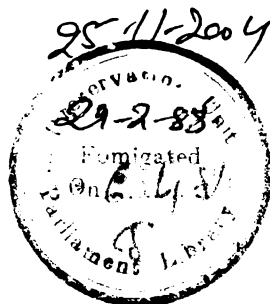


THE COUNCIL OF STATE DEBATES

Volume V

(20th January to 26th March 1925)

FIFTH SESSION OF THE COUNCIL OF STATE, 1925



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COUNCIL OF STATE.

Tuesday, 3rd March, 1925.

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

MEMBER SWORN:

The Honourable Khan Sahib Aman Ali (East Bengal: Muhammadan.)

QUESTION AND ANSWER.

FISCAL RELATIONS BETWEEN JAPAN AND INDIA.

THE HONOURABLE MR. LALUBHAI SAMALDAS: Sir, I have given private notice to the Honourable the Commerce Secretary of a question, and if you will allow me I would ask him the question.

THE HONOURABLE THE PRESIDENT: Yes.

THE HONOURABLE MR. LALUBHAI SAMALDAS: (a) Will Government be pleased to say if their attention has been drawn to the following remarks made by Mr. N. N. Wadia in his speech at the annual meeting of the Millowners' Association:

"I have heard rumours which I do not believe for a moment (*I am quoting Mr. Wadia's speech*) that there is a treaty between the British Government and Japan under which for certain defensive measures promised by Japan in the Far East, the British Government on behalf of Great Britain and its Dominions have promised that they would not put protective duties against Japan. I do not believe these rumours and have confidence in our own Government to protect our interests."

(b) If the answer to (a) is in the affirmative, will they be pleased to say what truth there is in the rumour referred to.

THE HONOURABLE MR. D. T. CHADWICK: (a) Yes.

(b) The Government of India have not heard the rumour and believe it to be entirely without foundation. The fiscal relations between Japan and India are only covered by the commercial convention of 1905, a copy of which has already been laid on the table of this House. This convention will be found printed on pages 370 and 371 of the proceedings of the Council of State for September 1922, to which the attention of the Honourable Member is invited.

CANTONMENTS (AMENDMENT) BILL.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: Sir, I beg to move:

"That the Bill to amend the Cantonments Act, 1924, as passed by the Legislative Assembly, be taken into consideration."

The motion was adopted.

THE HONOURABLE THE PRESIDENT: I will put the clauses of the Bill. If any Honourable Member has anything to say on any particular clause I hope he will stop me.

The question is:—

“That clauses 2, 3, 4 and 5 do stand part of the Bill.”

The motion was adopted.

Clauses 2, 3, 4 and 5 were added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

“That clauses 6, 7, 8, 9 and 10 do stand part of the Bill.”

The motion was adopted.

Clauses 6, 7, 8, 9 and 10 were added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

“That clauses 11, 12, 13 and 14 do stand part of the Bill.”

The motion was adopted.

Clauses 11, 12, 13 and 14 were added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

“That clause 1 do stand part of the Bill.”

The motion was adopted.

Clause 1 was added to the Bill.

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THE HONOURABLE THE PRESIDENT: The question is:

“That these be the Title and Preamble of the Bill.”

The motion was adopted.

The Title and the Preamble were added to the Bill.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: Sir, 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 the Cantonments Act, 1924, as passed by the Legislative Assembly, be passed.”

The motion was adopted.

PRISONS (AMENDMENT) BILL.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I beg to move:

“That the Bill to amend the Prisons Act, 1894, as passed by the Legislative Assembly, be taken into consideration.”

Honourable Members will have learnt from the Statement of Objects and Reasons that certain recommendations were made by the Indian Jails

Committee with the object of alleviating in certain respects the rigour of prison discipline. Those recommendations have been accepted by the Government of India, and this small Bill is intended to give them the necessary legislative effect.

The motion was adopted.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 2 do stand part of the Bill."

