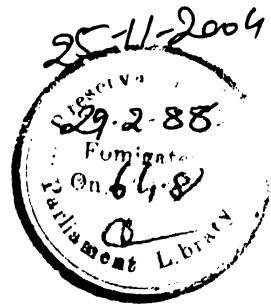


THE
COUNCIL OF STATE DEBATES
(Official Report)

Volume IV, Part I

(From the 30th January to the 25th March 1924)

FOURTH SESSION
OF THE
COUNCIL OF STATE, 1924



DELHI
GOVERNMENT CENTRAL PRESS
1924

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COUNCIL OF STATE.

Tuesday, the 11th March, 1924.

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

QUESTIONS AND ANSWERS.

PREVENTION OF *Jathas* PROCEEDING FROM BRITISH TERRITORY TO JAITO.

182. THE HONOURABLE DR. SIE DEVA PRASAD SARVADHIKARY.

(a) When did the Government come to know that the Akali *Jatha* that had recently conflict with the Nabha Administration was about to leave British Indian territory for Jaito?

(b) What steps did the Government take to prevent the *Jatha* leaving British Indian territory and going to Jaito?

(c) If no steps were taken to prevent this, would the Government please state why no such steps were taken?

(d) Do the Government propose to take any steps, in future, for preventing *Jathas* leaving British Indian territory?

(e) Is it a fact that a portion of the *Jatha* came from a neighbouring Indian State and passed through British India?

THE HONOURABLE MR. J. CRERAR: (a) Information of the departure of the *Jatha* from Amritsar on February 9th was received on February 10th.

(b) and (c) The conditions on which the *Jatha* would be allowed to perform religious ceremonies at Jaito were announced as soon as the fact of its departure was known to the Government of India and formal notice of these was given to the *Jatha* on at least three occasions during its march. No other steps were taken to prevent its leaving British territory as Government were not then prepared to assume that it would depart from its proclaimed intention of peacefully celebrating such ceremonies. Any forcible steps to disperse or restrain the *Jatha* would have involved a contrary assumption, and Government desired to make it clear that all reasonable facilities would be granted for a *bona fide* religious observance.

(d) Information has been received that a second *Jatha* left Amritsar for Jaito on February 28th. It is understood that the organisers of the *Jatha* have appealed to the Sikh public to refrain from joining it on its march, and, if this appeal is complied with, the risk of any breach of the peace will be materially reduced. Further action must however necessarily be determined by the actual circumstances of the case.

(e) Not so far as Government are aware.

THE HONOURABLE SARDAR JOGENDRA SINGH: May I inquire whether, if the *Jatha* give an undertaking that they will not take any part in

politics whatsoever, it will be allowed to proceed and perform the Granth Path?

THE HONOURABLE MR. J. CRERAR: I would invite the Honourable Member's attention to the terms of the announcement which was made in the press. It was there clearly laid down that, provided the *Jatha* undertook to abstain from any political activity during their sojourn in Naba territory they would be allowed to enter the Gurdwara to perform their ceremonies.

THE HONOURABLE SARDAR JOGENDRA SINGH: The whole of the *Jatha*?

THE HONOURABLE MR. J. CRERAR: They will be allowed in batches of 50 at a time. If those conditions are accepted by the *Jatha*, there will be no obstacle placed in the way of the whole *Jatha* being permitted to perform the religious ceremonies.

THE HONOURABLE MR. S. VEDAMURTI: Will the Honourable Member tell us if this second *Jatha* had arms and weapons or not?

THE HONOURABLE MR. J. CRERAR: I have no information on that point, Sir.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Is it a fact that the organisers of this *Jatha* have offered that the *Jatha* should be searched at whatever place the authorities please, specially before they enter Naba territory, and if so, have any steps been taken in this behalf?

THE HONOURABLE MR. J. CRERAR: Will the Honourable Member repeat the question?

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Is it a fact that the organisers of the *Jatha* have suggested and offered that the *Jatha* should be searched at whatever place the authorities please, and specially before they enter Naba territory, and if so, have any steps been taken to do so before they enter the Naba territory?

THE HONOURABLE MR. J. CRERAR: No, Sir. No such intimation has been received by the Government of India.

THE HONOURABLE SAIYID RAZA ALI: With reference to the Honourable Member's reply just given, are Government prepared to say whether recourse would be had to force if the *Jatha*, consisting of 500, refuse to go to the Jaito Gurdwara in batches of 50 each?

THE HONOURABLE MR. J. CRERAR: I regret once more that I must ask the Honourable Member to repeat the question. The precise point did not reach my ears.

THE HONOURABLE SAIYID RAZA ALI: The question, Sir, is this. The *Jatha* consist of 500 persons and the terms that have been offered to this *Jatha* are that if they are prepared to go in batches of not exceeding 50 each to the Jaito Gurdwara, they would be allowed to do so. What I want to know is, if the *Jatha* refuse to accept these terms and insist on marching in their full number, namely, 500, would recourse be had to force in dispersing this *Jatha* of 500?

