf Act. It will be remembered that power was inserted in the Bill to Local Government to introduce it either wholly or in part, or in selected areas. Madras has not yet considered the question of extension. In Bombay a Resolution recommending the application of the Act will be moved by a non-official in the Legislative Council and the Government will await the result of that Resolution. The question is under consideration in Bengal. The United Provinces have decided for the present not to introduce the measure. The Punjab has decided to extend the whole of the measure except section 6 to their province. The question is under consideration in Burma. In Bihar and Orissa the Local Government are about to publish draft rules with a view to enforcing the Act as recommended by their Legislative Council. I need not perhaps go through the other Provinces. Now, Sir, I confess that I myself have felt about Dr. Gour's present measure that, since it refers to a subject in which legislation would be introduced in a province by a Minister, it really ought to be dealt with in provincial Legislatures. I am confirmed in this feeling by the course of recent legislation in Madras itself, where of course, if this Bill were passed in its present form, it could hardly be adopted in view of recent legislation on the subject of endowments. I merely place these considerations before the House. As I have said before, we are not definitely opposed to the measure, but we feel that it is one which would be far better taken elsewhere than in this House, and we have some doubts whether the provincial Ministers would see their way to adopt it.

**Maulvi Abul Kasem** (Bengal: Nominated Non-Official): I rise to support the motion of my Honourable friend, Dr. Gour, which is a simple one, that the Bill as presented by him should be circulated for public opinion.

[Maulvi Abul Kasem.]

I would have very much liked if he had asked for a Select Committee at this stage. However, as he has decided to elicit opinions on the measure I have only to support him.

Sir, the Honourable the Home Member has said that, although the Mussalman Wakf Act was passed by this Legislature, it has not yet been introduced by any of the Local Governments. I want to remind him and this House that the Bill was passed by the Central Legislature during the last days of the last session of the late Assembly. After it was passed, it received the sanction of the Governor General some time in August and I believe it is the last Act of the last Legislature. At that time the Ministers in the provinces who had to introduce it were engaged in their election campaigns and every one was busy and they had no time to think about official business or matters of this kind. I am glad that steps are now being taken to introduce it in some of the provinces. As vested interests are at stake, there is, naturally, some opposition in certain quarters to the introduction of the measure. But I want to tell the House that under this Bill as introduced by Dr. Gour the only thing that is required to be done is submission and publication of accounts. That only gives facilities to anybody interested in a particular endowment or trust to institute proceedings against the trustees. The law, as it stands at present, gives a right to anybody who is interested in any trust to apply to the civil court for certain remedies, but the applicant has not got the information necessary to enable him to succeed in his case. Therefore this Bill only provides that necessary information should be supplied to the public in order to enable them to take legal steps against the trustees concerned. It does not interfere with the rights or privileges of the trustees. The Bill is only a copy of the Mussalman Wakf Act, which was thoroughly discussed in this House and was very carefully considered by a Select Committee. What is more, the Bill as introduced by me was a measure of a very different type. It contained very many details and so it had to go to the various Local Governments and it took time. I want to make an appeal to the Honourable the Home Member. When the Mussalman Wakf Act was introduced in 1921 and circulated for opinion, the opinions were not received from Local Governments till 1923 and that was the reason why there was so much delay in getting it through. I hope that greater expedition will be effected with regard to Dr. Gour's Bill as it may seriously affect the Hindu public at large and that an opportunity will be afforded to this House to see the Bill through at an early date.

