

**THE**  
**LEGISLATIVE ASSEMBLY DEBATES**  
**(Official Report)**

---

**FIRST SESSION**  
**OF THE**  
**SECOND LEGISLATIVE ASSEMBLY, 1924**



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# LEGISLATIVE ASSEMBLY.

Wednesday, 27th February, 1924.

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

## QUESTIONS AND ANSWERS.

### THE KRISHNASAGARA AND METUR RESERVOIR PROJECTS.

**Mr. A. Rangaswami Iyengar:** May I, Sir, with your permission, put two questions to the Honourable Member for Industries of which I have given private notice?

526. **\*Mr. A. Rangaswami Iyengar:** (a) Whether the statement in the Press that an agreement has been arrived at between the Madras and Mysore Governments in regard to the Krishnasagara Reservoir Project in Mysore State and the Metur Reservoir Project in Madras is correct?

(b) If so, whether the Government will state what the terms of the agreement are in so far as they bear on the facilities, rights and liabilities of the landholders of the Tanjore and Trichinopoly Districts enjoyed in respect of lands now under cultivation and hereafter to be brought under cultivation?

(c) Whether the landholders were afforded an opportunity of stating their case before the new agreement was arrived at?

**The Honourable Mr. A. O. Chatterjee:** (a) Yes, an agreement has been arrived at.

(b) We have not yet received any official information regarding the terms of the agreement.

(c) The Government of India have no information.

**Mr. A. Rangaswami Iyengar:** Will the Government be pleased to lay the information when it is received on the table of this House, Sir?

**The Honourable Mr. A. O. Chatterjee:** I cannot say when we shall receive the information. It may be after the close of the session of the Assembly. The Honourable Member will probably be able to get hold of the information much quicker from the Madras Government.

**Diwan Bahadur M. Ramachandra Rao:** May I ask, Sir, whether that agreement is subject to confirmation by the Government of India?

**The Honourable Mr. A. O. Chatterjee:** I should like notice of that question.

### METUR IRRIGATION PROJECT.

527. **\*Mr. A. Rangaswami Iyengar:** Have the Government of India accorded their sanction to the undertaking of the Metur Irrigation Project

in accordance with the working arrangement stated to have been entered into with the Mysore Durbar? If so, will the Government lay on the table a statement showing:

- (i) the nature of the arrangement under which the Government of Madras will start the Project,
- (ii) the total estimate of the Project and the expected return thereon, and
- (iii) the plan by which the Government of India are going to enable the Madras Government to finance the Project?

**The Honourable Mr. A. C. Chatterjee:** The answer is in the negative, We have not yet received the Project.

**Mr. A. Rangaswami Iyengar:** May I know, Sir, whether this project will require the sanction of the Government of India?

**The Honourable Mr. A. C. Chatterjee:** It will probably require the sanction of the Secretary of State.

### ELECTION TO THE PANEL OF THE ADVISORY PUBLICITY COMMITTEE.

**Mr. President:** The following Members have been proposed for election to the panel of the Advisory Publicity Committee:

Maulvi Muhammad Yakub,  
Kumar Ganganand Sinha,  
Mr. Gaya Prasad Singh,  
Captain Ajab Khan,  
Dr. H. S. Gour,  
Mr. Ahmad Ali Khan,  
Mr. Mahmood Schamnad Sahib Bahadur,  
Khan Bahadur Mohammad Shams-uz-Zoha,  
Maulvi Abul Kasem,  
Mr. Ambika Prasad Sinha,  
Mr. G. Pilcher,  
Mr. W. S. J. Willson,  
Diwan Bahadur T. Rangachariar, and  
Sir Purshotamdas Thakurdas.

There are only 14 to be elected to the panel and, therefore, I declare these 14 Members duly elected to the panel of the Advisory Publicity Committee.

### THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

**Sir Henry Moncrieff Smith** (Secretary, Legislative Department): Sir, I move for leave to introduce a Bill further to amend the Code of Civil Procedure, 1908, for certain purposes.

Three or four years ago, Sir, the Parliament in England passed a Statute called the Administration of Justice Act, 1920. Part II of that Statute provided for the reciprocal enforcement of judgments in the United

Kingdom and in other parts of His Majesty's Dominions. Section 9 of the Act in Part II provided that judgments obtained in a superior Court in any part of His Majesty's Dominions to which Part II of the Statute applied could be executed by the High Court in England or Ireland or by the Court of Session in Scotland. The method of application of Part II to His Majesty's Dominions was laid down under section 14. It says that, where His Majesty is satisfied that reciprocal legislation has been enacted by the Legislature of any part of His Majesty's Dominions, His Majesty may, by Order in Council, extend Part II of the Statute to that portion of the Dominions. We were asked last year by His Majesty's Government whether we should like to provide reciprocal legislation. All Local Governments and High Courts were consulted and, as a result of the opinions received, Government have introduced this Bill. It will be seen, with regard to the judgments passed by Courts in His Majesty's Dominions outside the United Kingdom, that the procedure we propose is very much the same as that in the case of Native States' Courts in section 44. When the Government of India are satisfied that a Dominion has passed reciprocal legislation, then they can notify the Courts of that part of the Empire as Courts to which this new section of the Code will be applicable.

My intention is to move at a later date that this Bill be referred to a Select Committee. For the present, Sir, I move for leave to introduce it.

The motion was adopted.