THE HONOURABLE MR. J. CRERAR: In reply to that, Sir, I can only say that, if the Honourable Member will prophesy to me what will happen.

I shall be in a better position to indicate the measures that will be taken. All I can say is that I hope and trust that nothing untoward will happen.

THE HONOURABLE SARDAR JOGENDRA SINGH: If the *Jatha* give an undertaking not to take any part in political activities, I thought that the Government were going to allow the *Jatha* to proceed and complete the *Granth Path*. Is not that so?

THE HONOURABLE THE PRESIDENT: The Honourable Member has had an answer on that point in reply to his previous supplementary question.

APPOINTMENT OF MEMBERS OF THE INDIAN CIVIL SERVICE AS SECRETARIES AND DEPUTY SECRETARIES DURING THE LAST FIVE YEARS.

183. THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Would the Government please lay on the table a statement showing what members of the Indian Civil Service have been appointed as Secretaries and Deputy Secretaries to the Government of India during the last five years and from what provinces?

THE HONOURABLE MR. J. CRERAR: The information asked for is being collected and will be laid on the table.

AMENDMENT OF THE INDIAN LIFE INSURANCE COMPANIES ACT, 1912.

184. THE HONOURABLE MR. PHIROZE C. SETHNA: Will Government be pleased to state—

- (a) if they have received any requests from commercial bodies and others—
 - (i) to amend the existing Life Insurance Companies Act, 1912, and
 - (ii) to introduce fresh legislation to require Indian and non-Indian companies doing fire, marine, workmen's compensation or other kinds of insurance work to furnish details of their premium income, etc.;
- (b) if the reply to (a) is in the affirmative, will such legislation be introduced during this Session, and if not, why not?

THE HONOURABLE MR. D. T. CHADWICK: The present Indian Insurance Act relates only to Life Insurance. The Government of India consider that a mere amendment of that Act would be unsatisfactory. They therefore consider it preferable to introduce legislation repealing that Act and dealing with life, fire and employers' liability. Marine and other forms of insurance will probably also be covered in so far as they form part of the business of a company transacting life, fire or employers' liability insurance. It was not possible to prepare such a comprehensive Bill in time for consideration this Session. Progress has however been made in preparing a draft and it is expected that commercial opinion will be consulted upon it during the ensuing months.

THE HONOURABLE MR. PHIROZE C. SETHNA: Is legislation likely to be introduced in the next Session in May?

THE HONOURABLE MR. D. T. CHADWICK: That will depend on how long the commercial bodies will take to formulate their opinions. In May? I do not expect that that is likely.

THE HONOURABLE MR. PHIROZE C. SETHNA: In September?

THE HONOURABLE MR. D. T. CHADWICK: In September? That will depend on how long commercial bodies will take to give us their views.

THE HONOURABLE MR. PHIROZE C. SETHNA: Do I understand that companies which do exclusively marine business are proposed to be left out?

THE HONOURABLE MR. D. T. CHADWICK: As the draft is, such companies would be left out, as the Government of India are not aware that many in India are concerned solely with that class of business. If there are many such, I have no doubt that the reports which we will receive from commercial opinion will certainly bring them to notice.

THE HONOURABLE MR. PHIROZE C. SETHNA: There are no Indian Marine Insurance Companies doing exclusively marine business but there are certainly non-Indian companies doing exclusively marine business in this country.

INDIAN TOLLS BILL.

THE HONOURABLE SAIYID RAZA ALI (United Provinces East: Muhammadan): I put a question yesterday with a view to ascertain as to what had been the fate of the Indian Tolls Bill, which was passed by this House on the 21st February last. It so happened, Sir, that at the time the Leader of the House was not present here, and therefore, no information could be had in reply to my question. Now, it is gratifying to note that the Honourable the Leader of the House is in his place this morning. I would like to know as to what has been the fate of this Bill, and further what steps the Government representative, the Leader of the House, proposes to take in connection with that question. I may simply say that that involves a very nice constitutional point and therefore we will have to go through it very carefully. It would be premature for me to point out as to what that constitutional point is till I get a reply from the Honourable the Leader of the House.

THE HONOURABLE THE PRESIDENT: I may say that if it is a question between the two Houses, the communication is not made to the Leader of the House but to the President of this Chamber. That is the manner in which this House receives intimation of the action of the other House, not by a communication to the Leader of the House but by a message to the President. When the Honourable Member raised the point yesterday I made inquiries and so far no message has been received, but I am informed that it is likely that a message will be received. When it is so received, then we shall have seizin of the matter and the Honourable Member's point can be gone into. Therefore I suggest to him that he renew his question to-morrow. It is important that we should observe the formalities on all these matters.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member): Sir, in the observations that fell from my Honourable and learned friend, a short while ago he seemed to me to make a point of the fact that I was not in my place yesterday morning when he put the question to which he has referred. If I may venture to say so, Honourable Members of

this House who have not placed a question addressed to the Leader of the House on the agenda and have not even given private notice of that question to the Leader of the House are not entitled to make the complaint which my Honourable friend did this morning.

