

Thursday, 26th February, 1925

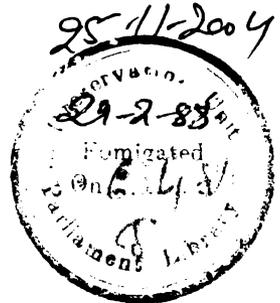
THE  
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Volume V

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FIFTH SESSION  
OF THE  
COUNCIL OF STATE, 1925



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# COUNCIL OF STATE.

*Thursday, 26th February, 1925.*

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

## LEGISLATIVE ASSEMBLY (PRESIDENT'S SALARY) BILL.

THE HONOURABLE SIR NARASIMHA SARMA (Law Member): Sir, I beg to move:

“ That the Bill to determine the salary of the President of the Legislative Assembly, as passed by the Legislative Assembly, be taken into consideration.”

Honourable Members are aware that under section 63 of the Government of India Act the Legislative Assembly is entitled to elect its own President after a period of 4 years from the date of the constitution of the new Legislature. The Assembly will very soon be entitled to exercise that right, and in order to enable it to do so, the Government introduced a measure providing a salary of Rs. 4,000 per mensem for its elected President. The Members of the Assembly, after due deliberation, accepted the view suggested by the Government of India and have provided in the Bill, as ultimately passed by them, the salary of Rs. 4,000 per mensem. They have in addition enacted another provision, under which the elected President will not be entitled to exercise any other calling or profession for remuneration. The Members of the Assembly rightly insisted that they should provide for their President a salary which would enable them to exercise a very wide choice from the persons who would be eligible for that office. Secondly, they decided, and rightly, that that officer should be a full-time officer at the disposal of the Assembly and should not undertake any work for remuneration. I now ask, Sir, that that Bill, as passed by the Legislative Assembly, may be taken into consideration by this House.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: General): Sir, this is in the nature of a domestic Bill appertaining to the Legislative Assembly and, if this Bill has satisfied the Members of that body, certainly no objection will be taken in this House, or any opposition offered. I am glad to notice, however, that the Assembly has thought it necessary to fix the salary of its President at Rs. 4,000. This will be compatible with the maintenance of the dignity of the President. Any other course or putting the salary below the salaries of Presidents of Provincial Councils would have been an ill-advised act. There is one matter, however, in this Bill to which I should like to make a brief reference. I am sorry to find that the Assembly has thought fit to go in for a full-time officer and has limited the selection of the President to a full-time man. It is the Assembly's business, and, if the Members are of opinion that that is the proper course to adopt, they are welcome to adopt it, but I cannot restrain from making an observation that in doing so it appears to have adopted a mistaken policy, because it will be deprived of the services of many competent business men who adorn that

[Sir Maneckji Dadabhoj.]

body and who could ill-afford to give up their time and business for the purpose of presiding over the Assembly. After all the President's duty requires three or four months' presence in Delhi during the winter months and a month in Simla, and I think the Assembly would have acted wisely if it had kept that question open, at any rate for the present.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR NARASIMHA SARMA: Sir, I move:

"That the Bill, as passed by the Legislative Assembly, be passed."

The motion was adopted.

### INDIAN RAILWAYS (AMENDMENT) BILL.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY (West Bengal: Non-Muhammadan): Sir, I beg to move:

"That the Bill further to amend the Indian Railways Act, 1890, as passed by the Legislative Assembly, be taken into consideration."

Honourable Members will remember that this Bill was introduced in the Assembly in the September Session at Simla and there was no opposition on the part of the Government. It subsequently developed. I do not want to make much of that because I think it is right that on the first reading of a Bill opposition to it should be as little as possible, and opposition should be avoided as much as possible, in order that the principles of the Bill may be discussed at a later stage. From that point of view I regret, Sir, that on some occasions when it need not have been so, premature opposition came, for example, in connection with the recent Interest Bill in this House. From that point of view again I am free to confess—I always like to confess mistakes—the Assembly was wrong on a previous occasion in refusing to give leave for the introduction of the Princes' Protection Bill. A Bill should have all the chance that can be given to it if either Honourable Members or the Government make themselves responsible for its introduction after careful consideration. Therefore I say, Sir, when the Government decided not to oppose the introduction of the present Bill at Simla, they did not resign their right to oppose it either in principle or in detail at a later stage; and I myself do not desire to make much of that want of opposition on their part at the introduction of the measure.

As the Statement of Objects and Reasons, which is a short one, explains:

"This amending Bill is intended to prohibit reservation of compartments in railway trains for the exclusive use of persons belonging to any particular community, race or creed. In certain prosecutions under section 109 of the Indian Railways Act, 1890 (IX of 1890), the point at issue was whether such reservation amounted to undue preference within the meaning of section 42. The High Courts have variously interpreted section 42 in these cases, while agreeing that such reservation is not *ultra vires*. The present amendment will place the matter beyond doubt and bring the law into line with public opinion."

In moving for the leave of this House that the Bill be taken into consideration I do not desire to place matters any higher than that. Although,

Sir, as is apt to happen in these cases, unfortunate extraneous circumstances have been introduced, we here who are invited to legislate should keep those considerations out of mind as far as possible and proceed upon strictly legal lines.

I shall give to the House four cases from the different High Courts, which are different from one another in some essential respects. I do not wish to trouble Honourable Members with the details of those cases, although if it is necessary I shall do so later on. I shall for the moment make the barest possible reference to them. One of the earliest cases is to be found in the Indian Law Reports, 42 Allahabad, in which the Judges decided that it was not a question of preference at all, and they said that section 42 of the Railways Act, which I shall read presently, does not apply to ordinary passengers. Section 42 of the Railways Act, of which sub-section (2) is the pertinent portion, says:

“A railway administration shall not make or give any undue or unreasonable preference or advantage to or in favour of any particular person or railway administration or any particular description of traffic in any respect whatsoever or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.”

Now, Sir, what is or what is not preference or undue preference has not been anywhere defined in the Railways Act. The nearest we have is in an English rule where the definition of the term is to be found. I refer to the English Act known as the Railway and Canal Traffic Act of 1888 on which the Indian Act was modelled as far as possible. Section 55 of that Act says:

“The term ‘undue preference’ includes an undue preference or an undue or unreasonable prejudice or disadvantage in any respect in favour of or against any person or class of persons or any particular description of traffic.”

Questions have arisen, Sir, as to what “traffic” means and includes, and there the Railways Act definition is sufficient for the purpose. “Traffic,” in sub-section (1) of section 3 of the Act, is said to “include rolling stock of every description as well as passengers, animals and goods.” However, the Allahabad High Court held in that case to which I have referred that reservation of these compartments was not a question of preference at all, let alone a question of undue preference. Then, Sir, we have a case in the Indian Law Reports, 45 Madras, in which the Judges said a railway administration can reserve accommodation in accordance with its own views, and that such reservation does not countervail the provisions of section 42 of the Railways Act, which I have just read out. Although they did not deny the applicability of section 42 of the Act to the case, they went on to say that special treatment of a class need not involve preference or undue preference.

Sir, it would have been enough for purposes like this that so many differing High Court cases should have grown up round this apparently small question. For every High Court case reported one may assume that the number of cases that do not go up to the High Courts is larger and one may also assume that the number of cases that do not at all go up to any court must be still larger; they however help in adding to the volume of grievances or fancied grievances, call them so if you please, which in time becomes disagreeably and disproportionately large.

The issues might be considered simple, but what appears to be simple to the ordinary average lay mind is not necessarily simple to the legal mind or to the mind even of High Court Judges. Therefore we have the

[Sir Deva Prasad Sarvadhikary.]

spectacle in Bombay of two High Court Judges differing—including the then acting Chief Justice, Mr. Lalubhai Shah, now Sir Lalubhai Shah necessitating a reference to a third Judge. That case is reported in I. L. R. 47 Bombay, where the Judges agreed in the first instance that section 42 of the Act did apply, but went on to say that it was a question of fact in every case as to whether the circumstances constitute undue preference or not. One Judge, Mr. Justice Marten, said that the onus of proof rested on him who alleged undue preference. The Chief Justice, Mr. Justice Shah, however said that the onus was on the prosecution; and thereupon there was a reference to a third Judge and he decided the question according to his lights. I refer to it only to show that the matter is obscure, that it is not free from difficulties and the time has come for us to consider whether, having regard to this obscurity and this difficulty and this difference of opinion between Judges, we should not place matters on a footing by which this obscurity and difficulty will disappear. That is one of the functions of the Legislature and, leaving aside the racial question entirely, it would be necessary for the Legislature to interfere when questions are brought home somewhat acutely in the way in which it has been brought home to the Legislature in this case.

The difficulty was not lessened by a Calcutta judgment reported in I. L. R., 51 Calcutta, where also the learned Judges said that the preference was a question of fact in every case, which would amount to this, that the passenger who wanted to allege undue preference would have to prove it himself, according to Mr. Justice Marten of the Bombay High Court, and for that purpose would probably have to walk down the whole length of the train and find out whether there was any accommodation in the other compartments or not, and whether he was seriously inconvenienced on account of being kept out of this particular reserved accommodation. That, Sir, would not be conducive to passengers' convenience, which, as we have seen from reports of the Assembly, the railway administration and the Government claim as justification for the retention of the present practice. The man does not come in time generally; if he did that, probably the question of want of accommodation would not arise at all; it is only the latest comer, the most unpunctual arrival, who rushes in and finds or fancies all the other compartments fully occupied, and he makes for the nearest free compartment where he thinks that he ought to have no difficulty in getting in and undertaking his journey but finds otherwise. It would be somewhat unreasonable to expect that he should, in the first instance, as I say, go down the whole train and make careful investigations, and not only that, but get reliable witnesses who would later on, if necessary, be able to prove that there was this case of inconvenience on the part of the passenger for which he could not undertake the journey. And therefore and thereupon a case of undue preference could be made out according to the Calcutta judgment I have referred to.

In this state of things, Sir, and also in view of the question having been brought up repeatedly in the Assembly by Resolutions and otherwise, this Bill was introduced in the Assembly, and they passed the Bill there. Clause 2 says:

"In section 42 of the Indian Railways Act, after sub-section (2) the following *Explanation* shall be inserted, namely:

'*Explanation*.—For the purposes of this sub-section reservation of any compartment in a railway train for the exclusive use of any passenger as belonging to any particular community, race or creed shall be deemed to be undue preference.'