**Sir Henry Moncrieff Smith:** Sir, I introduce the Bill.

### THE REPEALING AND AMENDING BILL.

**Sir Henry Moncrieff Smith** (Secretary, Legislative Department): I move, Sir, for leave to introduce a Bill to amend certain enactments and to repeal certain other enactments.

If Honourable Members will look at the Bill on the table they will find a column of remarks which I think gives all the explanation that is necessary of the various items in the Schedule to this Bill. I move for leave to introduce the Bill, Sir.

The motion was adopted.

**Sir Henry Moncrieff Smith:** Sir, I introduce the Bill.

### THE INDIAN PENAL CODE (AMENDMENT) BILL.

**The Honourable Sir Malcolm Halley** (Home Member): Sir, I move, that the Report of the Select Committee on the Bill further to amend the Indian Penal Code for certain purposes be taken into consideration.

The motion was adopted.

**Mr. President:** The question is that clause 2 stand part of the Bill.

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

"That in clause 2, after the word 'sections' the figures '361' be inserted."

[Dr. H. S. Gour.]

Honourable Members will remember that the Bill as originally drafted and presented to this House intended to amend not only sections 372 and 378 but also section 361 by the substitution of the word "eighteen" for "sixteen" in section 361. In the Select Committee this clause has been recommended for deletion. Myself, and Messrs. Joshi and Fleming have objected to the deletion of this clause, and I wish briefly to state our reasons why we differ from the majority of our Honourable Colleagues in the Select Committee. If Honourable Members will turn to sections 361, 362 and 363 of the Indian Penal Code, they will find that the offences punishable under those sections are offences which are described in sections 361 and 362 as constituting "kidnapping" and "abduction." These two terms "kidnapping" and "abduction" are defined in the Indian Penal Code in the following terms. "Kidnapping" is defined in section 361 as "taking or enticing any minor under 14 years of age if a male or under 16 years of age if a female" and "abduction" is defined in section 362 as "enticing any person by force or deceitful means to go from one place to another place." The difference between sections 361 and 362 is one of degree. In the one case, there is the taking from lawful guardianship or enticing away from the custody of the lawful guardian of a minor below the ages of 14 and 16 according to its sex. In section 362 there is the presence of force or fraud. Honourable Members will observe that it is not an offence under the Indian Penal Code if the minor is neither taken away from lawful guardianship nor enticed or fraudulently deceived or by force compelled to leave a particular place. Therefore, a certain amount of independence is given to the minor to think for himself or herself as to where he or she will live or go. It must be remembered that the minor below the age of 18 is regarded by the civil law as incompetent to form an independent judgment as to the nature and consequences of his act. But so far as the penal law of the country is concerned, a certain amount of latitude is given to minors to think for themselves as to what is best for them. Therefore, there is no circumscription regarding the independent judgment of a minor within the meaning of these two sections. The penalty is only visited upon a person who takes or entices or fraudulently compels or deceitfully induces a minor below the age of 16 and 14 to do certain things which are described in those sections. The Honourable Members who sat on the Select Committee with us have opined that these two sections were intended to be enacted in the interest of the lawful guardian. With the utmost respect to our Honourable Colleagues I wish to point out that these sections do not at all contemplate the guardianship or the protection which the guardians enjoy under the statutory or common law. For example, you will find, if you turn to section 359, that kidnapping is described there as being of two kinds, kidnapping from British India and kidnapping from lawful guardianship, and, if you turn to section 363, which punishes the offence of kidnapping, you will find that that section lays down that whoever kidnaps any person from British India or from lawful guardianship shall be punished in the manner described in that section. Consequently, kidnapping from British India is an offence independently of the exercise of control by a lawful guardian. I therefore venture to submit that these sections, which are drawn from an English Statute, 24 and 25 Victoria Cap. 100, section 35, which repeated and re-enacted an earlier Georgian Statute, were intended for the sole protection of young persons who had not attained the years of discretion. If these sections had been enacted for the primary purpose of protecting the lawful guardians in the exercise of their right as such guardians, I submit that the Statute law of

this country would contain provisions for the protection of those rights in respect of minors below the age of 18, and in certain cases, where a guardian is appointed under the Guardian and Wards Act, below the age of 21. But let that pass. Whether these sections were enacted for the protection of the minor or for the protection of the lawful guardian, the fact remains that these sections stand as part of the Statute law, and we have now to consider whether they require any amendment. The official Benches were in favour of raising the age in section 361 from 16 to 18 in the case of a girl though they left intact the age in the case of a boy. I shall confine my remarks only to the case of a girl and I submit that there is no reason why the view taken by the official Benches on the last reading of this Bill should undergo a change for reasons stated by them in the Report of the Select Committee.

**Mr. President:** Order, order. I want the Honourable Member to clear up a doubt in my mind. The second amendment standing in his name proposes to abolish the distinction between the two sexes and substitute the age of eighteen for both. Therefore that is an amendment of larger scope and the one which he is now on is an amendment of lesser scope.