THE HONOURABLE SARDAR JOGENDRA SINGH (Punjab: Sikh): Sir, I wish to make a personal statement. It seems that yesterday I caused a certain amount of misunderstanding. The facts were these. Just before the Council met yesterday Mr. Graham asked me if I would move my Resolution that day. I told him that I would like to move it that day and that it might be discussed on another day, that is, Wednesday. He told me that there would be an afternoon Session of the Council and that the Council would adjourn at 1-30 for Lunch. So, when you called on me to speak on the Resolution, I spoke right up to 1-30 hoping that the Council would be adjourned for Lunch at 1-30. At 1-30 the Honourable Sir Narasimha Sarma got up and the President who was then the Right Honourable V. S. Srinivasa Sastri permitted him to speak. I immediately went to Mr. Graham and he referred me to the Chair. The Chair permitted me to go saying that the Council would be adjourned but not till the afternoon, because Members would like to have the Resolution taken up on Wednesday next. It was with his leave that I retired. But if unconsciously I sinned, I hope the House will permit me to make my sincerest apologies to it.

THE RIGHT HONOURABLE SRINIVASA SASTRI (Madras: Non-Muhammadan): Sir, when I had the honour to occupy your Chair yesterday, and the Honourable Sardar Jogendra Singh spoke to me, I did not understand that he was taking my leave. If a Member had a pressing engagement and told me he had to go, it was not within my province to restrain his movements.

THE HONOURABLE THE PRESIDENT: I think there has been some slight misapprehension in the matter, and I am sure that the House will willingly accept the expression of regret that fell from the Honourable Sardar Jogendra Singh. I understand that the discussion has, as a matter of fact, been postponed till Wednesday and I suggest to the Council therefore that it will let the matter rest there.

DEATH OF THE HONOURABLE MR. G. M. BHURGRI.

THE HONOURABLE SIR ZULFIQAR ALI KHAN: (East Punjab: Muhammadan): I wish to inform Honourable Members and you, Sir, of the sad news that has been received from Hyderabad of the untimely death of Mr. Bhurgri. He was an ex-Member of the Council of State and I think he served as a Member here for two years when he resigned. Then he proceeded to Europe for treatment and was treated there for some time. But, when he came back, he was still ailing. All the same he stood for election to the Assembly and was elected as a Member. We all expected to meet him here but Fate decreed otherwise, and he expired yesterday, leaving his family and his many friends to mourn his sad death. I am sure all Honourable Members knew him very well. He took an active part in all political activities and was considered a very sensible

[Sir Zulfiqar Ali Khan.]

young man. He was one of the few Muhammadan landlords in that province who distinguished themselves in political life. Although there are many landlords in Sind and very big ones too, unfortunately they are not educated and do not take any interest in political life at all. But he was one of those few who distinguished themselves in political life. Therefore, I think his death is a great loss to the Muhammadans of Sind and to the Legislative Assembly. As an *ex-Member* of this Council he helped in the debates and took an intelligent part in its discussions, and I have no doubt that we all mourn his loss very deeply.

THE HONOURABLE MR. HAROON JAFFER (Bombay Presidency : Muhammadan): I support my Honourable friend Sir Zulfiqar Ali Khan in the views he has just expressed. I think the Muhammadans of India, and specially those of my Presidency, will deeply mourn the sad and untimely loss of our old friend the Honourable Mr. Bhurgri. He took a most prominent part in Muhammadan education. He was once the President of a Muhammadan Educational Conference held at Poona. He was also elected the President of the last Session of the All-India Muslim League and took a leading part in many other activities pertaining to all communities. I think it would be a graceful act if this Council sends a message of condolence through the President to his family.

THE HONOURABLE KHAN BAHADUR NAWAB SIR MOHAMED MUZAMMIL-ULLAH KHAN (United Provinces, Nominated Non-Official): I associate myself with my friends in this matter but would refer to Mr. Bhurgri's death as a loss not only to the Muslim community but to the whole of India. He was an Indian public man who served all through his life for the good of India, and therefore I think his family deserves the sympathy of this House without any distinction of any particular creed and religion.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member): Sir, Government have heard with deep regret the news of the untimely death of Mr. Bhurgri. Mr. Bhurgri was a prominent figure in this House some time ago and had recently been elected as a Member of the other House, but unfortunately his public activities have been cut short owing to his failing health and his untimely death. I associate myself with the expressions of sympathy to the relations of the deceased, which have fallen from the lips of my friend the Honourable Sir Zulfiqar Ali Khan.