**Sir P. S. Sivaswamy Aiyer** (Madras: Nominated Non-Official): While the object of Dr. Gour's Bill must command our sympathy, I am rather disposed to concur in the observations which have fallen from the Honourable the Home Member. Circumstances vary considerably in different provinces. There are institutions which are peculiar to particular provinces in regard to which the provincial Legislatures will be more competent to legislate than the Central Government. Quite recently we had a legislative measure introduced in Madras with this object of improving the administration of Hindu religious endowments. There was a keen agitation over the provisions of this Bill and I believe it has since been withdrawn or at any rate it has not been passed. The controversy there arose over a class of institutions known as *mutts*. There is a great difference of opinion as to whether this class of institutions should or should not be included within the scope of the Bill. With regard to Dr. Gour's present

measure also it seems to be far from clear whether he intends to include this class of institutions within the definition of trusts or not. If he intends to bring *mutts* within the purview of this Bill, I can assure him that it will give rise to very considerable opposition in the country. It is preferable that measures of this kind should be left to the provincial Legislatures instead of being taken up here; but if Dr. Gour should decide to go on with this Bill I would suggest his excluding institutions like *mutts* from the scope of his Bill.

**Mr. K. Rama Aiyangar** (Madura and Ramnad *cum* Tinnevelly: Non-Muhammadan Rural): I have carefully perused this Bill and I have not been able to see that Dr. Gour has defined the charitable or religious trusts that he has mentioned here. I do not know if he means to include in its scope all private, family or personal trusts. If that is intended to be done by this Bill, it will absolutely be not only not practical but it will interfere with very small trusts which are being performed by family members for the purpose of the institutions they maintain. In the Madras Presidency, while I was in the local Legislative Council there, the question was brought up whether all private trusts also should not be brought under some such control and the Nattukottai Chetty community, who have a large number of small trusts in almost every family, absolutely objected and I was supporting them in the view that, if they were brought under this kind of control, there will be greater danger than real benefit to the trusts themselves. To ask every member who has a few hundred rupees or say a few thousand rupees to spend on a particular watershed pandal or other small purposes to file these accounts every year in court and also to get some sum spent in satisfying everybody there will practically not be in the interests of the trusts themselves. I should have very much liked to have had the matter defined here. The Preamble does not mention it. Section 3 wants every trustee to come forward and render accounts and all that and reference of this kind to the provinces will not at all help us. Unless the matter is specifically stated, it would not be very useful and I think there will be considerable difficulty in considering the proposals.

**Dr. H. S. Gour:** I shall very briefly reply to the criticisms made on my Bill. The Honourable the Home Member says that this is a piece of legislation which might be left to the local Legislatures. Well, Sir, we are following precedents. The last Assembly has protected Muhammadan trusts by passing an Act of the Central Legislature and I have no doubt that the Government who were parties to that piece of legislation must have considered the question which the Honourable the Home Member has raised in connection with my Bill. That, Sir, is a question which is covered by my motion, namely, that the Bill be circulated to the Provinces for eliciting further opinions thereon. If the Local Governments, acting with the Ministry in the various provinces, state their reasons why this piece of legislation should be left to the various provinces, it will be then time for this House to reconsider its decision. In accepting this motion this House does not stand committed to the principle of the Bill. All that this House decides is that it is a measure which calls for further examination and in sending this Bill to the Provinces for the purpose of eliciting public opinions thereon it is doing exactly what the Honourable the Home Member would like to do, namely, to consult Local Governments, the Ministers and public and private bodies affected by the Bill. I therefore submit that that is not an objection which need detain us at the present moment.

[Dr. H. S. Gour.]