**Dr. H. S. Gour:** I am at present dealing only with clause (1) the first part of my amendment. I shall therefore give my reasons for the reinsertion of this clause which was originally in the Bill. Honourable Members will see that, while the present Statute law protects a girl under sixteen years of age, no such protection is afforded to girls between the ages of sixteen and eighteen. Now, I venture to submit that this is an age which, both in boys and girls, is a most impressionable age, and I submit that, if it is right that all minors should be protected and if it is right that the age fixed by the Indian Majority Act, namely, the completion of eighteen years, is the right age for allowing girls to think for themselves, then there is no reason why in section 361 we should withdraw the protection from girls below the age of eighteen. It is undoubtedly the policy of Government, as will be clear from the number of Bills which have been introduced in this House, that the provisions of the Indian Penal Code dealing with the protection of minors should be assimilated with the provisions of the Indian Majority Act, and, it is the policy of Government that all minors below the age of majority should receive legislative protection. That being so, I fail to understand why a majority of my colleagues on the Select Committee have yielded to the pressure from certain quarters in deleting the clause which stood as a part of the original Bill. They recognise the difficulties which will be presented to them in practice and they say that there may be cases in which it will be necessary to punish the offender and they propose to insert an additional section under this Chapter. They say in their Report:

"We realise that our decision, by not making the offender punishable under section 363, will not provide protection for girls of 16 years of age and upwards from the nefarious class of persons known as 'bardafarosh' who carry on, more especially in Northern India, a regular traffic in girls who are induced, otherwise than by means which would amount to abduction, to consent to marriage in proper legal form. But we think that this particular case should be dealt with, after inquiry and consideration, by the insertion of a new section in Chapter XVI of the Code."

That there is an evil is admitted. The only question is what shall be the remedy. A majority of the members of the Select Committee propose the addition of a section to Chapter XVI to deal with this evil. We propose that the general law should stand as we have indicated and that in the case of persons between the ages of sixteen and eighteen, if there is

[Dr. H. S. Gour.]

an intention to marry, a smaller sentence might be provided for in section 363. I am quite prepared to deal with cases of marriage as cases requiring mitigation of sentence and for such cases I would add a proviso to section 363. I therefore suggest that the original clause as it existed in the Bill, namely, that the age of sixteen should be raised to eighteen be re-inserted and I move accordingly.

**Mr. President:** Amendment moved:

"That in clause 2 after the word 'sections' the figures '361' be inserted."

**Diwan Bahadur T. Rangachariar** (Madras City: Non-Muhammadian Urban): Sir, I beg to oppose this amendment. The essence of the offence under this section is the interference with the civil right of guardianship of the guardian over the infant. The intention with which removal is effected is quite immaterial for the purposes of this section. Sir, it may be from the best of motives that the rights of guardianship are interfered with under this section and yet the offence is complete. In such a case whether a girl who has attained the age of sixteen years should not be trusted to look after herself or her own interests is a matter on which I think honestly different opinions could be held. Sir, we know that in this country, also in other countries, especially where early marriage prevails and is frequent, the mothers-in-law rule, or the step-mothers rule, are well known. Take a case where a girl between the age of sixteen and eighteen wishes to go to her sister's house, being a married woman unable to bear the ill-treatment meted out to her by her mother-in-law and her husband is unable to protect her—she wants to go to her sister's house or mother's house for protection against temporary cruelty. The sister or the mother, as the case may be, who assists her would still be guilty of the offence under this section, because you interfere with the rights of guardianship. Take again a case where a girl changes her religion at the age of sixteen or is willing to change her religion, is anxious to change her religion. She wants to become a Muhammadan or she wants to become a Christian and she seeks the assistance of a missionary or the assistance of a Maulvi. Then, again, the Maulvi or the missionary will be guilty of the offence of kidnapping although the girl is well able to form her own judgment. You must draw a limit somewhere. You may as well say "Why 18, why not 21. Are girls of 18 well able to take care of themselves in a matter like that?" You have to draw a line somewhere. The law of the land has all along been that 16 is the age of majority.

**Dr. H. S. Gour:** What?

**Diwan Bahadur T. Rangachariar:** Notwithstanding my friend's interjection, 16 is the age of majority, except where it is altered by the Indian Majority Act. (A Voice: "When was it passed?") In 1875. The Indian Majority Act applies only to certain cases. It does not apply to all cases. For instance, a girl of 16 can make an adoption to herself to perpetuate the lineage of the family. I mean such a responsible act can be performed by a girl of 16 and yet that she is not able to take care of her own interest is the idea put forward by my Honourable friend, Dr. Gour. Under the Hindu Law, a girl of 16, if she happens to be a widow, can adopt a son to perpetuate the lineage of the family, a widow owning property which will pass by inheritance to that adopted son; so that it is not correct to say that the age of majority is 18 in all cases and I do think that girls in

this country of the age of 16 can well be trusted to take care of themselves and I therefore think it will be a hard case indeed to provide that the age of 18 should be fixed within which if the girl goes out with another person, it may be for the most innocent purpose, it may be for protecting herself against cruelty, the person who helps her will be guilty of this offence. I submit, Sir, that this will be a most mischievous provision to enact and I therefore oppose the amendment. The matter was thoroughly considered by the Select Committee for a long time and we came to the conclusion that the age as it is should not be disturbed and I hope the House will not accept the amendment.