I might once more invite the attention of the House to the wording of section 42 (2) of the Act which says:

“ A railway administration shall not make or give any undue or unreasonable preference or advantage to or in favour of any particular person, and so on.”

As I have shown, there are these differing judgments of the various High Courts—in fact almost all the provincial High Courts, Allahabad, Madras, Bombay and Calcutta have taken more or less different points of view, and have shown that there is decided difficulty and obscurity in the matter. What some Judges have considered to be undue preference others have not; and what some Judges declared ought to be a matter for proof on the part of the prosecution other Judges have declared to be a matter for proof on the part of the defence. Therefore the only way in which the matter can be cleared up, if it meets with the views of the Legislature, is to have it definitely, clearly and unequivocally stated that reservation of this particular kind is “undue preference” under section 42 of the Railways Act. Sir, I believe in present practice this is confined to Europeans. I remember the time—I believe it has been discontinued now—on the Oudh and Rohilkhand Railway in my younger days when there were compartments reserved entirely and absolutely for Indians. On the one hand we had reservation of that kind; on the other we had and still have reservation for Europeans, and there were certain compartments in which Europeans and Indians could go alike. Probably a continuance of that system might from certain points of view be ideal. That however has been discontinued; at least I have not recently seen any compartment as reserved for Indians.

In the course of the debate in the other House it appeared that this practice has now been reduced to very small proportions; the reservation is only in certain classes of trains in certain Railways and only to a limited extent. That is satisfactory so far, and it strengthens my hand all the more. I believe there is in the mind of the railway administration, although it has not been clearly stated, that in time it is proposed to do away with this. When that will be one does not know, but the question has been taken up in the Assembly by means of Resolutions as well as by this Bill that the rest of the practice should be done away with.

I should like again to dissociate myself absolutely, at least as far as possible, from all racial considerations, and to place my motion entirely from the point of view of legal difficulties. Well, Sir, the changing spirit of the times is supposed to require it, and if there is really no insuperable difficulty in the way, I do not see why the growing popular demand should not be met in the way proposed in this Bill. The railway has been responsible for a great deal of social change. The travelling public is not as mindful of caste rules as it used to be before. People who used to be oppressed with it are no longer handicapped to that extent by the *pardah* system, and I believe the time has come when the old prejudices of different sections of the community travelling together should give way to the new order of things. That, by itself, would not be an unhealthy thing to achieve. If there were not really insuperable difficulties in the way, and I have not been able to see that there are such difficulties unless of course one works up imaginary difficulties, which ought to disappear, the Bill ought to be accepted. I do not think that at this stage I need labour the point further, and I commend my motion to the House and move that this Bill be taken into consideration.

THE HONOURABLE MR. D. T. CHADWICK (Commerce Secretary): Sir, the Council is under a deep debt of gratitude to the Honourable and learned Member for his speech. Most of us are laymen and have not the full legal knowledge of the Honourable Mover. The Honourable Member has in his learned speech alluded to some complexities that hamper the legal mind. He has read some arguments of or rather paraphrased some of the arguments of the High Courts. But, Sir, we have a greater duty than to try to reconcile the arguments of Judges. As part of a Legislature, we are not fortunately troubled with the workings of the legal mind, we are only concerned with the results, with the decisions they arrive at, and as the Statement of Objects and Reasons of this Bill says, not one of the High Courts has held that the mere fact that a third class compartment in a railway is labelled for Europeans and Anglo-Indians is an offence against the Railways Act or is undue preference. That is the clear decision of four High Courts. The result is that the law is clear. We are not troubled with the ratiocinations and the arguments by which they arrived at those results. The decisions are sufficient for us. Therefore, Sir, in the first place, this Bill is designed definitely to change the law. It is worded as an explanation, but it is not an elucidation of an obscure phrase to make the principle embodied in the law more clear. The underlying object is to alter the sense of the section. It seeks to make a substantive change in the law. This I oppose.

I shall now proceed to state the reasons as to how that change would work and the grounds upon which I oppose this motion. The change sought to be introduced by this *Explanation* places another restraint upon the freedom of the Railway Administrations in using its carriages and disposing of the railway stock which it uses. The principle embodied in the Railways Act has been well described in the following words by one of the Judges of the Calcutta High Court:

"In the railway administration is vested the management of the railway and ordinarily they should be deemed to have the power, unless expressly curtailed by law, to make such arrangements as they consider necessary for the convenience of their customers and for their own interests."

The only restrictions, so far, placed by law are that the railways must provide one compartment of the lowest class to be reserved for women, and they must not exercise undue or unreasonable preference. Sir, if this Bill were passed, we would place another restraint upon the freedom of Railways to use their rolling stock as they saw best for the convenience of their passengers.

Sir, I fully endorse what the Honourable and learned Mover has said that in considering legislation we must be careful and critical that we should be certain that it is in accordance with the guiding principles of the Act, and that in considering a change in the law it behoves us to get our facts clear unobscured by the fumes of passion or the fogs of prejudice. We have not the freedom we possess in discussing a Resolution. We must not confuse the details of administration with the principles of the Act. I would now like to examine the principle which is embodied in our law to see if our position is satisfactory.

Now, Sir, what are the facts? They are these. In the first place, we are dealing with railway travel. And what does that connote? I have never yet met any one who sought and found happiness in an unending succession of railway journeys. Perhaps an engine driver's idea of bliss is to travel as a passenger, but I do not think travelling by railways as a passenger is really anybody's idea of happiness. There are many

religions in the world and there are many ideas of the future state of happiness. But I have never yet found any one whose idea of Heaven included a constant changing of trains in noisy railway stations in the middle of the night or in the early hours of the morning. It is not for such a fate as that, that we strive to live honest, sober, kindly lives on earth. And why is that so? Because railway travel connotes and is inevitably associated with a certain amount of discomfort to the individual. If we have a good journey, we rejoice over our good fortune. That discomfort arises partly from the noise and dust, but still more from the fact that we are necessarily cooped up with our fellow-human beings for varying lengths of time. That is one of the unavoidable concomitants of railway travel. And my Honourable and learned friend only two days ago alluded to it whilst speaking on the Railway Budget, when he expressed the desire that there should be more third class *coupes*, in other words, there should be more facilities offered to third class passengers to get away from their neighbours with whom they are bound to travel in the same train for long distances . . . .

**THE HONOURABLE SIR DEVA PRASAD SARVADHIKARY:** Without undue preference.

**THE HONOURABLE MR. D. T. CHADWICK:** Certainly, Sir, they desire to get away from their fellow passengers as far as possible. My Honourable and learned friend inserted "without undue preference", but I would point out to him that the law courts have held that the labelling of a compartment as reserved for a particular class is not necessarily undue preference. This close contact with strangers is an unavoidable concomitant of railway travel, and it is not peculiar to India. It is so in every country. There is also another human fact to be remembered, and that fact is that the habits and customs of a people change. What the travelling public wanted 40 years ago is not what they require to-day. In other words, Sir, human conditions are not fixed and static, they are fluid. The habits and customs of a people constantly change. My submission to this House is that the railway law, as it is at present constituted, recognises these two human facts. It leaves to the railway administration a wide power to make the best arrangements they can for the convenience of their customers. It does not hedge them round with restrictions. In fact, the legal restrictions are as few as possible.

Now, Sir, I maintain that it is desirable to leave the law flexible, and if that principle is a right principle as I have endeavoured to shew that it is, being founded on human nature, then we should be cautious in infringing it and we should leave it to the railway administrations to make the best arrangements that they can make from time to time for the convenience of their passengers and in their own interests. In fact the history of this case, as I will show in a few minutes, illustrates the wisdom of refraining from embodying in the law all manners or kinds of restrictions.

But for the moment I will turn aside to look at the railway aspect. As far as the railway administration is concerned, it is much simpler for them, it is much cheaper for them to have no distinction of classes nor to bother themselves with different rates of fares. In fact where you have quick, short journeys as on tube railways, etc., the whole tendency is to get rid of different classes altogether . . . .

**THE HONOURABLE SIR MANECKJI PATABHROY:** They have all third class carriages.

THE HONOURABLE MR. D. T. CHADWICK: Yes, but on long journeys, passengers will not stand that. We are not all happy in third class accommodation and the railway, for the convenience of its customers, has to put up with different classes, first, second and third class carriages. The reason is that the habits, standards and customs of mankind vary. Now, Sir, I said this case illustrated itself the wisdom of the present law in leaving it flexible and only enshrining that general principle that the railway is free to make the best arrangements it can for the convenience of its passengers. As the House knows, this very case originated some 20 years ago from the Railway Conference at Lucknow in December 1903 to consider the question of the comfort and convenience of third class passengers on the Oudh and Rohilkhand Railway. At that date the request was that every train be provided with separate compartments for Europeans, partitioned by planks and not by iron bars, and that European third class passengers be restricted to that compartment. At that meeting the railway administration did not jump to this suggestion with alacrity. They had no desire to introduce another complication for their railway staff at the stations to cope with, and they said they would consider it. It was from that it started and the reason was obviously that the habits of different classes of the travelling public, namely, of Europeans and others who had to travel on the railways were different, and it was to the general convenience of the travelling public to endeavour to keep them separate. Well, Sir, in those days if we had such a rush as we have to-day to embody in legislation the passing phase of social conditions then, I have no doubt there would have been a demand to have altered section 42 of the Railways Act in some way to make this recommendation of separate carriages the law of the land. That was the desire of the passengers at the time and of the people. But we are told that that is changed now and therefore some wish to alter section 42 to meet the opinions of my Honourable and learned friend and his friends. Well, if at the time, that separation was the prevalent opinion, if they had then followed the procedure we are asked to follow to-day, then those opinions of twenty years would have been enshrined in the Act. Fortunately it was not. The Act was left entirely alone. Railways were not compelled to mark off in every train a compartment for Europeans and Anglo-Indians, and in 20 years what has happened? Customs have changed and the railways have been able to meet the change because they were left free under the law to do so. They began many years ago to mark off these compartments for Europeans on every train. That is not the case to-day. To-day on two railways no compartments whatever are retained for Europeans. On slow trains on all railways no compartments are kept for Europeans. In the first and second class and intermediate on all railways no compartments are reserved for Europeans. It only remains to the extent of one small third class carriage on the fast long distance trains. In other words, Sir, the Act has been sufficiently flexible as it is worded at present, to meet both the strong demand of 1904 for separation and also the change which gradually came about with the changing opinions of the time. Why need we then go and introduce more restrictions into the Act? It has served us well. It has proved its worth. Our main consideration should be to keep that principle of the law clear and leave the Act flexible.