The next question was that raised by my Honourable friend, Sir Sivaswamy Aiyer, namely, that of *mutts*. I am quite willing that, when this Bill goes to the public for the purpose of eliciting their opinion, special reference should be made to the peculiar character of *mutts* in the Madras Presidency and, when these opinions are collected, I have no doubt that the Honourable Sir Sivaswamy Aiyer will assist us in the Select Committee, if the Bill ever goes to that body, and place the case of *mutts* before that body. At present we are not going into the details of this measure but we are merely asking this House to send the Bill to elicit public opinions upon it. The same remarks apply to my friend, Mr. Kama Aiyangar. He tells me that I have not defined trusts. If he turns to section 2, clause (*a*), he will find that I have done so, but whether that definition is sufficiently comprehensive or precise and covers or excludes the trusts of the character he has mentioned, is again a matter which we cannot go into at the present moment. That again is a question which could be discussed when we consider the principle of the Bill and it is once again a matter upon which we shall invite the opinion of the Select Committee. As I have said, the House stands committed to nothing. It only wants that this measure should be circulated to the public and public opinion should be collected thereon. If I had to defend the principle of this measure, I feel that I should have the Hindu public behind me on this subject. From time immemorial Hindu trusts which were created and endowed by a succession of pious donors have been managed by individuals and bodies who do not recognise their trust character and, if I were to ask any Hindu to make an inventory of all the Hindu public trusts in this country, would he be able to do so? My measure wishes to place upon the register for the benefit of posterity a list of all public endowments which are trust property and the profits of which must be utilised for a public purpose. Is that an ignoble desire? Can any Hindu here think that public trusts do not require public supervision? (*A Voice*: "Not personal.") Does anybody think that public trusts should go into private hands and that they should be treated, as in some cases they have been treated, as belonging to the individuals who enter upon their trusts as managers and *shebaits* and as representatives of the public? This is the short question. As I say, I am not raising the question of principle here. I am only asking this House to give me the liberty of obtaining public opinions; when those public opinions have been obtained, those who are affected by the Bill will be heard and its principle discussed in detail. At this moment, as I have said, Sir, I feel that the entire body of public opinion in this House will support my measure and I, therefore, Sir, move it.

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

"That the Bill to make provision for the better management of Hindu religious and charitable trust property and for ensuring the keeping and publication of proper accounts in respect of such properties, be circulated for the purpose of eliciting opinion thereon."

The motion was adopted.

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## THE ADOPTION (REGISTRATION) BILL.

**Dr. H. S. Gour** (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I move for leave to introduce a Bill to prescribe a registered instrument as necessary for a valid adoption affecting property.

Honourable Members will find that a Bill of this character was introduced by me in the last session of the Assembly. The public opinions thereon were collected and, when I moved for reference of the Bill to a Select Committee, it was opposed by Government on the ground that it required certain changes which I had not made. I then withdrew the measure. I have since made the necessary changes and at the present moment, Sir, I am only permitted to make a short speech explaining its main principles. The Bill is merely intended to provide a reliable piece of evidence for the purpose of establishing valid adoptions. Honourable Members who practise in the civil courts know that in cases of large estates, as soon as the owner dies, faked adoptions are not infrequently set up and costly litigation is the result. I only wish that in the case of valuable estates the execution of a registered instrument should be made compulsory and not optional as it is at present. I do not know how far the modified measure, I ask the leave of this House to introduce, will be received by the outside Hindu public, but, if I find that public opinion upon the measure is adverse to any change, I shall bow to their decision. For the present, Sir, I only beg leave to introduce it.

**Mr. C. Duraiswami Aiyangar** (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, I rise to oppose this motion. It goes to the root of the matter and if I am correct in my impression that this Bill has not received the assent of His Excellency the Governor General prior to its introduction, then, however reluctantly it may be, I think I must take a point of order under section 67, clause (2) (*b*) of the Government of India Act and rule 19, clause (3). I say I take this point of order reluctantly because I do not ordinarily wish that the power to prevent a useful piece of legislation should be vested only in one individual however high he may be. It may be ordinarily left to the Legislative Assembly itself, but in this case, Sir, I am willing to use every possible tool which can defeat this measure, which I think goes to the root of the Hindu religion.

**The Honourable Sir Malcolm Hailey** (Home Member): May I interrupt the Honourable Member. It was his point I think that this Bill had not received sanction under section 67 (2) (*b*). I can give the Honourable Member the information that the Governor General has given sanction under that section.

**Dr. H. S. Gour:** I may further add that, if the Honourable Member has not seen it, the sanction is endorsed on the back of the Bill.