**Mr. N. M. Joshi** (Nominated: Labour Interests): I rise to support the amendment moved by the Honourable Member from Nagpur. The Select Committee give one reason for dropping section 361 out of the original Bill and that reason is that a girl over 16 and below 18 ought to be allowed to consult her own inclinations; but, Sir, the Honourable Member from Nagpur made it quite clear that this section does not provide for any punishment to the girl herself. It provides punishment for people who take her away or entice her away. Therefore, the reason given by the Select Committee has no force at all. I feel that the Select Committee have not expressed in their report what was in their mind. When the Bill was discussed last time it was stated that, if section 361 was kept, it may interfere with the religious scruples of some people. Sir, I cannot understand how religion can be affected in kidnapping. By no stretch of imagination can I persuade myself to believe that any religion can be strengthened by an act which is called kidnapping. But, Sir, two kinds of acts of kidnapping were mentioned in this House which have some bearing on religion. My Honourable friend from Madras just now stated that girls should have the freedom of allowing themselves to be converted to other religions after the age of 16 and, if you do not allow that conversion between the ages of 16 and 18, it is interference in religious matters. In the first place the Members of the Assembly know very well . . .

**Diwan Bahadur T. Rangachariar**: I did not say it was interference with religion.

**Mr. N. M. Joshi**: Members of this Assembly know very well that as soon as we are born, we come under the influence of one religion or another and I feel that the influence of that religion should suffice to save the soul of a girl between the ages of 16 and 18. If she really wants to save her soul by going into another religion, it is better that she should wait for a few days and understand what that second religion is. Sir, a religion may do good to its followers and most people believe that it does; but, Sir, in all religions there are several restrictions which by common consent will be regarded as harmful. Before, therefore, any girl adopts a new religion she should understand in what respects her freedom is going to be interfered with. Therefore, even in the interests of freedom, it is necessary that girls should be protected between the ages of 16 and 18. We are no doubt restricting the freedom of the girl between the ages of 16 and 18 but we are restricting her freedom for a few days in order that her freedom should be maintained till she is able to make her choice wisely. Sir, the second way in which section 361 interferes with people's religion is as regards marriage. Now, Sir, if any religion makes it compulsory upon girls that they should marry (*A Voice*: "Not compulsory."), well, if it is voluntary, there is no interference at all. But, if marriage

[Mr. N. M. Joshi.]

is compulsory, I think that the parents or guardians of the girl, who belong to the same religion will understand the religious restrictions very well and they themselves will marry the girl before the age of 18; but if the guardian does not marry the girl between 16 and 18 in order to save the soul of the girl, then certainly I do not know why third parties, who have no interest in the girl, should intervene to save her soul by marrying her between the ages of 16 and 18. Their interest for the wellbeing of the girl cannot be greater than the interest of the guardians and parents. Therefore, if there is a religious necessity for marrying a girl between the ages of 16 and 18, the guardians themselves will take care of the religion of the girl. And then my Honourable friend from Madras said that we again come in the way of the girl's freedom. Here again I maintain that we want to put certain restrictions upon the freedom of the girl in order that her freedom may be maintained till she is able to make a wise choice. Sir, marriage in any community imposes restrictions upon the freedom of the girl. Take any community and any religion and you will find that after marriage the woman's freedom is curtailed. Therefore, if a girl wants to marry, she should thoroughly understand how far she is allowing her freedom to be curtailed by marriage. When, therefore, we want to put restrictions upon a girl between the age of 16 and 18, we are doing it because we want to save her freedom. Let her understand how far she wants her freedom to be curtailed, which is sure to be done by marriage, and then let her marry. We therefore are not doing anything wrong to the girl by asking this Legislature to put certain restrictions upon her action in marrying herself to anybody against the wishes of her guardians. Sir, my Honourable friend from Madras gave an instance of a girl ill-treated by a mother-in-law, and he wanted that the girl should be saved by her sister. But, Sir, I am not against that at all. If any guardian is ill-treating a ward, it is the business of Government to find a suitable guardian for that girl and, Sir, another Bill is before this House just for that very purpose. (*Dr. H. S. Gour*: "She can leave the guardian under the present law.") And let us have a very strong law to take away girls or boys from the guardianship of parents and guardians who ill-treat their children and young wards and let Government make provision to secure proper guardians for such children, and we shall not only not oppose it but we shall support such a measure, and I hope my Honourable friend from Madras will also support it. Sir, he also suddenly burst into sympathy for the Christian missionaries. I am surprised that my Honourable friend whose religion does not allow anybody to be converted to it . . . . .

**Diwan Bahadur T. Rangachariar**: That again is quite wrong, Sir. I myself have reconverted a Christian.

**Mr. N. M. Joshi**: I would like to hear from my Honourable friend, Sir, that he is willing to take into his caste people from other religions.

**Diwan Bahadur T. Rangachariar**: It is quite open; we have done it.

**Mr. N. M. Joshi**: I do not know whether he has done it.

**Diwan Bahadur T. Rangachariar**: Oh! yes, under my auspices and under my immediate presence and patronage.

**Mr. N. M. Joshi**: I am glad to hear, Sir, that my Honourable friend will treat such converts in the same way in which he treats his own castemen as regards marriage as well as in the matter of taking food. But,



Sir, I do not think he need waste his sympathy upon the Christian or Moslem missionaries. I think they will be able to take care of themselves and we need not go out of our way to provide protection for those Christian missionaries and missionaries of other religions who want to convert young girls between the ages of 16 and 18 without their understanding what the new religion is. I therefore feel that no harm will be done to the girls for whose protection we want this section to be inserted into this Bill. It will do them a great deal of good. Therefore, in the interests of the girls and ignoring the interests of those people who want to marry girls against the wishes of their guardians and parents, or those people who want to convert girls to their religion against the wishes of their guardians and parents, I hope that this Assembly will pass the amendment of my Honourable friend from Nagpur.