Now, Sir, I think the House will agree that in regard to this reservation for people of habits different from those of other travellers on the railways, there is some reason, some justification for it lingering longer in the trains to which it at present applies, that is on the express trains and fast trains on long journeys; in other words on those journeys in which

passengers are unfortunately and necessarily cooped up together for long periods of time and even through the night. And in this connection, without any offence to anybody, I think we should all realise that in this matter of the habits of the people and their customs, it is a common fact throughout the world, a common human fact characteristic of all countries in the world that many of these habits and customs are most obtrusively marked amongst that class of the population which is in the habit of travelling in the third class; in other words it is amongst the poorest class of passengers that there are frequently different habits and customs of different sections of the travelling public which jar most acutely on each other. It is not a question of India; it is the same all over the world. Therefore the point I make here is that we are not dealing with the Resolution, we are dealing with a change in the law, and that the circumstances are not such as to demand a change in the law. The law has shown that it is adaptable to changing conditions, and there is no point in introducing a restraint upon the discretion of the railway companies.

Also, Sir, after all the third class European is a traveller like everybody else, and there is his convenience also to be considered. In some portions of the country he forms a greater proportion of the travelling public than in other parts. There may be on some portions more need than in others for the Hindu and Muhammadan portion of the travelling public desiring to continue this reservation. In other portions of the country he is a very small factor in the travelling public, and on these lines total reservation has gone, and as toleration and understanding spread reservation will gradually go.

It is also sometimes urged that this reservation ought to be abolished on the ground that if this reservation did not exist, there would be much more accommodation available for the ordinary public. Well, Sir, there is really nothing in that. The reservation that exists is almost invariably a reservation of one small third class compartment in one of these long-distance trains. You are not going to increase the accommodation of the travelling public appreciably by abolishing that reservation. The way you are going to increase the accommodation for the public is by providing more rolling stock and more trains. I am sorry I was deprived yesterday of the opportunity of going into the question of the conveniences for third class passengers. I will only mention to the House that in the last three years 5 million more passenger train miles have been run than three years ago. Last year alone 73 more trains were put on the railways. That is the way to tackle the problem of overcrowding.

My submission therefore to this House is that the law is sufficient as it is at present; that there is no obscurity in it; that it is wise that the law in the matter of railway travel should be flexible as in fact the law is at present, and I submit no more restraints or restrictions should be entered in it.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab: Non-Muhammadan): Sir, I rise to support my Honourable friend Sir Deva Prasad Sarvādhikary. My object in supporting him is not only because there are legal difficulties in the matter of the interpretation of the Act, but because I am a believer in universal brotherhood and have always been its strong advocate. It is a fact, Sir, that in these days when communal feelings are increasing we ought not to allow any enactment to remain in force which adds to their bitterness. What we find is that all converts, whether they are in the lower ranks or in the higher,

[Rai Bahadur Lala Ram Saran Das.]

show enthusiasm and their spirit is always extremely bigotted, and if we allow such enactments to remain we shall be helping them to increase their bitterness towards each other. It is an admitted fact that in these days the minds of the people are greatly changed, especially during the last 5 years. Being a business man, I travel a lot and I see people talk when they find a special compartment reserved for Anglo-Indians and Europeans practically running empty while they themselves are packed up in all other compartments. They consider that they are not being well-treated by the Government. Whether they rightly understand the spirit in which this is done is another matter; but the feeling is there and that feeling cannot be ignored. Eurasians, Anglo-Indians and Europeans who travel in third class compartments get occasion to mix with the masses of the Indian people and it is they who are to put right any bitter feeling which may exist. I am a man who is always for peace and order, and my wish is that there should be contentment in the minds of all people, but when I find that some people do not care to travel with others or when they do travel do not like to sit by each other, I think that spirit should not be exhibited to the masses. It gives them a wrong impression and that impression we ought not to allow to be created. Sir, you find on the railways that there is always a great rush among the third class passengers. The figures which the Honourable Sir Charles Innes gave to us the other day show in what very great numbers these third class passengers travel, and the Railway Department itself admits that carriages to carry them are not sufficient. There is no reason whatsoever for the Railway Department to reserve any compartments. There was a time, as my Honourable friend Sir Deva Prasad Sarvadhikary said, when on the Oudh and Rohilkhand Railway there were different compartments for Europeans and Indians, even in the higher classes; that does not exist now and I welcome it because I feel that all, whether we be Europeans, Muhammadans, Hindus or Sikhs, should treat each other with great brotherly feeling and not show an offensive spirit. These reservations simply show people that in the case of a certain class of travelling public the railway administrations give preferential treatment. This creates an unhealthy feeling particularly in these days and for these reasons I would welcome a consideration of an amendment of the present law.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: General): Sir, the object of this Bill is to prohibit the railway administration from reserving certain compartments for a certain class of persons. The Bill as it stands is a simple one, but it is altogether a very delusive Bill. Few people in this Council realise what will be the logical consequence of our action if this Bill is passed, and I shall therefore ask your indulgence, Sir, and the indulgence of this House for a few minutes while I explain the real purport of section 42, clause (2), of the Railways Act, trace the history of this arrangement briefly and show the disastrous consequences to which we will be led by the passing of this Bill. Sir, I quite agree with my Honourable friend Lala Ram Saran Das that we should live in harmony and brotherhood. Nobody will deny that proposition and I know that it has the sympathy of every one of us. My Honourable friend Sir Deva Prasad Sarvadhikary in introducing this Bill in this Council has very prudently and very tactfully (*The Honourable Sir Deva Prasad Sarvadhikary*: "And very properly") and very pro-

perly, if you please—taken his stand on the obscurity of the existing law. He has wisely avoided the position taken by the author of the Bill himself and the various Members who supported him in the Legislative Assembly, because he probably thought that a position of that character if taken up here would not obtain the sympathy of this House. (*The Honourable Sir Deva Prasad Sarvadhikary*: “Am I my brother’s keeper?”) No, you are not your brother’s keeper, but I shall show you how the position which you ask this Council to adopt will work out. Sir, my Honourable friend quoted from the Statement of Objects and Reasons of this Bill and stated that the law was obscure, and his only object in coming forward to-day is to clear that obscurity. I shall presently refer to that obscurity, but before I do so let me clear up any doubts, if they at all exist, on the subject by a brief reference to a significant passage in the speech of the author of this Bill. In answer to the speech of the Honourable Sir Charles Innes. Mr. Neogy said :

“ I find that the Railway Department has spoiled my Honourable friend. He has thoroughly identified himself with the narrow outlook of that department which stands for racial discrimination wherever it possibly can. Sir, my Honourable friend said that those Indians who travel in these compartments by virtue of their wearing European costume like this arrangement and so do the Anglo-Indians. Quite right. But we do not like it. That is exactly what this Bill intends to say to the Honourable Member. I believe we have lately had a good deal of sympathy in this House for the poor Anglo-Indians. My Honourable friend, Sir Campbell Rhodes, pleaded their cause in moving terms in this House the other day, and my Honourable friend Sir Charles Innes has followed suit. I make it quite clear here that I am not in favour of taking away any of the privileges enjoyed by the Anglo-Indians so long as those privileges can be enjoyed by the Indians alike. I am not in favour of discrimination against the Anglo-Indians, but I am absolutely opposed to any discrimination against the Indians.”

Sir, that was the spirit in which this little bit of an innocent Bill was introduced in the other House. That is the spirit which underlies the principle of this Bill and it is in this connection that I shall say a few words. At present I shall leave the question of racial discrimination alone. Sir, if this Bill involved any great principle, any sublime principle against the continuance of all racial discrimination, I would be glad to support it. When the Racial Distinctions Bill came up before this Council I supported it with all the emphasis and vehemence at my command. I pointed out that those discriminations which were in the Criminal Procedure Code as it existed were unsuitable to the times and that the present conditions of our political situation required their immediate repeal. But here I find serious danger in this small little bit of a Bill which is presented to us to-day and I shall indicate my difficulties presently. My Honourable friend drew the attention of this Council to the rulings of the four High Courts of Allahabad, Madras, Bombay and Calcutta. I know there has been some difficulty about the interpretation of the words “undue preference”, and the Judges were somewhat troubled in coming to a conclusion. There was no serious difference of opinion; there was no such great obscurity whether the original framers of the Act in defining “undue preference” meant to contemplate distinctions of this character or not. Sir, my Honourable friend has forgotten to tell the House one thing. How did all these cases which caused legal obscurity happen to take place? They were caused by a few men, three or four men, who deliberately broke the law and forced their way into third class compartments reserved for Europeans; and when they were prosecuted under the Railways Act their defence was that the words came within the purview of section 42(2)

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of the Act. Let me concede for a moment that this obscurity exists. Then make it clear. Why prohibit it? I shall be very pleased to accept my friend's Bill if he introduced the word "not" after the word "shall" in the last but one line of the clause, the legal obscurity will disappear and the whole clause would read thus:

"For the purposes of this sub-section reservation of any compartment in a railway train for the exclusive use of any passenger as belonging to any particular community, race or creed shall not be deemed to be undue preference."

This will avoid all the trouble. No, Sir. The plea of obscurity is a mere excuse, a mere pretext for interfering with the ordinary work of the railway administration. As such, Sir, I oppose this Bill.