THE RIGHT HONOURABLE SRINIVASA SASTRI (Madras : Non-Muhammadan): Since through a pure accident four Muhammadan speakers have paid their tribute to the deceased, it seems fitting that one of the Hindu members who knew him very intimately should say a word on this point. The Honourable Mr. Bhurgri was a great personal friend of mine. Above everything else, he represented not purely Muhammadan India, but the whole of India. I believe he was one of those who sincerely believed that the future of this country was bound up with the bringing about and the maintenance of amicable relations between the two great communities, and his efforts in this direction were energetic and unceasing. No more shall we have his genial presence amongst us. No more, Sir, will he hug me as he used to do to his bosom whenever he met me. No more shall I hear him call me Madras Brahmin in playful allusion to the unfortunate split in that land. No more shall we see his simple, straightforward

manners. He was a loyal friend and a devoted patriot. I associate myself with the sentiments of grief that have been expressed.

THE HONOURABLE THE PRESIDENT: I also have heard with great regret the news of the death of Mr. Bhurgri. He was in the old Imperial Legislative Council and, as has been pointed out, he was a prominent member of this House for the first year of its existence. It is clearly the unanimous desire of this House that an expression of sympathy should be conveyed to his family through the usual channel, and I shall see to it that the wishes of the House in this matter are carried out.

REPEALING AND AMENDING BILL.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member): Sir, I beg to move:

"That the Bill to amend certain enactments and to repeal certain other enactments, as passed by the Legislative Assembly, be taken into consideration."

A glance at the 5th column of the First Schedule to the Bill, copies of which are in the hands of Honourable Members, will make it clear that 7 out of the 8 amendments which are sought to be made in the various enactments specified in the third column consist of mere corrections of clerical or printing errors and the eighth amendment in section 564 of the Code of Criminal Procedure is merely designed to make clear the point specified in that column. Similarly, a perusal of the explanation given in the 5th column of the Second Schedule will show Honourable Members that, while one of the five repeals which this Bill seeks to make is designed merely to correct a clerical error, the remaining four repeal certain enactments which have become in process of time either obsolete or unnecessary.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to amend certain enactments and to repeal certain other enactments, as passed by the Legislative Assembly, be taken into consideration."

The motion was adopted.

THE HONOURABLE THE PRESIDENT: The question is that clauses 1, 2, 3 and 4, and the Preamble do stand part of the Bill.

The motion was adopted.

Clauses 1 to 4, and the Preamble were added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is that the First Schedule and the Second Schedule to the Bill do stand part of the Bill.

The motion was adopted.

The First and Second Schedules were added to the Bill.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI: I beg to move that the Bill, as passed by the Legislative Assembly, be now passed.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to amend certain enactments and to repeal certain other enactments, as passed by the Legislative Assembly, be passed."

The motion was adopted.

RESOLUTION *RE* RATIFICATION OF THE INTERNATIONAL
CONVENTION FOR THE SUPPRESSION OF THE CIRCULATION
OF, AND TRAFFIC IN, OBSCENE PUBLICATIONS.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, before I formally move the motion standing in my name I request your permission and the permission of the House to make a small verbal correction. I propose to substitute for the last words in the Resolution 'the age of 20 years' the words 'a certain age,' my object being, inasmuch as I merely propose to ask the House to assent to a general principle, to eliminate an item of detail which, if the Resolution is accepted by the House, could more conveniently be considered in the course of legislation.

THE HONOURABLE THE PRESIDENT: Certainly.

THE HONOURABLE MR. J. CRERAR: Then, Sir, I move:

"That this Council recommends to the Governor General in Council:

- (1) that India do ratify the International Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications dated the twelfth day of September One Thousand Nine Hundred and Twenty-three, which was drafted by the International Conference which met at Geneva under the auspices of the League of Nations on the 31st August, 1923;
- (2) that in the legislation to be introduced in the Indian Legislature in accordance with the provisions of the Convention, it should be made an aggravation of the offence of the offer, delivery, sale or distribution of obscene matters or things if such is made to persons of either sex below a certain age."

The papers which have been circulated to Honourable Members are probably sufficient to give them a clear idea of the object of my Resolution; but it is perhaps desirable that I should supplement it by a brief narrative of the circumstances which have led up to it.