**Pandit Madan Mohan Malaviya** (Allahabad and Jhansi Divisions: Non-Muhammadian Rural): Sir, I strongly support the amendment of Dr. Gour. I am surprised, Sir, that the Select Committee thought it within their competence to eliminate section 361 from the Bill as it was introduced. The history of the measure is given in the Report of the Select Committee. In 1928, this Legislature passed the Act which was called the Indian Penal Code (Amendment) Act, Act XX of 1928, according to which, in conformity with the Resolution of the International Convention, a law was passed by which protection was extended to minor girls from the action of those who want to take them away for immoral and illegal purposes. When that Act was passed, the Government of India thought it fit to consult the opinion of Local Governments regarding a change in sections 361, 372 and 373. After having obtained the opinions of all the Local Governments, the Government of India prepared a Bill which included section 361 as well as sections 372 and 373 and desired to raise the age to 18 years, which was the age fixed in the Indian Penal Code (Amendment) Act, Act XX of 1928. This was the Bill which was referred to the Select Committee. It was not a question of detail whether section 361 should be eliminated from the Bill or not, and I submit with great respect to those of my friends who were parties to that procedure that they went beyond the limits prescribed for them when they recommended that section 361 should be entirely omitted. Section 361 provides that:

"Any person who takes or entices any minor from lawful guardianship without the consent of such guardian is said to kidnap such minor or person from lawful guardianship."

It does not touch the capacity, the freedom of the minor to adopt a certain course after 16 years. My friend, Mr. Rangachariar, is entirely mistaken in arguing as he did argue that a girl at the age of 16, if she is maltreated by her guardian, might wish to go to a sister's house for protection and that the sister will be exposed to any danger. Nothing of the kind. Nor would a girl, who wants of her own freedom to go over to a missionary or to a Maulvi with a desire to change her religion, be exposed to any such danger. Act IX of 1875 lays down with regard to a person attaining the age of 18 years, that:

"Nothing herein contained shall affect—

- (a) the capacity of any person to act in the following matters, (namely),— marriage, dower, divorce and adoption;
- (b) the religion or religious rites and usages of any class of Her Majesty's subjects in India; or
- (c) the capacity of any person who before this Act comes into forces has attained majority under the law applicable to him."

[Pandit Madan Mohan Malaviya.]

So that, if a minor who has attained the age of sixteen wishes voluntarily to go over to any place out of the guardianship in which she might be at the time, she is protected. This section would have no operation against her. She will also have the protection of the law if, having received ill-treatment from the guardian, she desires to seek the protection of some other friends. She would also have the protection of the law if, by way of receiving inspiration through the reading of books or pamphlets, she decides to discard the religion of my friend, Mr. Rangachariar, and wishes to adopt the religion preached by a Maulvi or a missionary. The section deals not with such cases. It only deals with the cases of persons who want to take her away or seduce her from lawful guardianship at a time when she has not attained sufficient maturity of judgment to judge for herself whether she should remain under that guardianship and when there is a danger that she might be led to contract the most solemn of all solemn contracts in life, namely, the contract of marriage. Now, Sir, that is the position in which this matter stands. There is no justification for urging that a girl should be free to change her religion at the age of sixteen. The proposed law will not stand in the way. Though I do hold that a minor would require protection even in the matter of deciding whether she should marry a particular person or not at that age, I consider it outrageous that, while a minor is protected from entering into a contract of Rs. 5 or Rs. 10, she should be free to give her person away to a man at a time when she has not attained majority and maturity of judgment, not of her own free will but under the influence of some person who has cast an evil eye upon her. I consider, Sir, that she does require the protection of the law at that time, and that her freedom, if she acts with freedom, will not be interfered with, if the proposed section 361 is amended, as Dr. Gour has suggested.

When this Bill was introduced and opinions were elicited, as I have mentioned, the Local Governments, so far as I can see, were practically unanimous in urging that sections 361, 372 and 373 should be altered, as has been suggested and as has been embodied in the Bill which was originally introduced. Now, Sir, if the amendment is not accepted, if this Bill is allowed to be so vitally mutilated as it has been by the Select Committee, I submit a very unsatisfactory state of affairs will arise. It has been openly asserted as an argument that freedom is sought for a girl in order that she might change her religion at the age of sixteen. Mr. Rangachariar said that he wanted that the girl should be free to change her religion. That is provided for in the law.

**Diwan Bahadur T. Rangachariar:** No. That is not the point.

**Pandit Madan Mohan Malaviya:** Yes, she is. Under section 2 of the Majority Act she is free to act in matters of marriage and . . .

**Diwan Bahadur T. Rangachariar:** Nothing in the Act shall affect the law relating to marriage, it has nothing to do with change of religion.

**Pandit Madan Mohan Malaviya:** Section 2 says:

"Nothing herein contained shall affect—

- (a) the capacity of any person to act in the following matters (namely),— marriage, dower, divorce and adoption;
- (b) the religion or religious rites and usages of any class of Her Majesty's subjects in India."

How is it excluded? It is expressly provided for. Now, Sir, that being . . . .

**Diwan Bahadur T. Rangachariar:** The point is with regard to any person who assists or encourages her in doing it; he will be liable to the offence.

**Dr. H. S. Gour:** Certainly not, Sir. My friend has entirely misunderstood the whole scope of the Bill. It is enticement that is punishable.