Now, let us see the prospective consequences of this Bill. My friend knows like many of us that the railway administration have made many such discriminating arrangements for the comfort and convenience of third class passengers. My friend knows very well that there are separate rooms where accommodation is provided for drinking water for Hindus; I have seen many little places likewise reserved for Muhammadans; there are refreshment rooms for Hindus and there are also rooms marked refreshment rooms for Muhammadans. I ask my Honourable friend, where will you draw the line of demarcation? If you pass this Bill to-day and say merely that the principle of reservation of third class compartments for a particular community amounts to an undue preference, why should not I or any other Member to-morrow get up here and say that all refreshment rooms marked for Hindus or Muhammadans should also be brought within the purview of the section and brought within the definition of undue preference? That is the danger of a Bill like this. The Bill looks innocent, but it is not so. It will cause a lot of complication. Apart from the question of interfering with the work of the railway administration, it will cause a considerable amount of inconvenience to our own travelling fellow-subjects; it will put the railway administration in difficulty; it will make travelling unpopular, and our own countrymen will be the first to protest against this Bill if the existing suitable discriminations are removed. I therefore ask you to consider seriously about these questions from different standpoints. After all is there anything so pernicious, so wrong about the reservation of separate accommodation? I have been a traveller for many years and I know that many Indians who travel third class, the poorer third class passengers, would infinitely prefer that in their compartments Anglo-Indians should not enter and they should be left alone because they would feel uncomfortable with their wives and children if Anglo-Indians got into them. I have noticed often how very unwilling they are to see any Anglo-Indians entering their compartments. So instead of doing something for the benefit of the third class passengers, we are subjecting them to serious inconvenience by passing a Bill of this nature. And therefore, I think that we ought not to go in for the acceptance of the principle involved in this Bill. Sir, my Honourable friend over there briefly referred to the history of this arrangement. This arrangement of reserving third class compartments was not started by the Railway Companies. It was introduced at the instance of Indians themselves. They themselves asked for this concession or privilege whatever you may call it.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab Non-Muhammadan): How?

THE HONOURABLE SIR MANECKJI DADABHOY: I do not know whether my Honourable friend has read the full debate on this Resolution, but perhaps it may interest him to know, Sir, that in the year 1904 a Railway Conference was held at Lucknow to consider the grievances of the third class passengers. At that conference the members present made a request that some special accommodation should be provided for Anglo-Indians and Europeans with whom our countrymen objected to travel on account of their different conditions of life. Now what are these different conditions of life? Now, I will just give only one instance. In an ordinary third class compartment the toilet accommodation is of a different character altogether. It is not the same as is provided in a third class compartment intended for Anglo-Indians or Europeans. It is this primitive condition of life that makes it necessary for the third class Indian travelling public to have special accommodation to suit their habits and their water closets are differently constructed. Then if you come to consider the class of people who mainly resort to these reserved compartments, you will see that they are all our own countrymen, they are either Anglo-Indians or Native Christians. It is this class of people who mostly avail themselves of the third class reserved compartment. Different conditions of life, different habits of life and different proclivities make such a distinction desirable. And therefore why, unless there are some serious objections, should you disturb the continuance of the present arrangement which is conducive to the convenience of the travelling public.

My Honourable friend over there is anxious that the obscurity in the law should be cleared up. It is on that standpoint he has based the present motion. The obscurity of law is not at all appreciated by the travelling public; nobody has complained about it. It is the man who breaks the rule and obtains forcible admission into such reserved compartment that relies on the plea of obscurity for his acquittal. The people generally only look to their convenience and comfort, and I think that it would not be proper to introduce a departure from the existing principle in the administration of our railways.

After all, it has already been pointed out that there is no objection to Indians dressed in European costume travelling in the third class compartments labelled as reserved for Europeans or Anglo-Indians. In fact, we have dining cars attached to trains mainly intended for the comfort of Europeans but which are some times made use of by Indians, some of our Indian friends dressed in English costume enter those cars and have refreshments there. In fact, the other day there was a question and an answer given in the other House as to why a separate exclusive refreshment carriage for Indians and third class passengers should not be attached.

THE HONOURABLE MR. D. T. CHADWICK (Commerce Secretary): We are trying to do it.

THE HONOURABLE SIR MANECKJI DADABHOY: In fact, we have constantly asked for reservation of third class refreshment rooms for purely Indian third class passengers. Therefore, can that object be gained by legislation of this character? I say that a proposal of this character is detrimental to the interests of the travelling public. The mere matter of the obscurity in law is put forward as an excuse to bring up this motion. Many of the Assembly Members on several occasions have made it perfectly clear that they want to insert this clause and enlarge the scope of the exception for the purpose of doing away with existing racial discrimination.

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Sir, as regards clause 42 (2), I say that it would be straining the language of the framers of the Bill to bring cases of this character within the category of the Bill. As I see this Bill, it is merely founded on sentiment. It is founded on a mere abhorrence of racial discrimination. This Bill is admittedly, according to the author's declaration which I have read to you just now, designed for the purpose of doing away with racial discrimination of this character, and I therefore cannot commend it. I refuse to become a party to such sickly sentimentality. If there was any good principle in it, I would have readily supported it. The Bill, in my opinion, unjustifiably seeks to interfere with the ordinary routine work of the railway administration, and if this state of things is allowed to continue, I do not know to what extent the work of the railway administration will be hereafter interfered with. I submit that it is far beneath the dignity of this House to bother itself with legislation of this character, and I hope that this Council will show its good sense by rejecting this Bill.

THE HONOURABLE HAJI CHOWDHURI MUHAMMAD ISMAIL KHAN (West Bengal: Muhammadan): Sir, I rise to speak on the subject before the House and I regret that I have to oppose the motion. In my humble opinion the question involved is so very trifling, as not to be brought before this House. I think to discuss such a petty affair like this, will be to lower the prestige of the House.

Setting apart the question of dignity, I come now to point out one or two patent facts to be taken into consideration in deciding the point at issue. Sir, I am not one of those to be carried away either by impulse or by emotion. The reservation of one ten or twelve-seated compartment in a whole train could not be taken to be the cause of overcrowding of other compartments. Is there anybody in this House who sincerely believes that by doing away with the reservation of the European compartment the whole problem of overcrowding of the third class passengers will be solved? I dare say not. I would rather appeal to Government and the House to bring forward some practical proposals which will really relieve the public who are at present suffering a good deal for want of accommodation in the ordinary express and passenger trains.

The other argument generally adduced by the supporters of the motion, is that it involves the question of racial superiority. But, Sir, I frankly admit that I do not see anything of the kind in the Railways Act as it stands at present. I make bold to say that the very day on which I will be convinced of that fact, I give my assurance to my Honourable and learned friend, the Mover of the motion, that I will be the first to join with him in denouncing such racial bias or superiority. I am not the person to admit of the superiority of any race or community, be it European, American or any one else. It is my sincere and firm belief that such powers of reservation are really required for the better railway administration of the country. It is for the convenience of all concerned that the European and the Anglo-Indian passengers should be completely separated from the rest of the passengers. I may warn the House that if we force the Indian masses and the Anglo-Indian passengers to travel together, violence and bloodshed will be of everyday occurrence. It is the poorest Anglo-Indian whose manners, customs and ways of living are so different from those of the Indians who avail

themselves of these compartments; and there are sufficient reasons and justifications not to grudge any petty advantage if there be any enjoyed by any minor community.

THE HONOURABLE MR. R. P. KARANDIKAR (Bombay: Non-Muhammadan): Sir, on such a matter as this it is very difficult to explain away the whole situation. Sentiment there will be in the discussion of this small measure, but I shall try to take this measure out of the region of sentiment as much as possible, and if I do restrict it to the province of law, it is not because I do not wish to enter into the sentimental aspect, but because it would be much more reasonable to discuss the measure on its own merits. We have had a very intelligent discussion in this House and a very generous offer from my learned friend the Honourable Sir Maneckji Dadabhoj for the introduction of one little word "not" in the Bill itself which might adjust it to the requirements of this House and possibly it would meet the case. The Honourable Sir Maneckji Dadabhoj wanted to trace the history of this question. I will not venture on the whole history, but I place before the House the reasons why I am convinced that this Bill is in consonance with the original intentions of the framers of the Railways Act of 1890. What I understand by "undue preference" I may explain in a very few sentences. The railway companies are common carriers, as we all know, and it is well known that they derive a certain monopoly over other interests, over other concerns, and they have to confine themselves to the rules under which the railway system is brought into existence. The railways may be owned by the State as owner or as sharer or as guarantor. In any case there is a certain responsibility to the State which rests on the shoulders of common carriers. From that point of view anything which is added to the comfort of any particular individual, as distinguished from others is undue if unpaid for and discriminated from that of others in respect of the comforts they enjoy. Reservation also has a peculiar meaning. If, for instance, a European or an Anglo-Indian for whom a third class compartment, a smaller or it may be a bigger compartment, is reserved, were to enter into other carriages or compartments there would be no objection to his doing so. Just think for a while, would you prosecute him? Would you take him to the courts of law and sustain a conviction because certain other compartments are reserved for him? The railway company who reserve a third class compartment may as well say some compartments are for Indians, not statutory Indians, but Indians as such. And if there is a corresponding responsibility upon any European or Anglo-Indian not to enter the compartment so reserved for Indians and if a European or Anglo-Indian was prosecuted with success, as an Indian was prosecuted, for entering certain compartments there would be no idea of preference. The advantages would be common and in that case there could be no reservation. I know how this dispute has been started. Some people choose to call it political; others may call it a justifiable means of doing away with racial distinctions. I am not concerned with either of the motives. Common sense dictates that unless a law is broken it cannot be tested, and when it is tested, it is there the province of the Legislature begins. Therefore the Legislature has been invoked here to set matters right, and I think this is preeminently a matter for the Legislature to consider. What the High Courts and other law courts do is to look to the wording of the section. They are precluded by precedent after precedent from looking into the reasons which compel legislators to frame

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a particular Act. They cannot go into the proceedings of the Legislative Council. They cannot invoke the aid of remarks made either by this or that Member. They can only, according to their light, consider the Act as it is. Hence I think explanations are needed. Hence the framer of this Bill has acted wisely in putting it down as an explanation. This brings me to the consideration of why this should be looked upon as an explanation. I have glanced over the proceedings of the year 1888 and 1890 between which years the matter was discussed and considered by a Select Committee. The Bill was at that time discussed by Sir Andrew Scoble and a particular reference was made to what was looked upon as a concession. If Honourable Members will look into the discussion, they will see that he specified what a concession meant. He referred to the English law and other Acts on the point, and the Railways Act followed them in 1888 and 1890. The then Legislature while framing the enactment claimed a certain indulgence for introducing a fresh section, section 64, in the Railways Act. What it did do was to show a preference for reserving certain accommodation for females, which was not to be found in other countries. They justified the introduction of section 64 in the Act expressly on the ground that it was a small concession. The kind of reservation, even for females, was a concession. If it was possible for the railways to do that themselves the law would not have contained a specific provision for the purpose. The expression used there in section 64 shows that it was looked upon as a concession. The reservation therefore of a particular compartment is a matter which does not ordinarily lie within the power of the railway administration. They must be entitled to do it under some law and unless they were armed with the law everybody would be inclined to test it and to find out whether the railway can do this thing or that thing. I refuse to look upon it as merely an arrangement by the railway administration itself. If Honourable Members will look at the proceedings of 1890 from page 77 onwards, it will make it perfectly clear to them that this was looked upon as a concession, and therefore it is an undue preference.