**Mr. C. Duraiswami Aiyangar:** Sir, I proceed to the objections to the principle of this legislation. The law of adoption in the Hindu religion is part of that religion, it is a part of Hindu religious rites and part of Hindu religious usage. Sir, in this matter I can quote Dr. Gour against himself because he has published a treatise called "The Hindu Code" and has even taken some steps to efface the Code of Manu by his own Code. I can quote Dr. Gour against himself. At page 10 of his general introduction he says:

"The one outstanding difference between the two branches of the Aryan family, migrated in opposite directions, is in their mental outlook on life. The one migrating to the east were meekly submissive to the usages which they continued to regard as *records of divine wisdom*, while the others threw the divine influence in the back ground and secularized their laws which they modified with the growing earnestness of the age."

This was in connection with *adoption*,

[Mr. C. Duraiswami Aiyangar.]

And then, Sir, at page 87, he speaks of the law of adoption again. There he has a section in the Code which he has formulated and which he is going to introduce bit by bit in this Assembly until he has his Code complete,—there he has a section which reads:

"In the Dravid country she may make an adoption after consulting thereon all her husband's *sapindas*, and with the assent of all or the majority of them, thereto: provided that if only some of them assent to the adoption made, it will still be valid if it is proper and was made in the *bona fide* performance of a religious duty."

That is the law of adoption in the Code which he has formulated. In his last paragraph of the general introduction to his Code, paragraph 225, at page 78, he gives his justification for framing a Code for us. He says:

"An effort was recently made in the Indian Legislature to secularize and codify the law as had been done in Rome fifteen hundred years ago, but the Government, though sympathetic, found itself confronted with a large and powerful volume of orthodox opposition which has given a pause to its codifying ardour. And so for the present there seems little hope for the Hindus unless *a new Avatar* arises to overcome their prejudices and reform their religious law."

I may submit, Sir, that until now we have not recognized that Dr. Gour is the new *Avatar*. Now this question of the law of adoption goes to the root of Hindu religion, because the very word "son", which in Sanskrit is "Putra", is derived from the text "*Punnamno Narakatrayata iti Putraha*". That is, one who saves his parents from going into the hell called *puth* is called *putra*, and it is a part of Hindu religion that a sonless man goes to the hell called *puth*, and therefore, if he has not got a natural-born son, the law of religious adoption prescribes that he may adopt a son; and the text upon which the law of adoption stands is also "*Pindothaka kriyaheto nama sankeerthanayasha*". "For the purpose of offering funeral obligations to his parents and ancestors and for the perpetuation of the lineage, an adoption is made." Therefore, Sir, it is clear that the law of adoption is not a secular law among the Hindus but it is a purely religious law. It is part of their religion, it is part of their religious rites, it is part of their religious usage. The law of adoption has also a number of ramifications, and in various branches of it and in everyone of these branches, you will find the religious element pervading. For instance, the rule about adoption is that only a sonless man can adopt. If it is a secular matter, he can adopt a number of sons, but it is a purely religious matter; the prescription of the Hindu religion is that, if he has no son to prevent him from going to the hell called *puth*, the alternative left to him is to adopt one son, and that is necessary to prevent him from going to hell and not for the luxury of having a son. Sir, another rule of Hindu adoption is that only one adoption can be made. If he takes one son in adoption, as long as that son is alive, he cannot make another adoption. Then, if the husband dies without giving any authority to adopt, the law says that the widow can take a son in adoption only by the authority or consent of her husband's kinsmen—"*Sapindas*" as they are called, and then, the *Sapindas* can give their consent only on religious grounds, and an application for such authorisation by *Sapindas* can only be supported on the ground of the spiritual benefit of the deceased husband. Sir, under certain circumstances an adoption during the time of pollution becomes also invalid, and an adoption is not simply a secular act but it is accompanied by a *homam* a religious ceremony called the *Datta-homam*. Then the religious effect of such an adoption is that, while the natural son must perform the obsequies, the annual *sradhs*, *tarpans* on new moon day and on eclipse day, of his own natural father, the moment