**Pandit Madan Mohan Malaviya:** Now, Sir, I wish the House to give this matter the calm and unbiassed consideration which the interests of a minor to whatever religion she may belong demands. This Legislature, desiring to give effect to certain Articles of the International Convention for the suppression of traffic in women and children, passed Act XX of 1923, last year. By section 2 of that Act, it laid down that:

"Whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punished as aforesaid."

Section 3 lays down that:

"Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine."

And there are other sections which provide punishment against the importation of a girl from foreign countries for this purpose. When this Act was passed and protection was extended to minor girls by that legislation, the Government of India felt, as they said in their circular letter, that sections 361, 372 and 373 required alteration. It is on that basis that the Bill was framed. How would the present proposal eliminate sections 361, 372 and 373 consistently with Act XX of 1923 which was passed? How will it be consistent, because you are refusing protection to girls of sixteen, because you leave it open to anybody to take away, to seduce, a girl from the guardianship of her mother or father before she has attained the age of discretion? And I consider it very wrong that this should be permitted. And therefore, Sir, I submit that, with that Act XX of 1923 on the Statute Book . . . .

**Diwan Bahadur T. Rangachariar:** That has nothing whatever to do with this offence.

**Pandit Madan Mohan Malaviya:** It is not exactly the offence. This is what the Madras Government said:

"If, however, the higher limit of eighteen is adopted in the section, that is, section 366, His Excellency the Governor in Council agrees with the Government of India that it would be illogical to retain the lower limit for the graver kindred offences referred to in sections 361, 372 and 373 and considers that the age limit should also be raised."

That is the opinion of one of the Local Governments. What is the opinion of the other Local Governments? The graver offences and the kindred offences referred to in sections 361, 372 and 373 do require that there should be provision against any person committing a crime against a minor under those sections. I submit, therefore, Sir, that the amendment of Dr. Gour should be accepted and that the Bill should be passed with that

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amendment. I hope the House will unanimously adopt the amendment of Dr. Gour, and I hope that even those Members who are parties to this Select Committee's Report will be good enough to reconsider their opinion from the point of view which has been urged by Dr. Gour. (*Diwan Bahadur T. Rangachariar*: "Vain hope.") Vain hope? I am sorry for those to whom the appeal was made, I mean, for the particular gentleman, and I do not mean others.

**Mr. M. A. Jinnah** (Bombay City: Muhammadan Urban): Sir, I wish Pandit Madan Mohan Malaviya had considered this Bill with a little more care, and just as he has appealed to us who were in the Select Committee, I appeal to him that after he has heard me and if I convince him to the contrary, I hope he will come into the lobby and vote with me. I have listened to the arguments of Pandit Madan Mohan Malaviya. Sir, the one thing which the Honourable Member has not quite appreciated and which I shall point out to him is this. Let us take the sections of the Indian Penal Code as they stand to-day. Section 361, which is the section with which we are concerned, define the offence of kidnapping as follows:

"Whoever takes or entices"—

—I will leave the word "entices" for the moment out of consideration—

"Whoever takes . . . any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind,"

—we are not concerned with people of unsound mind—

"out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship."

Therefore, the first question that I want the House to consider is this. The mere taking, not enticing, mere taking of a minor from the lawful custody of his guardian is an offence.

**Pandit Madan Mohan Malaviya**: With what intention?

**Mr. M. A. Jinnah**: No intention. If the Honourable Pandit Madan Mohan Malaviya has studied the law on the subject, I beg to point out to him that it has been held by judicial decisions that, if a girl or a boy is taken away even for the most innocent purpose from the lawful guardianship of the guardian, it is an offence under the Indian Penal Code.

**Pandit Madan Mohan Malaviya**: That will be a matter to be dealt with separately, not by refusing to give the protection of the law.

**Mr. M. A. Jinnah**: You are now increasing the age.

**Dr. H. S. Gour**: The High Courts have laid down that it means removing, physical removing.

**Mr. M. A. Jinnah**: That has nothing to do with intention. I am really surprised at Dr. Gour saying that that means intention, that a criminal lawyer of his standing, his reputation, should say that that means intention within the meaning of the criminal law. There is no question of intention in section 361, Sir, I say. The mere taking away is a sufficient element to constitute the offence. Now, I have absolute sympathy with the principle for which these social reformers are struggling in this House.

**Diwan Bahadur T. Rangachariar**: It is not social reform.

**Mr. M. A. Jinnah:** It is not and that is exactly what I say. Sir, it is in their enthusiasm that they really miss the whole point. Sir, I am sure that this House will never allow it. If the social reformers were to make out a case—as it is the principle which we have now agreed to by the Act which we passed, namely, Act XX of 1928,—that if a minor is taken away from the lawful guardianship for the purpose of committing an offence or for immoral purposes such as were not provided for in the Indian Penal Code before, then I can understand. Already we have in the Indian Penal Code before Act XX of 1928 was passed, sections 372 and 378. Section 372 deals with the offence of selling a minor for purposes of prostitution. Now, for selling a minor for the purposes of prostitution the age limit was 16. We in the Select Committee at once agreed that that age should be increased to 18. We allowed section 372 to be included. Section 378 deals with another offence, buying a minor for purposes of prostitution. So, so far as the principle for which my Honourable friends across there, Mr. Joshi and Dr. Gour stand, namely, that if a minor is taken away for a purpose which is unlawful, immoral or which is an offence under the Indian Penal Code, then by all means increase the age from 16 to 18. But, Sir, we equally maintain that those who wish to include section 361, which does not necessarily mean that you should do anything for the purpose of committing an offence or for immoral purposes, have to make out a case. Why is the age to be raised in that case from 16 to 18? That is the question and I ask this House to answer. What is the ground? Those who wish to alter the law have to make out a case, Sir; and what case has been made out? If a girl is enticed—remember this—if a girl of 16 is enticed, then section 361 applies. But can you imagine—I cannot imagine it but possibly it will be a very rare case—that any man can possibly entice away a girl of 16?