THE HONOURABLE MR. J. CRERAR: Sir, in clause 2 there is one small consequential drafting amendment which I desire to move. Honourable Members will observe that in sub-clause (c) of clause 2 of the Bill sub-section (11) of section 46 of the Prisons Act is repealed. In sub-section (12) of that section, however, a reference is made to sub-section (11) which will, if the Bill is passed, *ipso facto* become repealed. It is necessary, therefore, to make a small drafting provision to meet that point. I propose therefore the following further amendment, that in clause 2 sub-clause (d) of the Bill the following words be added, namely, "the words 'as defined in clause (11)' shall be omitted; and."

THE HONOURABLE THE PRESIDENT: The amendment is that those words be inserted after the word "substituted" in clause (d).

THE HONOURABLE MR. J. CRERAR: The amendment which I move, Sir, is as follows:

"That to clause 2 sub-clause (d) after the word 'and' the following words be added, namely:

'the words 'as defined in clause (11)' shall be omitted; and'."

THE HONOURABLE THE PRESIDENT: The original question was:

"That clause 2 do stand part of the Bill."

Since which an amendment has been moved:

"To sub-clause (d) of that clause after the word 'and' the following words be added, namely:

"the words 'as defined in clause (11)' shall be omitted; and'."

The question is that that amendment be made.

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clause 3 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE THE PRESIDENT: Does the Honourable Member intend to move that the Bill be passed?

THE HONOURABLE MR. J. CRERAR: I do not propose to make any further motion at this stage.

OBSCENE PUBLICATIONS BILL.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I have the honour to move:

"That the amendments made by the Legislative Assembly in the Bill to give effect to certain articles of the International Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications, be taken into consideration."

[Mr. J. Crerar.]

Honourable Members will observe on examining the Bill as it is now presented to them that the principal alterations made in another place are three in number. The first extends the scope of the *Exception* to section 292 of the Indian Penal Code in order to make it clear that that *Exception* protects books, pamphlets, writings, drawings or paintings kept or used *bona fide* for religious purposes. In the second place, it provides that search warrants for the purposes of this Bill under section 98 of the Code of Criminal Procedure cannot be issued by a lesser authority than a District Magistrate, Sub-divisional Magistrate or a Presidency Magistrate. Thirdly, cases triable under the amended sections of the Act, if this Bill becomes law, will be triable by the Courts of Presidency Magistrates, or Magistrates of the First Class and by no inferior Court, the object of that being of course to ensure that questions arising under these sections will be tried by an experienced Magistrate. I have the honour to make that motion, Sir.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: General): Sir, I presume one or two observations in connection with this amended Bill will not be out of place here. The Bill has been sent back to this Council with three principal amendments to which my Honourable friend Mr. Crerar has just referred. Now-a-days it has been the fashion with the Legislative Assembly not to accept any Bill in its integrity which has been remitted from this Council for their consideration. The amendments which have been made on this occasion, I say with great deference to that body, do not carry us a step further in any way from the form in which the Bill was originally passed by this Council. I will briefly refer to them, Sir. The principal amendment which the Assembly has made is the enlargement of the scope of the *Exception* by the addition of the words,—“book, pamphlet, writing, drawing, painting kept or used *bona fide* for religious purposes.” These new words have been incorporated into the *Exception*. My humble opinion is that this enlargement of the *Exception* carries us substantially no further. There is a substantial body of case-law which has made it abundantly clear that *bona fide* religious, artistic and scientific writings, etc., are not obscene within the meaning of the Penal Code. There are a series of rulings which cover every imaginable case. In the catalogue of Hindu mythology the forms, figures, models, shapes and many other things are too numerous to mention, and Hindu mythology being so wide in its application it is difficult to bring every conceivable form of writing or figure that may exist or may be imagined or thought of within the category of this *Exception*. I therefore think that this amendment on the whole is superfluous. I have the support of no less an authority than Sir Alexander Muddiman in respect of my contention and I shall only draw attention to a passage in the speech which he made recently in the other House.