he is adopted by this ceremony, he begins to perform all these ceremonies towards his adopted father and ancestors in that line. All these circumstances will clearly go to show that the law of adoption is purely a part of Hindu religion, and it cannot be interfered with by legislation of this kind. The legislation which Dr. Gour is seeking to undertake now is to render the religious sacrament invalid, for the simple reason that the man who is adopted has to get a property worth more than Rs. 5,000. If the property which he gets by virtue of his adoption is less than Rs. 5,000, then only the adoption will be valid, but above that, a man is not entitled to observe his religion and adopt a son for purposes of his *sradhs* and other ceremonies, for the simple sin of his having been possessed of more than Rs. 5,000 worth of property without registration. If he performs the adoption within one month of his death—I am unable to understand how a man can adopt when he has departed this life and gone to hell, as you will find from clause 2 here; that is the only exception which he makes; and he empowers a man to adopt after he has gone to hell and not so long as he is on earth. Now, Sir, I say that this is a case in which clearly . . . . (*Diwan Bahadur T. Rangachariar*: "No, he *means* before".) Now, what I wish to submit is that this question deeply affects the Hindu religion, and it is not proper for the Legislature to interfere and make an adoption invalid whatever may be the circumstances. Now, Sir, Dr Gour introduces a Bill for placing restrictions on a Hindu's power of making an adoption for the sake of religious elevation. If this principle is to be carried by legislation, there is nothing to prevent a legislation to-morrow for registering marriages also under Hindu Law. Hindu marriages and Hindu adoptions are all religious sacraments and should not be interfered with by secular laws curtailing such powers. Therefore, Sir, I think there is strong objection to this Bill being allowed to be introduced into this Assembly; and it will also create difficulties on the principle on which he wants to introduce this legislation, that is, to avoid litigation. Really it will multiply litigation. A man living in a village remote from a Sub-Registrar's office will be prevented from making an adoption if he has property worth more than Rs. 5,000—such an adoption will become invalid according to the principle of this Bill. Therefore, Sir, while it does not reduce litigation in any manner, it seriously affects the Hindu religious principles and I submit to this House, to all sections of this House, to assist me in seeing that Hindu religious feelings are not offended by a legislation of this kind.

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

"That leave be given to introduce a Bill to prescribe a registered instrument as necessary for a valid adoption affecting property."

The motion was negatived.

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## THE INDIAN REGISTRATION (AMENDMENT) BILL.

**Diwan Bahadur T. Rangachariar** (Madras City: Non-Muhammadan Urban): Sir, I beg leave to introduce a Bill further to amend the Indian Registration Act, 1908.

Honourable Members are aware that documents, both testamentary and non-testamentary, are registered under the Indian Registration Act of 1908. There are officers called District Registrars and Sub-Registrars. Sub-Registrars are scattered throughout the district, whereas the District Registrar is generally at headquarters. With reference to non-testamentary instruments, Honourable Members will notice that under section 35 of the Act,

[Diwan Bahadur T. Rangachariar.]