**Pandit Madan Mohan Malaviya:** You cannot imagine it? I am surprised.

**Mr. M. A. Jinnah:** Excuse me, Sir. Enticing means what? Under the law what does it mean?

**Pandit Madan Mohan Malaviya:** Persuade her to leave her lawful guardianship in order to . . .

**Mr. M. A. Jinnah:** Excuse me. The expression enticing away a girl is generally applied to a little girl who is not at all capable of forming her judgment. We find in the Courts cases such as this. A man finds a little girl of 6 years—a child—with certain ornaments or jewels and he gives her a little sweetmeat or gives her a little toy and takes her away, and having taken her away gets possession of her jewels or ornaments and either throws her away or kills her. But what the Honourable Pandit has in his mind is abduction. Certainly a girl of mature judgment—who has reached the age of 16—can be abducted; and now I will give him the definition of abduction. Abduction is thus defined in the Indian Penal Code:

“Whoever by force compels, or by any *deceitful means* induces any person to go from any place, is said to abduct that person.”

Therefore the only possible case which those who wish to maintain that section 361 also ought to be included in this amending Bill and that the age in section 361 should be raised from 16 to 18, is the case which we discussed and which was brought before us by the Honourable the Home Member in the Select Committee and which is mentioned

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in the report of the Select Committee. Now, as to that case, as the Honourable Pandit will see, there is no dispute. I ask Honourable Members who are in favour of Dr. Gour's amendment to point out what specific case is there which you want to include under section 361 except the one which was placed before us by the Honourable the Home Member and which we have referred to in our report. This is what we say :

" We realize that our decision, by not making the offender punishable under section 363 will not provide protection for girls of 16 years of age and upwards from the nefarious class of persons known as 'bardafarosh' who carry on, more especially in Northern India, a regular traffic in girls who are induced, otherwise than by means which would amount to abduction, to consent to marriage in proper legal form. But we think that this particular case should be dealt with, after due inquiry and consideration, by the insertion of a new section in Chapter XVI of the Code."

Now, Sir, that is the case which might be dealt with separately, as we have submitted in our report to this House. But, barring that, what are the other grounds? Then it was said—I think it was Dr. Gour who said it—that if a girl cannot enter into a valid and binding civil contract until she is of the age of 18 years, why should she, therefore, be allowed to leave the custody of a guardian for a purpose, however innocent or honourable it may be.

**Pandit Madan Mohan Malaviya:** Why a man should be allowed to take her away or entice her away?

**Dr. H. S. Gour:** He is forgetting all that.

**Mr. M. A. Jinnah:** Pandit Madan Mohan Malaviya is still mixing up the 'taking away' with 'enticing away'. The girl may not be enticed and it may not be by a man. The girl may be taken away and it may be by a woman. I cannot appreciate this position. Remember you are enacting a penal section.

**Pandit Madan Mohan Malaviya:** Let me make my meaning clear. My friend has laid much stress upon the word 'taking'. A man may take away a girl and not entice her away and yet it may lead to consequences which may be very unsatisfactory to the girl and to the parents. I know of cases where girls have been taken away without any idea of enticing them or any idea of taking them and yet the result has been what the parents regarded as unsatisfactory. I think my friend should bear that in mind and not lay too much stress upon the word 'taking'.

**Mr. M. A. Jinnah:** I shall deal with that aspect of the case. Now the Honourable Pandit wants us to consider the question as to what are the sentiments and the feelings of the parents. We are to enact a penal section to meet the sentiments and the feelings of the parents. Is this the object of enacting a penal section, namely, that the parents would not like a girl to marry anyone she likes and therefore up to the age of 18 she cannot do it. Is that the object? But the learned Pandit forgets that the girl can marry. There is nothing to prevent a girl marrying both according to the Hindu Law and Muhammadan Law.

**Pandit Madan Mohan Malaviya:** I do not want to interfere with that point. What I want to say is why should a man exercise his influence upon a girl of 16 and take her away from her guardians.

**Mr. M. A. Jinnah:** That is not a question of influence. That is exactly the confusion. Supposing a man comes or a woman comes and the girl

wants to leave her parents in the company of either—not for any offence, mind you, and not for any immoral purpose—the mere fact that an assistance is rendered to her makes that man or woman guilty under the section. (*A Voice*: “That is to-day.”) Of course, it is to-day. To-day the age-limit is 16. You want to increase it to 18. That is the whole point. And why? Why should it be 18? Why not 21? Why not 25? It is possible some parents may have very different sentiments from others. Sir, I do not really wish to take up the time of this House. But I want the Honourable Pandit to consider this that both according to the Hindu Law and the Muhammadan Law a girl is entitled to marry at the age of 15. I can only refer him to Mr. Justice Mulla's Muhammadan Law which I have been able to get hold of from the Library. This is what he says:

“According to the Islamic Law, the minority of a male or a female terminates when he or she attains puberty. Among the Hanafis and the Shiahhs puberty is presumed on the completion of the fifteenth year. Under the Mussalman Law every individual, upon attaining puberty, may enter into legal transactions of every kind affecting his or her status, that is, marriage and divorce, or his and her property.”