When four High Courts of different provinces have had to deal with such cases, how can you say that it is a trifling matter? I know it has been said that we are so dignified here that to treat of such questions is below our dignity and that we should not bother about such petty matters. Call them pin-pricks or call them anything else you like, but these are just the things that test your law, and I appeal to the House not to throw out this measure or to treat it as beneath the dignity of the House. For if the dignity of the House were so raised as to make it incompatible with the dignity of the other House, we would lay ourselves open to peculiar charges and I should not like that. I do look upon this measure as well worthy of being considered.

Now I proceed further. In addition to those decisions to which reference has already been made, there was an additional one, also coming from Bombay—I refer to 45 Bombay in which on the civil side the question was considered. The Judges did not go into the question as to whether this was undue preference. It was a very knotty point and I assure this House if ever any endeavour was made by anybody to turn the present *Explanation* by adding a little “not” there it would move heaven and earth. No such concession can ever be possible in the case of a common carrier. Let anybody try to introduce the word “not”. It would certainly be a reservation.

In fact the railway administration now reserve whenever they like. It may be only a matter of sentiment which I realise. There is no difficulty about that and whatever may have fallen from the benches opposite urging that it would be an advantage to the people concerned to have a separate compartment relying upon a reference to the Railway Conference of 1904. I do not believe that the separate compartment should be so separated by planks. If it was not to be separated by iron bars but by planks what does it mean? There may be claimed separate compartments for all but as long as there are no successful prosecutions against any European or Anglo-Indian for entering other compartments the arrangement is one-sided. I do realise that there is a great difficulty in enabling railways merely to have separate compartments for Europeans, even if only for decency's sake, or for the sake of convenience, but to make it a point of law that anybody going into the compartment shall be prosecuted is unjustifiable and the High Courts are in that matter helpless. The Assembly has moved in this matter because the Assembly represents the common people. I admit that the railways may reserve for the comfort of passengers generally, but there is no corresponding responsibility on non-Indians such as that if they went over to another compartment they are liable to similar treatment. There is nothing of that kind. If the third class carriages are all full up and there is room in this reserved compartment, I do not see any reason why it should not accommodate those people who would otherwise be left behind. In circumstances like that to say "This compartment is reserved for Europeans" is not right. When there is a compartment which is going empty, which travels for miles together with nobody inside it, there can be no harm if this compartment were utilised by non-Europeans or non-Anglo-Indians. It is just cases like these that bring up this question.

Now I turn to the question as to whether it is an *Explanation*. The arguments on the other side are all on one side, and I do not think Honourable Members should be satisfied with the line adopted by the other side which is inconsistent with the whole spirit of the Railways Act. Now this *Explanation* says that this is undue preference. Well without that *Explanation* the law may have been understood to mean anything. There is no particular object in stating it as an *Explanation*; but because there has been some difficulty in interpretation about it that this *Explanation* is added. There is nothing wrong in it, no slur is cast upon anybody. We are indeed thankful to the railway companies for providing minor comforts and conveniences like drinking water, etc., stated by my Honourable friend Sir Maneckji Dadabhoy. It is not that the travelling public are not grateful to the companies for these things; but is it going to end there? Is it not a fact also that third class compartments are generally full up and that it is to the interest of the companies to increase their traffic by these and other means? The travelling public are not unmindful of the little things that are done for their comfort, but when the railway company say "You cannot enter this compartment or that compartment; we have the right to reserve compartments for certain people" then the public say "We also have a right in this matter" and they appeal to the Legislature through their representatives. It may be a small matter or a big matter. The conviction of a man under this section of the Railways Act as it is interpreted is a matter I should say of grave importance; and I appeal to this House not to reject the consideration of this Bill however it may be moved. The time may be a

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premature time or it may be a good time, but no time can ever be premature because somehow or other this subject has to come up. It can be taken up to higher quarters. For instance, there is another section in the Railways Act which allows people to take the matter to the Commissioner to approach the Government to appoint a Commission.

It would have been better for the railway companies to have placed the matter before the Commission and obtain weight to their opinion, but instead of doing that they are raising this sort of objection. Here is a clear case for the Legislature to decide one way or the other; the Bill should not be thrown-out because it is a flimsy thing and a mere pin-prick and that therefore we are not concerned with it. I do appeal to the House not to throw out the motion on such flimsy grounds.

THE HONOURABLE RAJA PRAMADA NATH RAY (East Bengal: Non-Muhammadan): Sir, if the present day policy of the Government is to remove all racial distinctions, I do not see how it is compatible with that policy to have reservation of compartments for particular communities in any trains. If these reservations are to be kept up, as my friend, Mr. Karandikar said, why should not there also be reservations for Hindus, Muhammadans, Jews, Parsis and Sikhs and all other communities? It is difficult to see why only third class has been singled out for such reservations when no such reservations are made in the first, second and intermediate classes. If the Government are to adopt the principle of putting each community in different water-tight compartments in 3rd class the same thing can be done in the case of the higher classes also. It is inconceivable why this should be done in the case of the third class only.

Then there is the question of habits to which my Honourable friend, Mr. Chadwick referred. I think this difficulty can be easily obviated by introducing the *coupé* system and having certain *coupés* fitted with special fittings, without saying that it is intended for such and such people. Sir, what was considered good enough twenty-four years ago cannot, I am afraid, be considered good enough now; things have moved since then in every path and walk of life and there have been lots of changes. I cannot see why what was good twenty-four years ago should hold good now. The Honourable Chaudhri Muhammad Ismail has said that if Indians and Anglo-Indians and Europeans go in one compartment they will fight with each other like cats and dogs. I cannot think that at the present day that will happen; there may be one or two fights here and there, but that also happens at present. I am afraid my friend is taking too pessimistic a view. The people have more sense now than to fight with each other in trains. However, that is my opinion and I have nothing more to say on that.

In the other place, the Honourable Member in charge of the Commerce Department had said that now a days practically no distinction is made in these compartments, and Indians wearing European dress are admitted or at least have been admitted in certain cases into those compartments. If there is no distinction between a European and an Indian dressed in English clothes, where is then the necessity of there being reserved compartments labelled for particular communities? In that case I believe Government are unnecessarily courting unfavourable criticism from the public where there is practically no need to do so. It is also to be

regretted that stress is being laid more on the dress of an individual than on the individual himself. Such a situation, from the Indian point of view, should be regarded as degrading because whatever sort of dress an Indian might put on he has no right to pass as one who does not belong to the Indian community; and the sooner such a system is put a stop to the better it will be for the self-respect of the Indians.

I think, however, that it is not impossible to find a sort of half-way house in this matter and change the existing labels in such a way as to include both Indians and Europeans. But that is merely a suggestion; it is not an amendment by any means. I should much prefer that the reservation on a communal basis should be done away with altogether and a system of *coupé* compartments introduced with special fittings. On these grounds, Sir, I beg to support the motion that this Bill for the amendment of section 42 (2) of Act IX of 1890 introduced by my Honourable friend, Sir Deva Prasad Sarvadhikary, be taken into consideration.

THE HONOURABLE MR. G. S. KHAPARDE (Berar: Nominated Non-official): Sir, I wish to support this motion on a ground that has not yet been put forward. It is this that the railways are common carriers; but unlike other ordinary common carriers they are monopolists also. The railway is a monopoly concern and anybody wishing to start a line now from Bombay to Delhi in competition with the Great Indian Peninsula and the Bombay, Baroda and Central India Railways would not be permitted to do so. And why? because the concern is very great, it requires large capital and any amount of outlay to secure the comfort of passengers. For all these purposes the railways are monopolists and having monopolies granted to them by the State, I say they have no right to discriminate between one person and another. They must offer to carry so many persons and not show any preference to any person or community and they must provide for all equally, otherwise the State would be right in withdrawing the monopoly from them.

THE HONOURABLE SIR MANECKJI DADABHOY: Why did you ask for a monopoly for the coastal trade?

THE HONOURABLE MR. G. S. KHAPARDE: I have not applied for the coastal trade monopoly and so that is not a point for me to answer. The fact remains therefore that railways as monopolists cannot of their own motion or choice create any preference in favour of any person, and that was the meaning of section 42 and all that; and it was relying on that that these people felt the inconvenience so much that people of education purposely broke the law in order to make what is called a test case and took it to the highest tribunal to see whether this was or was not preference. Now, you do not mean to say that these people instituted these cases merely for the fun of the thing, that they were tired of sitting at home and said "We will now go to jail", or that they had so much money that they wanted to spend some of it on lawyers and so on; that is not so. There is real inconvenience and there is a feeling, perhaps not so vocal as it might have been, and perhaps there are poorer people who cannot afford to take it to courts; but still there is a real grievance, for it often happens that a train is overcrowded and in the middle of it there is one compartment travelling completely empty not because there is any lack of passengers, but because a label has been put upon it reserving it for a particular community and no other person can enter it. Sitting here in this cool atmosphere we may not recognise the inconvenience of it;

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but when there are fairs and when people are travelling, say to Pandharpur, and you see them put in cattletrucks to be carried to their destination and there in the middle of their train there is this empty compartment reserved for a particular community, into which otherwise one could get and travel more comfortably, that is where the irritation comes in; and that irritation having come in and having gone this distance, if at all no racial discrimination is intended and no favouritism is intended, then why this elaborate defence of it? Why do you not say "All right; you feel the inconvenience; we throw it open; anybody can travel by it." If it is such a small matter, then why should there have been any opposition at all? But because there is the opposition, there is something behind it; and what is that something behind I shall just explain. First of all, the railways by themselves have not the authority to grant preference to any particular community or race, they cannot show any kind of preference at all. The law prohibits them from doing so. Therefore, why do they label the compartments as reserved for a certain class? I therefore submit that it is a real grievance that the railway companies should be allowed to set apart a compartment for any particular section or race. This grievance is very keenly felt by the dumb millions, by those who are unable to complain, by people who do not know the arts of publicity, nor have they the power to put forward their grievances.

THE HONOURABLE SIR MANECKJI DADABHOY: Did the National Congress ever bring forward this proposition?

THE HONOURABLE MR. G. S. KHAPARDE: I have not read all the reports of the Indian National Congress sessions, and so I cannot tell my friend whether the Congress ever brought forward this subject for discussion, but if they have not, I think they have failed in their purpose. Had they done so, they would have done better.