In the year 1910 an International Conference was convened at the instance of the French Government and framed an agreement for the suppression of obscene publications. The agreement was, as a matter of fact, of a purely administrative character and very limited in scope. It did not go much further than to provide for the international interchange of information for the purpose of the discovery and suppression of offences relating to obscene publications, and for the establishment in the territories of each of the contracting Powers of some authority on whom should devolve the duty of this work of co-ordination and of intelligence. The Conference did proceed to draft a Convention of a legislative character, but unfortunately, owing to the war and the even graver pre-occupations which it entailed, no further progress was made until after the Armistice. To that original agreement, the agreement of 1910, India adhered in 1913. She adhered, I must admit, with some hesitation because she felt—or those who spoke for her felt—that in this matter India was more sinned against than sinning. Nevertheless, though India might benefit less materially by adhering to the agreement than some of the other Powers, it was felt in the first instance that some measure of protection against these publications was a proper measure to take. The second and the prevailing consideration was that it was undesirable that India should seem unwilling to support or out of sympathy with the aims and objects of the agreement. The matter, as I have already indicated, was revived after the Armistice at the third session of the

League of Nations and was laid before the League of Nations at the instance of the British Government, and certain Resolutions were passed desiring the French Government, in view of the initiative which that Government had taken in 1910, to convene a conference for the purpose of considering it further. In pursuance of these Resolutions, an International Conference met, at the invitation of the French Government, at Geneva under the auspices of the League of Nations. The Indian delegate was Sir Prabhashankar Pattani. Again, in view of the initiative taken by the French Government in this matter, it was unanimously decided that the French delegate, M. Gaston Deschamps, should be elected President. The Conference paid India the compliment of electing her delegate, Sir Prabhashankar Pattani, to be Vice-President of the Conference. And I may remark that the British delegate, in his report to the Secretary for Foreign Affairs, paid a tribute to the admirable skill with which Sir Prabhashankar Pattani filled his position and the substantial assistance which on several occasions he gave to the Conference in the settlement of, and in securing agreement on, difficult matters of controversy. Well, Sir, the Conference drew up a Convention which in several respects marks a distinct advance on the agreement of 1910. It was agreed to unanimously and signed by over twenty States, subject to the ratification of their respective Legislatures, and it is to the ratification by India of this Convention that I now seek the approval of this Council. I do not think, Sir, that I need say very much to commend this Resolution to the Council. I said that, when the question of adhering to the agreement of 1910 was under consideration, it was felt in India that India suffered a great deal more by this demoralising traffic than she participated in it. That is still true. Nevertheless, I regret to say that, since the war, there has been a very material increase in the importation into India of matter of this character. I will not inflict upon the House any elaborate details, but it is important for the House to remember that the methods of reproducing and of disseminating matter of this character have unfortunately, as one of the by-products of the advance of science, been materially extended and India undoubtedly suffers a great deal more from the consequences of that traffic than she did 14 years ago. Only recently, within the last few days, a circular directed to an address in Bangalore fell into my hands which had been issued by a firm in Hamburg, which was a typical instance of the traffic carried on mainly from some of the continental countries of Europe.

My first point, therefore, is that we must to a very considerable extent revise our estimate of the dangers to which India is exposed. India would be well advised to take measures to protect herself against this demoralising traffic because, on the evidence at my disposal, I would hardly hesitate to say that even the traffic in pernicious drugs, even that traffic in women and children which has very recently occupied the attention of this House, even those traffics, are hardly more dangerous in their potentialities or more demoralising than that which is now immediately under consideration. But I do not base my case solely on a measure of self-protection. I am convinced that, in a matter of this kind, when an appeal is made by nearly all the civilised nations of the world for her assistance and co-operation in suppressing this dangerous traffic, India will not be behind hand in taking her share in the promotion of public morality, not only here in India but throughout the world.

[Mr. J. Crerar.]

Now, Sir, Honourable Members will observe that the operative articles of the Convention, so far as our present purpose is concerned, are Articles I, IV and V. Article I is of the greatest importance because it indicates the offences for which it is proposed that penal provision should be made where such provision does not already exist. Article IV says that the contracting parties, whose legislation is not at present adequate in respect of the offences specified in Article I, shall take steps to put their legislation in order, and Article V makes a further provision on the same lines. An examination of the Indian law on the subject indicates, as a matter of fact, that very little amendment or extension of the law will be necessary. We have of course, under the Sea Customs Act, ample legal means—which is of course not quite co-extensive with practical means but we have at any rate legal sanction—for the prohibition of the entry of obscene matter into India. We have also under the Post Office Act means for preventing the transmission of such matter through the post. But we are not now concerned merely with measures for preventing transmission. We are concerned more particularly with stiffening up our penal provisions and making the results of the infringement of our law in the matter more deterrent. The two relevant sections of the Indian Penal Code are sections 292 and 293. Section 292 penalises the selling, distribution and importation thereof for sale or hire or exhibition to public view of any obscene book, pamphlet, printing, paper, representation or figure, etc., and section 293 penalises the possession of any such obscene book or other things just mentioned in the preceding section, for the purpose of sale, distribution or public exhibition. These two sections are pretty wide in their scope. But they are not entirely co-extensive with Article I of the Convention, and it will be necessary for us to examine whether, and if so, to what extent, it is necessary for us in carrying out our undertakings under the Convention to amend these two sections.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: (West Bengal: Non-Muhammadan): We also have a provision for the destruction of these in the Criminal Procedure Code.