sub-clause (iii) of that section, if the executant when he appears before the registering officer denies the execution, or if any person by whom the document purports to be executed is dead and his legal representative or assign denies its execution, the registering officer, if he is a Sub-Registrar, has no power to inquire whether the man really executed the document or not. On the mere denial, whether true or false, he is bound to refuse registration and for the document to be so endorsed as refused, a party has to go all the way to the District Registrar in order to get a formal order from him for inquiry. The District Registrar makes the inquiry under sections 74 and 75 of the Act. Then when he makes the inquiry and finds that the document was really executed by the person who falsely denied the execution, then he orders a registration, and then on that order the party has to go back to the Sub-Registrar with that endorsement and then gets the document registered and in case the Registrar holds that the document was not executed, then the party has a remedy of going to the civil court, as Honourable Members will notice, under section 77 in order to get a decree of the court directing registration. Now, there was a time perhaps when Sub-Registrars were not considered competent enough to go into this question of fact whether really the executant executed the document or not, when education was not so far spread and recruitment to the Registration Department was perhaps from people who were not thoroughly familiar with judicial methods. But I know, speaking for my province, almost every Sub-Registrar is a graduate in Arts; and Honourable Members will also remember in the case of wills under section 41 even when the will is presented to a Sub-Registrar after the death of the executant, then he has got the power to inquire whether the will or authority was executed by the testator or donor as the case may be, so that even under the Act in the matter of execution in the matter of inquiry as to the factum of execution, Sub-Registrars are given the power; and therefore it appears rather anomalous that on this simple matter parties should be driven to this formality of first of all getting refusal from the Sub-Registrar and going all the way to the district headquarters in order to prove the fact that the executant really executed the documents. And after all registration of a document does not by itself give any validity to it. The document in order to be valid has to comply with other requirements. Those other requirements of the law are not dispensed with by the mere fact that a document has been registered. Now, there are districts and districts. Speaking of my own province, in a district like Vizagapatam or Tanjore or other districts which are very big districts, people living in remote parts have to take all the witnesses to long distances in order to get the execution proved—a simple matter like that; and really there is no object at all gained by reserving this power in the hands of the District Registrar. We are progressing fast. The object of my Bill is in order to enable some Sub-Registrars, if not all, to hold this inquiry as to the factum of execution. Honourable Members know that under the proviso to section 35, if the officer before whom a document is presented is the District Registrar himself, he is enabled to hold an inquiry on the spot and direct registration if he finds the document has been executed; but it is not so in the case of the Sub-Registrar. The provision which I want to have enacted is to add a power to the Local Government under section 7 of the Act. It is in these words:

"The Local Government may by notification declare any Sub-Registrar to be a Registrar within the meaning of the proviso to section 35, and all provisions contained in sections 74 to 77 which apply to documents presented for registration to a Registrar shall also apply to documents presented for registration to such Sub-Registrar."

As I have explained, the object of this provision is to enable the Local Government to declare the Sub-Registrars they may consider competent and qualified to hold this inquiry. It will facilitate the despatch of business; it will conduce to the convenience of parties; and really you will be removing an anomaly in the Act which provides that he can hold an inquiry as to the execution of one document, namely, wills, whereas he cannot hold an inquiry as regards non-testamentary instruments; and I really see no objection to this course being adopted. I am not providing that all Sub-Registrars should be entrusted with this power. I am only enacting an enabling clause enabling Local Governments to empower certain Sub-Registrars to hold this inquiry. You will be saving the parties a lot of expense, worry and annoyance. I, therefore, Sir, seek leave to introduce the measure.

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

"That leave be given to introduce a Bill further to amend the Indian Registration Act, 1908."

The motion was adopted.

**Diwan Bahadur T. Rangachariar:** I introduce the Bill, Sir.

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## THE HINDU COPARCENER'S LIABILITY BILL.

**Dr. H. S. Gour** (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I move for leave to introduce a Bill to define the liability of a Hindu coparcener.

The Bill I seek leave of the House to introduce has nothing to do with what we have been hearing from my friend, Mr. Duraiswami Aiyangar, namely, the Hindu religious law. It is intended to settle a conflict which has arisen since the decision of their Lordships of the Privy Council in what is known as Sahu Ram's case. Honourable Members will remember that for a long series of years commencing with the decision of the Privy Council in 14 Bengal Law Reports, page 187, the well known case of Girdharilal *vs.* Kantoo Lall, down to the time when Lord Shaw delivered the judgment of their Lordships of the Privy Council in Sahu Ram's case, it was understood to be the undisputed and established principle of Hindu Law that a father was entitled to incur a debt so as to make his son liable provided the debt was not illegal or immoral. For the first time Lord Shaw in an *obiter dictum* set out a view in conflict with the pre-existing law and laid down that the antecedent debt for which the son is held liable must be a debt incurred by the father without reference to the family property and independently of it. This was a startling proposition, so startling that so great a writer as Mr. Mayne in his latest edition, page 421, paragraph 311A, comments on this case in the following terms. He says, the Privy Council decision in Sahu Ram's case reported in 39 Allahabad, page 487, Privy Council, introduces a qualification contained in the words that the debt must not only be antecedently incurred but incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be available by such joint estate It:

"is here enunciated for the first time and however weighty and emphatic an expression of opinion it may be thought to be, it is clearly a *dictum* not necessary for the decision of the point actually before the Board on the facts before it. If given effect to, it must unquestionably unsettle what has hitherto in India for long been considered as settled law."