THE HONOURABLE SIR MANECKJI DADABHOY: Thank you.

THE HONOURABLE MR. G. S. KHAPARDE: I therefore submit, Sir, that the people of this country have a real grievance and it is felt all over the country. If therefore we throw out this Bill, it will only show that we never care for the sufferings of the poor people and that we are attending more to the interests of the more influential and monied classes than to the interests of the poorer classes. On these ground therefore, I submit that this Bill should be carefully considered and passed.

THE HONOURABLE MR. G. A. NATESAN (Madras: Nominated Non-official): Sir, at the present stage we are asked whether this Bill should be considered, and I think a very strong case has been made out for its consideration. I admire the sweet and reasonable manner in which my Honourable friend Sir Deva Prasad Sarvadhikary placed his case, and I also admire the very reasonable speech delivered by the Honourable Mr. Chadwick in opposing the motion. I really think that in this matter there is not much difference of opinion. I must state at once that I do not presume to say anything about the legal aspect of the question on which the Honourable Mover has rested his case. However, I must say one thing quite frankly. When I got notice of this Bill, I really thought that it was a very small matter and that this House need not trouble itself with it. However, I must again say frankly that I applied for literature on this subject and I got some elucidation from Diwan Bahadur

T. Rangachariar, Deputy President of the Assembly. I argued with him and pointed out to him that perhaps even now some of our people will not care to get into a compartment which is labelled as reserved for Anglo-Indians, because their habits are certainly entirely different from ours. But he gave me some reasons, which induced me to come to the conclusion that it is perhaps desirable that this distinction should be done away with. I must say at the same time that I am not looking at the question from a racial point of view at all. The point of view which I wish in all humility and in all seriousness to put before the House is this. My Honourable friend Mr. Karandikar said that the railway authorities intended this as a concession. I deny this statement, and I would respectfully submit that it is entirely opposed to facts, because it is only our own countrymen that asked the railway authorities in 1904 to have separate compartments . . . .

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: It is not so.

THE HONOURABLE MR. G. A. NATESAN: Then there must be some mistake in the report of that conference. However, I say this subject to correction. I believe it is a well known fact that most of our people avoid getting into a compartment which is labelled as reserved for Anglo-Indians or Europeans. In 1904 the prejudice was far greater, but it is gradually dwindling. As a matter of fact, I wish to state that when I was travelling with my wife in the first, second or third class—I have had my days of toils and difficulties and in the early days of life I could not afford to travel by second or first class,—but when I was travelling with my wife in those days we always avoided travelling with certain people whose habits did not agree with ours. But my experience has been very pleasant. I shall just give the reasons briefly for supporting the Bill. My point is this. There was no doubt a great prejudice in 1904, but much water has flowed under the bridge since then and the relations between the various communities have considerably improved. When I myself hesitated to get into a first or second class compartment with my wife and when I actually got in, I have had the kindest treatment and consideration at the hands of Europeans who mostly occupied those compartments in those days. It was only very recently a very big European official even offered to get out of the compartment for a quarter of an hour at a railway station when we were about to take our food, because he thought that my wife might have some objection to taking food in his presence. Similarly, a Muhammadan gentleman with whom I was seated in a second class compartment some years ago was very considerate to us while travelling from Villupuran to Madras. I at first hesitated to get into that compartment because my wife was travelling with me, but he was the first to welcome me and offer the entire berth to us. That poor man is now dead. He was a great merchant in Madras and a philanthropist. My Honourable friend Sir Muhammad Habibulla must have known him, and his name is a household word in Madras. But that is by the way. When I discussed the matter with Diwan Bahadur Rangachariar, he narrated to me his own case. He once happened to go to Mayavaram, which is only about 30 miles from Kumbakonam. He had to travel by a train in which there was no first or second class, and therefore he got into a third class compartment. The moment he got in, a little board was put up saying "Reserved for Eurasians and Anglo-Indians", and he was asked to get out, and he refused. In this connection I should point out that Honourable Members of this House ought not to picture to themselves Diwan Bahadur Rangachariar as he is now with his English uniform, with his neck-tie, and perhaps with his

[Mr. G. A. Natesan.]

improvements in dress since his return from England. If you wish to know Mr. Rangachariar, you must picture to yourself Mr. Rangachariar with his big *dhoti*, with only a shirt and a coloured *duppatta*, with his *namams* as thick as possible on his forehead, bright and shining. Now the point is, Mr. Rangachariar wanted to go to Kumbakonam station, there was no first or second class compartment in the train and he had to finish his journey. How could anybody go and tell him that he cannot travel? I again wish to say that I desire to support this motion only after hearing the experiences of my friend Diwan Bahadur Rangachariar. He was asked to get out of the compartment, and he refused to do so. That means, that the train was overcrowded, there was no first, second or intermediate class compartment, but as he had to go to Kumbakonam, he was quite willing to put himself to the inconvenience of travelling by the third class. But he was shown the board labelled as "Reserved for Anglo-Indians". Mind you, at that time there was not even a single Anglo-Indian passenger in that compartment. Now, I ask the House to consider whether under these circumstances the law should be retained as it is. I have read the literature on the subject. I have also had the advantage of listening to the eminently reasonable speech of my Honourable friend Mr. Chadwick. But what I ask him is this. He himself says there is no reservation of any first or second class compartments for any particular section of the people. He also tells us as was stated in the other House, that this reservation has been done away with in almost all the railways, and that it exists in only one or two railways. Now it is for us to consider the balance of advantages and disadvantages. My Honourable friend Mr. Karandikar made out a very strong case. Suppose you do reserve a third class compartment,—I take the statement of the Honourable Mr. Chadwick,—with only eight seats. Suppose an Anglo-Indian family consisting of more than 8 people proceeding on a holiday trip get into the third class compartment reserved for them and occupied the eight seats and the remaining Anglo-Indians tried to get into any of the other third class compartments not reserved for them but occupied by Indians, will the Indian passengers be justified in refusing admission to them telling them that they should squeeze themselves into the compartment reserved for them? These Anglo-Indians who cannot find themselves accommodation in the compartment reserved for them may be willing to put themselves to the inconvenience.

THE HONOURABLE MR. D. T. CHADWICK: They must put up with it.

THE HONOURABLE MR. G. A. NATESAN: That is just what I say, if one has to put up with it the others can also put up with this inconvenience also because we are all fellow passengers and have to share in the trouble. If there is to be any fighting at all, as my Honourable friend the Muhammadan Member said, there will be a fight in these conditions also. I have had my share of difficult times and been constantly a third class passenger. Let me say this trouble used to take place, but the relations between the various communities have considerably improved and there are Europeans who welcome Indians with their wives and treat them well, and it is an object lesson which I think every one should foster and encourage. While relations are thus improving, I do not think it is desirable even on one or two railways, to pursue this present plan. The whole question now is purely a question of expediency. Where is the balance of advantages or disadvantages? You have done away with this reservation in the first class, second class and intermediate. You have no such reservation even in regard to the third class on most railways. You have it only on one

or two railways. I think Sir Maneckji Dadabhoj did a distinct disservice to the promotion of good feeling and a better atmosphere in which these very complicated subjects are discussed in this Council by introducing the question of finding fault with the motives of people. That is a practice we should all deprecate, and those who are leaders in supporting the dignity of this House should set a better example. There is no doubt there were some of our own people who thought they should not be compelled to travel with certain classes of people, but I think that feeling has died out. I have had considerable experience and have had to utilise the third class very often myself, and I say we do not find much of these difficulties. But I do think that even if there is a little difficulty, it is better in the interests of good administration and the promotion of that happy fellow feeling that this small restriction should be taken away. If it exists only on one or two railways why bother to keep up this position? Why not alter it? The Honourable Mr. Chadwick said in 1904 at a Railway Conference a suggestion was made about this. There is a Central Railway Committee. Why not refer this question to them and ask them to consider it instead of Government getting up and saying they oppose the consideration of this Bill? Why not consult this Committee, put the pros and cons before them and ask them if they still think this is necessary? I think it will be a very good thing if Government do not oppose the consideration of this Bill, but leave it to the Railway Advisory Committee to consider this question. Nothing will be lost if this matter is postponed. It is clearly admitted that you have no reservation for the higher classes and that all reservation has been done away with in the majority of cases.

THE HONOURABLE THE PRESIDENT: The Honourable Mr. Chadwick.

THE HONOURABLE SIR DEVA PRASAD SARVADHIKARY: I want to reply.

THE HONOURABLE THE PRESIDENT: The Honourable Member had ample opportunity to rise in his seat after Mr. Natesan had spoken. I sat in my place with my eyes fixed on the Honourable Member waiting for him to rise. I must impress on Honourable Members that they must look after their own interests in this matter. I do not intend to ask the Mover in any case whether he wishes to exercise his right of reply. I shall have to assume, if he does not rise at the end of a debate, that he does not wish to reply.

THE HONOURABLE SIR DEVA PRASAD SARVADHIKARY (West Bengal: Non-Muhammadan): Sir, in the first place it is due to myself and also to the Chair, that I should explain the delay in getting up in my place. I am never slow to avail myself of the opportunities that the rules provide for me but am averse to undue precipitancy. The Honourable Mr. Natesan made a suggestion to the benches opposite and I saw the Honourable the Home Secretary going up to the Honourable Member in charge, and I thought naturally there was a conference going on as to whether that suggestion was going to be taken up or not, and I wanted to give time for the purpose. When however I saw the Honourable Mr. Chadwick rising, I thought that was not going to be done, and I lost no time in getting up.