THE HONOURABLE MR. J. CRERAR: Quite so. We shall probably have to extend the provisions of section 98 of the Criminal Procedure Code also so as to cover searches for the specific object which the Convention has in view. It is also recommended in the final act of the Conference that it should be made an aggravation of the offence if the offer, sale or distribution of obscene matter or such other things is made to young people. I think that is a suggestion which will commend itself to the House.

THE HONOURABLE SIR MANECKJI DADABHOY: (Central Provinces; General): Will the Honourable Member kindly let us know whether there are any special reasons why the age of 20 has been fixed?

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: That has been amended now to "below a certain age".

THE HONOURABLE MR. J. CRERAR: I touched on that point in my opening remarks and I might perhaps add for my Honourable and learned

friend's information that we merely, as a provisional suggestion, took the age of 20 as roughly the age of adolescence. It is perhaps the age most peculiarly liable to receive evil influences. But, as I said, that is a matter which can properly and more conveniently be considered in the stage of legislation. The recommendation of the Conference was that we should make the offence involving delivery of obscene matter to young people an aggravated offence, and that could easily be attained by raising the sentence under sections 292 and 293 in the special circumstances of young people perhaps to six months. The case would still be technically a summons case and the procedure the same as for the lesser offence. These, however, are matters of detail which I merely mention by way of illustration to the House. I have no desire to commit them in any way to any decision on details of this character. The consideration of these matters will necessarily be reserved for the stage of legislation in the event of this Resolution being passed.

I do not think I need add much more. I desire only to emphasise two points. The first is that we have unfortunately evidence that the baneful effects of this traffic have materially increased since the conclusion of the war, that the importations into India of matter of this character have materially increased, and it is highly desirable that India should take steps to protect herself against it. As I have said before, I rely not so much on that consideration, but on the strong hope and confidence that India, whatever her own domestic individual interests in the matter, will not refrain from a gesture of sympathy and co-operation to the other civilised States who have subscribed to this Convention in a matter which concerns the morality of the whole world. Sir, I move the motion standing in my name.

THE HONOURABLE DR. DWARKANATH MITTER (West Bengal: Non-Muhammadian): Sir, I rise to support the motion moved by the Honourable Mr. Crerar. I congratulate the Government on its taking an initiative in this matter. Sir, I can assure the Honourable Mr. Crerar that India does not lag behind any other civilised nation of the world in its sense of decency. Its sense of purity is as high as that of other civilised nations of the world. Sir, one recognises the extremely deleterious effect which the importation of obscene literature and objects has on young minds which are open to impression. The object, as it appears from one of the paragraphs in the Convention, is that it should be an aggravation of the offence if these articles are offered for delivery or sold or distributed to persons who are minors. With regard to that, Sir, in India, the age of majority is reached at 18. There are other places in the continent of Europe where the age of majority is not reached before 25. In these circumstances, the suggestion which I should make with reference to paragraph 2 of the Resolution is whether it could be altered in this way instead of the way in which it has been suggested it should be altered—"if such is made to young persons of either sex." That would be in consonance with what has been stated in paragraph 4 of page 6 of the papers which have been circulated to us, where the Conference has expressed the wish that the legislation of each country may prescribe an aggravation of the penalty, if the offer, delivery, sale or distribution of obscene matters is made to young people. Of course, it must be left to legislation to determine as to what age would be covered by the use of the expression "young persons". That would be a matter of detail and ought to be left to the Legislature. The phrase "certain

[Dr. Dwarkanath Mitter.]

age" is very vague. It may perhaps go beyond the age of adolescence which varies, as I have said, in different countries. I do not know if the Honourable Mr. Crerar will accept the amendment that I propose instead of the amendment which he has suggested in the Resolution as it stands on the paper.

THE HONOURABLE THE PRESIDENT: Does the Honourable Member move it?

THE HONOURABLE DR. DWARKANATH MITTER: Yes, I move an amendment that in clause (2) of the Resolution as it stands on the paper, instead of the words "persons of either sex below the age of 20 years" the words "young persons of either sex" be substituted.

THE HONOURABLE THE PRESIDENT: To the Resolution under consideration, amendment moved:

"That in paragraph (2) the words 'below a certain age' be omitted, and before the word 'person' the word 'young' be inserted."

That amendment and the Resolution are now open to the discussion of the House.