[Dr. H. S. Gour.]

Well, Sir, after this unsettling decision of their Lordships of the Privy Council, the question came up before the various High Courts. The Madras High Court and the Patna High Court in two Full Bench decisions sought to distinguish this case of their Lordships of the Privy Council on the ground that their Lordships could not have made a clean sweep of the law as enunciated by themselves in the previous decisions and as followed by the Indian Courts for several generations and they re-affirmed the previous principles which they had enunciated as more in consonance with Hindu Law than their Lordships' decision in Sahu Ram's case. Unfortunately, in a later case, an occasion arose where a question of antecedent debt was concerned; Lord Shaw delivering judgment of the Privy Council re-affirmed his previous view. But I have been informed, Sir, by an *ex*-Judge of the High Court that that learned Judge in a decision given a few months back has recognised the force of objections raised by the Indian High Courts and has practically gone back upon the two decisions. The result of this statement and restatement of Hindu Law has been an utter confusion in the Indian High Courts. I have set out in my Statement of Objects and Reasons the conflicting view prevailing in the Indian Courts on the meaning of what is an ' antecedent debt '. And, I think it is the duty of this Legislature to define with precision and in clear terms as to what it wants the Judges of this country to mean when the term ' antecedent debt ' is used in this connection. Sir, only the other day, when the Supplementary Grants were before this House, Honourable Members voted a large sum of money for the purpose of preventing judicial delays. A Committee is sitting inquiring into the causes of laws delays. I am sure, Sir, Members of this House will realise what portion of laws delays is due to the uncertainty of law created by conflicting decisions, which, I submit, it is the duty of the Legislature to settle for the guidance of the Courts in this country. I do not know whether my friend on the other side is going to oppose this motion. If I had known this on the last occasion I would have anticipated his objection. I am only introducing this measure and it is unfair to muzzle me at this stage. (Laughter.) It was unfair of my friend to spring upon me from a bush unobserved when I anticipated no attack upon my measure at this preliminary stage.

**Mr. C. Duraiswami Aiyangar** (Madras ceded districts and Chittoor: Non-Muhammadan Rural): I do not know what my Honourable friend, Dr. Gour, is referring to. If he is referring to the conversation which we had yesterday, then I should like to point out that I distinctly made him understand that I was going to oppose his Adoption Bill.

**Dr. H. S. Gour:** Well, Sir, I can presume from what my learned friend has said that he is not going to oppose this measure. (*A Voice*: " You are much too sanguine ".) Fortified in that belief, I rest content by asking the leave of this House to introduce this measure.

**The Honourable Sir Malcolm Hailey** (Home Member): I ask your permission, Sir, to address the House very briefly, not, as far as I am concerned, for the purpose of opposing the Bill—because I agree with Dr. Gour that when a measure of a somewhat complicated nature is before the House it is not proper to attempt an out-and-out decision on a single speech, which may have to deal with somewhat intricate issues. I would only ask that before the Bill takes any further stage, the Mover and those interested in the measure should consult the most recent ruling of the Privy Council, namely, Raja Bahadur Brij Narain *vs.* Mahadeo Prasad, which was delivered

on the 14th November 1923 (*Dr. H. S. Gour*: 'That is the ruling I referred to''), and which, in our belief, solves the whole of the difficulty arising out of the case of Sahu Ram. It may be for the convenience of the Members of the House if they study that case before we again discuss this measure. The remaining clauses of the Bill are all in the nature of a codification of a part of the Hindu Law and we shall deal with these ourselves when the case comes up again before the Assembly.

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

"That leave be given to introduce a Bill to define the liability of a Hindu Coparcener."

The motion was adopted.

**Dr. H. S. Gour:** I introduce the Bill.

The Assembly then adjourned till Half Past Four of the Clock on Friday, the 29th February, 1924.