Sir, I am sorry the burden and responsibility of having to reply has been cast on me, not by the Honourable Member in charge of the question, whose sweet reasonableness, to quote my friend Mr. Natesan, had nearly disarmed me, but by another. The responsibility for any heat or

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introduction of unnecessary and undesirable elements in the debate must rest on the Honourable Member from Nagpur, as has been pointed out by the Honourable Mr. Natesan. There are some law points, Sir, with regard to which I shall have to deal later on as the Honourable Mr. Chadwick has in his way referred to them. Before I do that, I desire to deal with some of the points that the Honourable Sir Maneckji Dadabhoy has thought fit to take up. He has called the Bill petty. I am thankful that the Honourable Mr. Chadwick did not borrow that official shibboleth elsewhere and call the Bill petty. He put his opposition on other and better grounds. We must be thankful that the Honourable Sir Maneckji has not called it paltry, emanating from a "paltry half dozen" according to recent newspaper phraseology who are making themselves obnoxious to the Honourable Sir Maneckji Dadabhoy and his friends. Sir, contrary to the terminological chastity upon which Sir Maneckji Dadabhoy prides himself, he has invoked good sense and asked the House not to "bother" themselves with this petty matter which was "beneath their dignity." A petty matter indeed which has engaged the attention of four High Courts and a responsible Assembly. I can hardly imagine my friend was serious. If for reasons that appeal to this Honourable House, it finds it necessary to reject the measure, let it do it by all means, but that is not the way to deal with a question that behind it has certainly large popular demand and has also the support of the majority, in a complementary Chamber of the Legislature, the strength and significance of which my friend with his astuteness cannot fail to recognise. He cried out on the question of monopolist carriers, raised by the Honourable Mr. Khaparde and the Honourable Mr. Karandikar. "Why did you ask for a monopoly for the coastal trade", as if that matter was *apropos*, as if that matter would involve a solution of what my friend Mr. Karandikar has called "concessions" in law. My friend Mr. Natesan did not appreciate what Mr. Karandikar meant by calling it a concession that Sir Andrew Scoble had to plead for in 1890, because it was an out of the way thing for common carriers to have a concession like this. It was instituted only by reason of serious questions connected with the womanhood of the country, which involved the necessity of having separate *pardah* arrangements in travel. Sir, I had to be somewhat emphatic in my protest in regard to the oft-repeated argument of Sir Maneckji referred to by the Honourable Mr. Natesan that this system came into vogue after the Conference of 1904, at Lucknow, or whenever it was. That is not a fact. I myself remember, I shall take no other evidence, that in 1882 on the Oudh and Rohilkund Railway there were reservations for "Europeans only" and for "Indians only" down to the intermediate class which attracted my attention. Possibly in the third class, there was no such rule which might have been the object of the Lucknow Conference. I shall not accept any testimony, having seen myself, to the contrary that separate reservation on whatever basis it might be for the time being, was due to this Lucknow Conference, or by reason of popular demand then put forward. It had a much earlier genesis. Sir, the Railway Department is out for making history we have been told, and if history is to be made on materials like that, and if it is to be argued that because something appears in print, somewhere and is *chappa me likha*, therefore that is to be accepted as proving something else. I am afraid it will prove poor history that will stand no critical examination. My Honourable friends from Bengal will probably remember that not only was there this differentiation

but the expression of differentiation in some cases was extremely offensive. *Kala admi ka wastay* was one of the signs you saw on the boards of some rooms intended for certain purposes. *Deshi Manishya Diger Jannya* was another legend. That was in my young days long before that Conference of 1904 and they made for unrest that the poor Government was made responsible for, of course quite wrongly. It will not do therefore to put forward this argument because in the archives of the Railway Department there is a resolution of the kind mentioned drawing particular attention to a particular phase of things regarding third class passengers in a particular Conference. As I have said I am not sure whether differentiation like that among third class passengers was in vogue or not in some railways and probably this resolution called attention to this. But the whole thing originated much earlier. Whether what is known as the Australian tiger-snake-reptile accommodation of which we have just read in the papers was necessary and whether a mere iron cage or plank partition will not keep off the terrible disaster apprehended by the Honourable Mr. Ismail Chowdhry whether iron sheeting or iron planking will not be required are matters I do not wish to go into here, but I can confidently assure this House that differentiation existed long before the Conference of 1904.

Sir, by itself reservation may or may not be harmful, may or may not be objectionable; but when legal consequences arise out of encroachment on reservation, legal consequences of an untoward and objectionable nature, it is then that the peoples' representatives have to take up the matter and they have done so. Rightly or wrongly some people have taken it into their heads to object to this and object to it in a somewhat vocal fashion, a somewhat aggressive fashion, let it be conceded, which has resulted in prosecutions. The difficulty, and the objection, come in when something is done contrary to rules under section 42(2) which have the force of law in the circumstances set out in the Act. And that is the difficulty that we are trying to have removed. If there is reservation and if there is no objection taken to it, it is a mere question of convenience and no one gains or loses by it. The difficulty appears when you carry the effect of encroachment to its logical and legal consequence. It will probably be put forward and with force, that unless you follow it up with prosecutions and convictions and punishments the strength of legal or semi-legal sanction disappears and you cannot carry on your administration. Therefore the consequential prosecutions and punishments must be upheld. It is for this reason that objection is taken to the reservation. I am not going to be drawn by my Honourable friends into a consideration of racial questions. Government themselves have made it clear—at least here—that there is really no racial question involved in the matter so far and they plead for a little lingering. My Honourable friend the Raja Bahadur of Dighapattia has drawn attention to a statement in the other House that people who can afford to be dressed like my friend behind are allowed to travel in these reserved compartments, whereas my clothes which have done duty in Buckingham Palace and Windsor Castle . . .

THE HONOURABLE MR. D. T. CHADWICK: They are all right in first and second class carriages, Sir.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: But they will not do, I am sorry to say, in third-class European reserved carriages. I have not tried it. I do not mind travelling third class like my Honourable friend Mr. Natesan. I have done it sometimes but I have

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never wanted to assert my rights in that particular way. My people have been quite comfortable travelling third class. I have done so myself with large deputations visiting the country for various purposes and have never been uncomfortable nor did we feel that there was any want of dignity in travelling below the first class—an element which is very much to the fore to-day. Having regard to the way in which our travelling bills are arranged those of us who want to travel with families and specially with large families, which the Government allowances do not and cannot cover, have sometimes to travel in reserved second class without loss of dignity. That is a point made clear here and in the Assembly on different occasions. On the present occasion questions like these need not cloud the issue. Government have shown that there is no reservation for Europeans in the upper classes, there is no reservation in most trains, there is no reservation in some railways at all and permission is given to people dressed in European fashion to enter even these reserved compartments. I do not know what European fashion itself is; fashion changes so often and so much; anything may be European fashion and nothing may be, but people supposed to be dressed in European clothes enjoy immunity. I refer to all this to show that the Government have not put forward their case on the basis of racial or communal consideration here, and I do not see why reading between the lines or going to the author of the Bill or his friends somewhere else we should allow, on Sir Maneckji Dadabhoy's unfortunate initiation, a question of that kind to come up and cloud the issue.

I began by resting my case on law and I shall end by doing so too. Unfortunately, Sir, having regard to what the Honourable Mr. Chadwick said and also my Honourable friend Sir Maneckji Dadabhoy who has himself been in law for 30 years as we know and with great credit, it is necessary for me to traverse one or two points of the kind, raised because the Honourable Sir Maneckji Dadabhoy has taken it upon himself to say that there has been no serious difference among the Judges and it is by straining the language of law . . . . .

**THE HONOURABLE SIR MANECKJI DADABHOY:** They were all *obiter dicta*: in all those cases convictions took place.

**THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY:** My friend says they were all *obiter dicta* the value of even which he ought to know and he says that in all those cases convictions took place. And that is the reason why we are here pleading for acceptance of what my Honourable friend has called a petty matter. And what are those pronouncements by the Judges who in the present state of obscurity were powerless?

I shall take only two cases. By the way it is not a fact that in all those cases which came before the High Courts people wanted to obtrude themselves to assert their right; there was certainly one case out of these four in which people found the compartment empty and got into it. They did not at first leave it; but at a wayside station they were asked to leave again and they left. Sir, I will take first the Calcutta case in which one of the learned Judges said: "It is conceded" (and that by the railway which on this particular occasion was allowed to be separately represented instead of being represented by the Government Advocate as usual):

"It is conceded, and it cannot be denied that the action of the Railway Company to which exception is taken does tend"—(*call it obiter dictum or whatever you like,—it is a judicial pronouncement all the same*)—"does tend to give preference to 'a particular class of persons' to the consequent prejudice or disadvantage of others."

This exactly fits in with the definition of "undue preference" to which I have referred in connection with the English Act.

The judgment continues:

"The controversy, therefore turns on the question whether the preference thus given is undue or unreasonable, which two words stand as synonymous and explanatory of each other. Mr. Mukherjee, (*now Mr. Justice Mukherjee*) who appears for the Railway Company, in his usual fairness, has conceded that the act of the Company in reserving a railway compartment for any particular class of passengers may amount to undue preference, provided other circumstances exist and are proved to render such act unreasonable and disadvantageous to other passengers, for instance, if it is proved that the train by which the petitioner wanted to travel was full, and no room was available for him except in the reserved compartment. But as the petitioner so argues the learned Vakil, has not alleged or proved any such circumstance, the question of undue preference or otherwise does not arise in this case."

And thereupon there was a conviction. And yet my friend will leave alone pronouncements like these, which he calls *obiter dicta*.

Then, Sir, the judgment goes on to say:

"I agree that in particular circumstances the reservation of a compartment for a class of passengers or intending passengers, without remuneration, may amount to undue preference within the meaning of section 42 (2) of the Railways Act, and to this extent I am in full agreement with the view expressed by Shah, A. C. J. in *Emperor v. Narain Krishna Gogte (to which I have already referred before)*, I am unable to accept the view which has found favour with some of the Judges, who are parties to the reported cases to which I propose to refer later, that it is within the absolute right or power of the Railway Company to reserve a compartment for Europeans only. Now the effect of such reservation is that an European, or one who is included in that term, for whom a compartment is reserved, may travel in any compartment he likes, but an Indian suffering from the disability of not being classed as an European is debarred from travelling in the European reserved compartment. I am unable to concede that such an apparently invidious distinction is not to be considered 'preference' in favour of one community to the prejudice of or disadvantage of another."

Then, Sir, the learned Judge refers to the other case that came up in Allahabad and disagreed with it and ultimately he said:

"the conclusion I have come to is that the departmental rule enabling the Company to reserve a compartment for a class of ordinary passengers may be a violation of the terms of section 42 (2) in certain circumstances, but the company has a general power to regulate its traffic and arrange for the accommodation and convenience of its passengers so long as it does not bring itself within that section."