THE HONOURABLE MR. J. CRERAR: I have no objection whatsoever to the amendment which has been moved, but I should like to point out that the slight verbal change which, with your permission, I have made in the original Resolution was not unadvised. The use of the phrase "young persons" is not unknown to legislation. It occurs for instance in some of the Factory Acts and, as there used, would obviously be inapplicable to the case at present under consideration. I think that it would be advisable to avoid even the slightest tincture of prejudice which the employment of a phrase which already has a certain legislative sanction but which would not be quite germane to our purpose might entail, and hence I used a term of greater generality. Subject to these remarks, I leave it entirely to the sense of the House whether my Honourable friend's alternative or mine is adopted. I, merely as a matter of caution, desire to explain the reasons which led me to employ a term of greater generality.

THE HONOURABLE MR. PHIROZE C. SETHNA: I would only like to know on whom lies the onus, if the amendment passes, to prove that the person is young, or if the Resolution passes, that the person is below 20 years of age. (*A Voice*: "That will be provided in the law.") (*The Honourable Dr. Dwarkanath Mitter*: "The words are 'certain age'.")

THE HONOURABLE THE PRESIDENT: The Resolution before the House has been altered by the Honourable Member (Mr. Crerar) and the words have been changed into "persons of either sex below a certain age."

THE HONOURABLE MR. PHIROZE C. SETHNA: I take it that "certain age" will be defined in some Act. (*The Honourable Dr. Mian Sir Muhammad Shafi*: "By subsequent legislation.") Then I should like to know whether the legislation will define on whom will lie the onus to prove a certain age.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI: Might I point out that in all criminal prosecutions the onus lies on the prosecution to prove that the facts of the case bring the offence with which a person is charged within the purview of the particular section. In order to bring any person charged with an offence under the section which will be embodied in the subsequent legislation, it will be for the prosecution to prove that the person to whom such offer, delivery, sale or distribution was made is under the age specified in that legislation.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: General): Sir, I am rather inclined to leave the Resolution, as put forward by Mr. Crerar, as it is. I am of opinion that in framing propositions of this sort we should avoid expressions which bear a dubious meaning and which will cause complication in the task of legislation which we shortly propose to undertake. I am not aware that anywhere in our Acts "young person" has been defined, not even in the Factory Act. The Honourable Mr. Crerar said that for some purposes in some Acts . . .

THE HONOURABLE MR. J. CRERAR: I should like to make a personal explanation. I ought to have been more specific. I was referring to English legislation.

THE HONOURABLE SIR MANECKJI DADABHOY: In English legislation they have used the phrase in some of the Acts, but so far as Indian legislation is concerned, I am not aware of any single Act in which the phrase "young person" has been either defined or introduced. I therefore think that it would be better and more advisable to leave the Resolution as it stands, leaving it to the proposed legislation to fix the age that will be suitable. I fear there will be a lot of discussion when the Bill comes up before this Council as to what would be a suitable limit of age, whether we would be right or justified in limiting it to eighteen years or even taking it up to twenty-one.

There is one other suggestion which I have to make to the Honourable Member (Mr. Crerar) that, when legislation in this connection is framed, it would be advisable that a comprehensive legislation on the subject should be undertaken. It would be advisable to delete the two sections of the Penal Code and incorporate them as well as the provisions of the Criminal Procedure Code with regard to the destruction of these obscene publications into the new legislation. It would be advisable to get all these provisions together in one complete presentable Act which will place the offences relating to obscene publications in one proper form before the country. It would be inadvisable to spread them over in different Acts. I throw out this suggestion for what it is worth for the consideration of the Home Department.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: (West Bengal: Non-Muhammadian): I should like very strongly to support the point of view that the Honourable Sir Maneckji Dadabhoy has brought out. It is quite true that India in this matter, as in many other matters, is more sinned against than sinning. But we are also apt pupils. We develop fast and the amount of obscene advertisements that invade the columns of our newspapers and the amount of obscene circulars, not from Bangalore or any other particular place, not from Hamburg or other foreign places merely, but from independent Indian sources that take the initiative is alarming. It is time that we put a stop to it. In this country

[Dr. Sir Devn Prasad Saryadhikary.]

there is a saying that whatever is in print is gospel truth, and particularly if it happens to be in English, the language of the rulers, it is doubly gospel. Those who have seen these circulars of flaring type disgracing Charing Cross shop windows, coming from the great countries beyond the seas, think that it is a right thing to take the cue where the teachers left of. That is a point that should be taken note of when legislation is undertaken.