“I have tried to point out to this House before, when we were dealing with the former amendment, that the whole of this offence turns very largely on the circumstances. A book written for medical students is very fit to be circulated among them; a book of that character that is issued in a popular form and is circulated to a girl's school, as I said before is obviously most undesirable. Again, it is quite reasonable that art students should be supplied with certain diagrams and pictures which would not be desirable for public presentation. You have now got into this position that you are affecting the defence of *bona fides* by inserting the words that you have inserted.”

These are very significant and instructive words and I cannot possibly add anything to that passage. In each case where the question is whether or not a particular book, printing or writing comes within the purview of the

Exception to the sections of the Indian Penal Code, that question will have to be decided by reference to Hindu mythology, Hindu sentiment, Hindu religion and customs and usages. We may go on enlarging the *Exception ad infinitum* in this way. I am making these remarks simply to show that in the present case there was no necessity for the enlargement of this *Exception* and our existing law is sufficient to govern every possible and imaginable case.

As regards the other amendment regarding clause 3 (1) relating to powers of search I think the law embodied in section 98 of the Criminal Procedure Code is quite adequate for all purposes. In the same way, the restriction of powers to Presidency and First Class Magistrates for trial of these offences is also significant. Sub-divisional officers now-a-days try most important cases. The whole cadre of the provincial service has been very much strengthened and the standard of judicial knowledge has been kept up at a higher level. I do not think these amendments were altogether necessary, but it is no use opposing them. I do not want to waste the public time by opposing these amendments again in this Council, which would necessitate a joint Session in which very probably we shall have an interminable discussion over this matter. It is much better to leave these amendments alone. I have, however, troubled the Council just for the purpose of showing that the fact that these alterations have been made by that body does not indicate that this Council had failed to consider the matter very carefully and given this important subject proper and adequate attention.

THE HONOURABLE THE PRESIDENT: The question is :

"That the amendments made by the Legislative Assembly in the Bill to give effect to certain articles of the International Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications, be taken into consideration."

The motion was adopted.

THE HONOURABLE THE PRESIDENT: "*Amendment No. 1.*—In clause 1 of the Bill for the figures '1924' the figures '1925' be substituted."

The question is that this Council do agree to that amendment.

The motion was adopted.

THE HONOURABLE THE PRESIDENT: "*Amendment No. 2.*—In clause 2 of the Bill, in the *Exception* to the proposed section 292 of the Indian Penal Code after the word 'any' where it occurs for the first time, the following words be inserted, namely :

'book, pamphlet, writing, drawing or painting kept or used *bona fide* for religious purposes or any.'

The question is that this Council do agree to that amendment.

The motion was adopted.

THE HONOURABLE THE PRESIDENT: "*Amendment No. 3.*—In clause 3 of the Bill, for sub-clause (1) (i) the following be substituted, namely :

'(i) after the words 'kept or deposited in any place' the following paragraph shall be inserted, namely :

'or, if a District Magistrate, Sub-divisional Magistrate or a Presidency Magistrate, upon information and after such inquiries as he thinks necessary, has reason to believe that any place is used for the deposit, sale, manufacture or production of

[The President.]

any obscene object such as is referred to in section 292 of the Indian Penal Code or that any such obscene objects are kept or deposited in any place '."

The question is that this Council do agree to that amendment.

The motion was adopted.

THE HONOURABLE THE PRESIDENT: "*Amendment No. 4.*—In clause 3 of the Bill, sub-clause (2) (i) and (ii) be re-numbered as ' (ii) ' and ' (iii) ' and the following be inserted as sub-clause (2) (i), namely:

' (i) for the entries in column 8 against sections 292 and 293 the words ' Presidency Magistrate, or Magistrate of the first class,' shall be substituted. ' "

The question is that this Council do agree to that amendment.

The motion was adopted.

THE HONOURABLE THE PRESIDENT: The usual message will go to the other House.

The Council then adjourned till Eleven of the Clock on Wednesday, the 4th March, 1925.