In the Bombay case Sir Lalubhai Shah said:

"I have carefully considered the reported cases on the point, and I am unable to agree with the view that such reservation for a class or section of the public is necessarily legal. It may be illegal as transgressing the limits prescribed by section 42 (2) as it has been shown in this case,"

And there is a great deal of argument in this case and other cases in support of that proposition, but I do not want to take the Council through all that. For my purpose it is sufficient to show that there is what I call this obscurity, that there is this difficulty; and the worst of it is that as a result of carrying out the rules under section 42 (2) prosecutions and successful prosecutions are possible. I also show that in order that the prosecutions may fail a passenger arriving at the last moment has not only to satisfy himself but to satisfy the court later on that the train was so crowded that he could not possibly get into any other compartment and that his not being allowed to get into this compartment would amount to undue preference, in which case and in which case alone unfortunately, according to some of these judgments, the prosecution would fail. That for my purpose is enough and for this reason I say—I do not want to

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put it any higher, I do not want to have imported into this House extraneous considerations to which appeal has been made, considerations which the Government themselves have very rightly refrained from urging—I say, Sir, that there will be no disaster of the kind apprehended all round by those who are opposing this Bill. Having regard to the widespread reduction of these facilities that existed before, which reduction has not been challenged, it is time that effect should be given to what certainly is a popular demand and the consideration of this Bill should be allowed in this House.

THE HONOURABLE MR. D. T. CHADWICK: Sir, I shall not detain the Council very long. I only wish to reiterate the principle enshrined in the law and that this Bill involves a change in the law. First of all I welcome the statement that was made by the Honourable Mover that though he had travelled in the third class he has never felt uncomfortable or inconvenience, even though as must have been the case on those trains some compartments were reserved for Anglo-Indians. That is a certificate for which I am thankful, which I shall cherish and shall keep for future use. I also welcome the speech of the Honourable Mr. Natesan. He bore testimony to the changing spirit of the travelling public and instanced his own case. He dealt very fairly with the case, but then he said as his reason for supporting this Bill that his friend, one whom we all respect here, Diwan Bahadur Rangachariar, was once put to difficulty when travelling by a train from Mayavaram to Kumbakonam. That I know is a slow-moving train. I have already told the Council that the Act as it stands at present is sufficient to meet changing conditions, and that to-day there is no reservation of such carriages upon slow-moving trains, and therefore the circumstances of the case which troubled Diwan Bahadur Rangachariar in the past cannot and do not exist to-day. Similarly, when the Honourable Mr. Khaparde spoke of seeing people being troubled by these reserved carriages on trains while they had themselves to travel in goods wagons and cattletrucks. He is speaking at best of a by-gone age. I must tell him that we do not attach goods wagons and cattletrucks to mail and passenger trains because they will not run at that pace. So his reason also for supporting this Bill is no longer a valid one.

In other words the Act is in fact flexible and adaptable to changing conditions and that is all we should reasonably demand of the law. I welcome my friend, the Honourable Lala Ram Saran Das's speech and the spirit he showed of tolerance; in other words, the circumstances of the day are changed and the Act is so flexible that the railways are able to change their arrangements to meet them. Sir, it is the principle in the law that we want to preserve. The Act as it stands is quite sufficient. Why change it? I might have taken a different line had this been a Resolution, but this Bill proposes a change in the law, and the law embodies the one clear principle that the railway administration should be free to make what arrangements it can for the convenience of its passengers, provided it does not show undue preference and unreasonable preference, and that undue or unreasonable preference is quite rightly a fact to be proved in each case. It is perfectly right for my Honourable friend to quote the judgment of the Calcutta High Court. I have the utmost respect for it. But the High Court said that in certain circumstances reservation may or may not amount to undue preference. Quite so. But reservation merely as such is not undue preference.

Now, my Honourable friend, Mr. Natesan, made a suggestion that we might have a talk, that we might accept and allow this to pass this stage and then refer the matter to the Railway Advisory Committee. May I say once more that this is not a Resolution, that if this motion is passed it means that the Government accept the principle?

THE HONOURABLE MR. G. A. NATESAN: May I rise to a personal explanation, Sir? My suggestion was that the vote on this question need not be taken now; I made a suggestion to refer this matter to the Central Advisory Committee for Railways; I should perhaps move it as an amendment.

THE HONOURABLE MR. D. T. CHADWICK: The Bill has been passed by one Chamber, and the time has gone past for taking it away; but my point is this: the law as it stands is sufficient; the railway administrations are meeting the conditions as circumstances demand. This everybody admits and agrees; and the rate at which this abolition of reservation should take place is really a matter which ought to be adjusted to the varying needs of different portions of the country. Some railways do not want them others want them. That is the way to treat the question. Let these differentiations disappear through the solvent of mutual toleration and not try to break them by the sledge hammer blows of the law. I oppose this motion for taking the Bill into consideration.

THE HONOURABLE THE PRESIDENT: The question is:

“That the Bill further to amend the Indian Railways Act, 1890, as passed by the Legislative Assembly, be taken into consideration.”

The Council divided:

AYES—13.

Akbar Khan, Major Nawab Muhammad.  
Barua, Mr. C.  
Harnam Singh, Raja Sir.  
Karandikar, Mr. R. P.  
Khaparde, Mr. G. S.  
Lalubhai Samaldas, Mr.

Natesan, Mr. G. A.  
Rampal Singh, Raja Sir.  
Ram Saran Das, Mr.  
Ray, Raja P. N.  
Sarvadhikary, Sir Deva Prasad.  
Singh, Maharaja Bahadur K. P.  
Yamin Khan, Mr.

NOES—23.

Abbot, Mr. E. R.  
Amiruddeen Ahmad, Nawab Sir.  
Bell, Mr. J. W. A.  
Berthoud, Mr. E. H.  
Chadwick, Mr. D. T.  
Crerar, Mr. J.  
Dadabhoy, Sir Maneckji.  
Dawn, Mr. W. A. W.  
Froom, Sir Arthur.  
Isma'il Khan, Mr. Muhammad.  
Ley, Mr. A. H.  
MacWatt, Major-General Sir Charles.

McWatters, Mr. A. C.  
Misra, Pandit S. B.  
Mitter, Mr. K. N.  
Muhammad Habibullah, Sir.  
Muzammil-ullah Khan, Nawab Sir.  
Patterson, Lieut.-Col. S. B. A.  
Sarma, Sir Narasimha.  
Singh, Mr. Charanjit.  
Tek Chand, Mr.  
Wacha, Sir Dinshaw.  
Zahir-ud-din, Mr.

The motion was negatived.

### ELECTION OF PANELS FOR STANDING ADVISORY COMMITTEES.

THE HONOURABLE THE PRESIDENT: The only other business before the House to-day consists of four elections which have to take place for the panels for departmental Advisory Committees. These elections will

ordinarily take about 5 to 10 minutes each. If the House prefers to finish the business, I am quite prepared to sit, otherwise I will adjourn now for an hour.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : You might finish the business now.

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RESULT OF THE ELECTION OF THE PANEL FOR THE STANDING ADVISORY COMMITTEE ON EMIGRATION.

THE HONOURABLE THE PRESIDENT: Before we proceed to the elections, I am in a position to announce the result of the election held yesterday to the Standing Advisory Committee on Emigration. There have been elected the following eight Members:

The Honourable Rai Bahadur Lala Ram Saran Das,  
 The Honourable Mr. Haroon Jaffer,  
 The Honourable Nawab Sir Umar Hayat Khan,  
 The Honourable Mr. G. A. Natesan,  
 The Honourable Dr. Sir Deva Prasad Sarvadhikary,  
 The Honourable Mr. R. P. Karandikar,  
 The Honourable Mr. Phiroze C. Sethna, and  
 The Honourable Saiyid Raza Ali.

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ELECTION OF PANEL FOR HOME DEPARTMENT STANDING ADVISORY COMMITTEE.

THE HONOURABLE THE PRESIDENT: The House will now proceed to elect a panel of six Members for the Standing Advisory Committee to advise on subjects in the Home Department.

(The ballot was then taken.)

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ELECTION OF PANEL FOR THE COMMERCE DEPARTMENT STANDING ADVISORY COMMITTEE.

THE HONOURABLE THE PRESIDENT: The next panel to be elected will be six Members for the Standing Advisory Committee in the Commerce Department.

(The ballot was then taken.)

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ELECTION OF PANEL FOR THE STANDING ADVISORY COMMITTEE IN THE DEPARTMENT OF INDUSTRIES AND LABOUR.

THE HONOURABLE THE PRESIDENT: The next panel to be elected will be six Members for the Standing Advisory Committee in the Department of Industries and Labour.

(The ballot was then taken.)

ELECTION OF PANEL FOR THE STANDING ADVISORY COMMITTEE IN THE DEPARTMENT OF EDUCATION, HEALTH AND LANDS.

THE HONOURABLE THE PRESIDENT: The last election is for the panel for the Standing Advisory Committee attached to the Department of Education, Health and Lands.

(The ballot was then taken.)

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STATEMENT OF BUSINESS.

THE HONOURABLE SIR NARASIMHA SARMA (Law Member): I inferred, Sir, from the discussion which took place yesterday regarding arrangements for the second week in March that the general wish of the House was that the adjournment after the 5th March should be limited to the week end and the succeeding holidays, and I am now in a position to inform the Council that His Excellency the Governor General has been pleased to allot Friday, the 13th March, for non-official business. As I indicated yesterday there would be sufficient Government business to occupy the Council on Thursday, the 12th March, should you be pleased to fix a meeting for that day. I may take this opportunity of adding that the business for Tuesday next, the 3rd March, will include the consideration and passing of the two Bills laid on the table yesterday, namely, the Bill to amend the Prisons Act, 1894, and the Bill to amend the Cantonments Act, 1924, and possibly the consideration of the amendments made by the Legislative Assembly in the Obscene Publications Bill as passed by this Council.

THE HONOURABLE THE PRESIDENT: With reference to the statement just made I shall fix a meeting of the Council for Thursday, the 12th March. As for the non-official day a circular will go out in the ordinary course from the Council Office stating when the ballot list will be opened and when the ballot will take place; but to save time I may inform Honourable Members now that the numbered lists will be open in the office to-morrow and on Saturday (the 27th and 28th) and that the ballot will take place on Monday morning in the Committee room here at 10-30 A.M. The day that has been allotted for non-official business is Friday the 13th, and it rests with Honourable non-official Members to avail themselves of the opportunity of having a meeting on that day.

The Council will now adjourn till Saturday, the 28th February, and I would particularly remind Honourable Members that the meeting on that day will take place at 5 P.M. instead of at the usual hour.

The Council then adjourned till Five of the Clock, on Saturday, the 28th February, 1925.

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