As regards the amendment proposed by my Honourable friend, Dr. Mitter, I am afraid I would like it to stand as put forward by the Honourable Mr. Crerar. Youth is very indeterminate, very difficult to define. It is rather relative, and I wonder why old age should not be protected any less than youth, which with its sturdy virtue and innate innocence, will be able to take care of itself. The Honourable Mr. Crerar's difficulty at the present moment is, I believe, that he is not quite sure as to what would be a suitable age to suggest for the purposes of this legislation. As in "society", where one does not refer to the uncertain age of ladies, he is hesitant in suggesting an age-limit yet. Time will show and public opinion will show whether the European standard in certain cases of 25 referred to by Dr. Mitter would not be a more suitable age for protection regarding a matter like this. I trust therefore that Dr. Mitter will reconsider the matter and will not press the amendment but leave

12 Noon. it to the Legislature, in the light of opinions that will be collected.

THE HONOURABLE MR. G. S. KHAPARDE (Berar: Nominated Non-Official): I think that the preceding speaker, who proposed the amendment, was thinking that a minor is going to be prosecuted or what age is to be the limit. The age has been introduced as an aggravation of the offence. A man who commits the offence would not be a minor. The man who circulates all these things will be considered to have committed a higher offence and would get a higher punishment if he sells them to persons of a certain age, that is to say, the persons of a certain age are not concerned in this offence. The offender is a man who is not to be looked upon as a minor or a major. If the man sells it to a minor he will be punished more severely. That is the whole idea of the second part of the Resolution. Therefore, it is not necessary for us to go into that question at all as to what minority ought to be and all those questions simply disappear. It is a question of the offender. If he sells these things to persons of a certain age, he gets, say, two years. If he sells them to children he gets seven years. That is the idea of it. The question of minor and major do not appear at all. To me therefore it is irrelevant to the particular question.

THE HONOURABLE THE PRESIDENT: Does the Honourable Dr. Mitter wish his amendment to be put?

THE HONOURABLE DR. DWARKANATH MITTER: One reason for my putting this amendment was

THE HONOURABLE THE PRESIDENT: The Honourable Member cannot make a speech. He must either ask for leave to withdraw his amendment or ask that it be put.

THE HONOURABLE DR. DWARKANATH MITTER: I wish my amendment to be put.

THE HONOURABLE THE PRESIDENT: The question is that in the Resolution as discussed the following amendment be made:

"That at the end of the second part of the Resolution the words 'below a certain age' be omitted and that the word 'young' be inserted before the word 'persons' in the last line."

The motion was negatived.

THE HONOURABLE MR. J. CRERAR: I am very gratified that the Resolution has received so favourable a reception from the House and the only remark which I wish to make in reply to the debate is with reference to the suggestions made by my Honourable and learned friends Sir Maneckji Dadabhoy and Sir Deva Prasad Sarvadhikary. The suggestion made was that the legislation undertaken in pursuance of this Resolution should be of a somewhat drastic and extensive character, and should include a consolidation of all the law on the subject. That is entirely a matter for the Legislature when they proceed to legislate. The object of my Resolution is to ask the House to agree to legislation only within the limits prescribed and rendered obligatory by our undertakings under the Convention. Those are very considerably more limited than what I understand my Honourable and learned friends have in mind. We do not as a matter of fact contemplate going beyond the actual terms of the engagements which we have to implement. My brief review of the state of the Indian law on the subject is sufficient to show that, as a matter of fact, our law is very nearly adequate already to comply with the requirements of the Convention. It is, as a matter of fact, in advance of that of many of the countries which are signatories to the Convention. (*The Honourable Sir Maneckji Dadabhoy:* "You can improve the Penal Code.") If legislation is desired to go beyond our obligations under the Convention, that of course is entirely a matter for the Legislature to determine, but it would be somewhat outside the scope of the Resolution which I have the honour to move. I have no doubt that, when Government proceed to draft the necessary measure, they will give careful consideration to the suggestions that have been made, but naturally at this stage I can give no more explicit assurance on that point.

THE HONOURABLE THE PRESIDENT: The question is that the following Resolution be adopted:

"That this Council recommends to the Governor General in Council:

- (1) that India do ratify the International Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications, dated the twelfth day of September One Thousand Nine Hundred and Twenty-three, which was drafted by the International Conference which met at Geneva under the auspices of the League of Nations on the 31st August, 1923;
- (2) that in the legislation to be introduced in the Indian Legislature in accordance with the provisions of the Convention, it should be made an aggravation of the offence of the offer, delivery, sale or distribution of obscene matters or things if such is made to persons of either sex below a certain age."

The motion was adopted.

STATEMENT OF OFFICIAL BUSINESS FOR THURSDAY, THE 13TH MARCH, 1924.

THE HONOURABLE THE PRESIDENT: Has the Honourable the Leader of the House got any statement to make regarding official business?

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member): Sir, the next meeting for official business will be on Thursday, the 18th, when motions will be made that the Bills further to amend the Sea Customs Act, 1878, and the Indian Tariff Act, 1894, which were laid on the table yesterday, be taken into consideration and passed. Thereafter, Tuesday, the 18th March, has been fixed for official business, but I regret I am not at present in a position to announce whether any legislative measures can be brought forward on that day.

The Council then adjourned till Eleven of the Clock on Wednesday, the 12th March, 1924.