Now, Sir, my Honourable friend, Mr. Rangachariar's argument is totally misunderstood. What Mr. Rangachariar said was this. If a girl to-day of 16 and below the age of 16, according to Hindu Law, and if a girl of the age of 15 and below the age of 15, can marry, can deal with her property and can adopt a child—if she can enter into all these serious transactions, if she is competent to do all that—do you think that a girl of 16 and below . . . . .

**Dr. H. S. Gour:** Cannot sell her body.

**Mr. M. A. Jinnah:** Cannot sell her body! Dr. Gour has got this on his brains and he wants to protect every woman from selling her body. But he has got that on his brain to such an extent that he cannot see anything else. We are not dealing with cases where the girl is selling her body, which is loathsome. I am sure that this House has understood the principle, and that is the reason why we do not object to the age being raised in sections 372 and 373. But what we do say is this that, when your girl has the right under your law, both Muhammadan and Hindu, to enter into such solemn transactions as marriage, divorce, adoption, change of religion, why do you want that girl to be deprived of her judgment that she cannot peacefully walk away with anyone that she likes, provided that is not intended for immoral purposes or for the purpose of committing an offence.

**Dr. H. S. Gour:** My friend has entirely misunderstood the whole scope of my argument. The Indian Penal Code does not penalise the voluntary act of a girl. She is free to walk away with anybody she likes. But she shall not be bodily removed or enticed from the possession of her lawful guardians. That is what the law punishes.

**The Honourable Sir Malcolm Hailey:** I stand in a somewhat peculiar position. The Honourable Pandit has asked the members of the Select Committee to reconsider their view at his instance. For the remainder of the Committee that would only be a single change; if I now were to change my mind again, I should have done so twice. If I fail to succumb to his pleading, I think I must render an account to the House of the reasons for my obstinacy. When we originally put this Bill forward, we included section 361. We had two reasons. The first was a general

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ground, namely, the advisability of uniformity in the age, a reason which I might describe perhaps as formal and not necessarily of substance. But certainly I at the same time had in my mind the necessity of providing under the law of kidnapping, section 361, against that offence to which Mr. Jinnah has referred, the offence, widely spread in Northern India, known as "bardafaroshi". We submitted our proposals to Local Governments and found that they were mainly in favour of a uniform age for all three sections. They commented very little on section 361, but they were as a rule sufficiently in favour of a uniform age for all three sections for us to place that age in the Bill. Then objection was raised in the Assembly regarding section 361. The Bill was submitted to Select Committee and further objections were raised there, and for my own part, I was converted by those who felt those objections. Let me put the whole matter in a nutshell. Are you to place any restriction on a person who takes away a girl between the ages of 16 and 18 from her lawful guardian for what may be a strictly moral and licit purpose? It is admitted on all hands that, if she is taken away for an unlawful purpose, then you may reasonably take the age of 18. It is again admitted on all hands that if she is abducted, that is to say, if force is used, or deceitful means are used, then again you may take the age of 18. That again is admitted on all hands, and the question therefore comes down, as I have said, to this; if you take away that girl between the ages of 16 and 18 for a perfectly lawful purpose, should you be penalised? Remember that we are enacting a section of a Penal Code, and the punishment is seven years. It is our duty therefore to see that we do not give an undesirable extension to this somewhat severe penal section; in other words, that we do not run the risk of penalising innocent acts in our desire to penalise acts which are not innocent. If it is necessary to penalise acts which are not innocent, then it should be done by some change in the law and not merely by so extending the existing law that innocent acts may also be brought within its scope. That point I think is clear; so much for the matter of principle. But the question has been largely debated between our lawyer friends here, whether you would, by the amendment, actually extend the scope of the Statute so that you might be in danger of penalising innocent acts. I think the point has been a little obscured. I have always a great hesitation in entering into controversy with lawyers, not because I do not feel myself right, but because I have not always the legal equipment to support my own opinion. But on this particular point I speak with some confidence. If you take the commentators on sections 361 and 363, they do make it perfectly clear that, although the somewhat harsh word "kidnapping" is applied in section 361, yet the offence does not necessarily involve any criminal intention. Under these sections, says one commentator, Mr. Starling, "kidnapping is an offence irrespective of any intent with which it is committed." Again: "Intention is not of the essence of the offence of kidnapping." The law uses the word "take" and it also uses the word "entice." I will explain to the House how the commentator whose book I hold in my hand, deals with the word "take." He says "take" implies a bodily removal by the defendant, not necessarily by force, and he quotes a case which shows that the mere leading of a not unwilling child would be sufficient. He then goes on to deal with "entice":

"Enticing is an act by which the person kidnapped is induced of his own accord to go to the kidnapper. The means used need not be deceitful. They may be the expectation of a present which is actually gratified, or the blandishments of a lover."



He goes on to draw a distinction with abduction, with which we need not deal.

Now, Sir, if evil intention is not necessarily of the essence of kidnapping; if in removing a girl from her lawful guardian when she is between the ages of 16 and 18, you commit the offence of kidnapping, although your intentions may be perfectly honourable, then it is clear that we must exercise the greatest caution in giving any extension to the scope of our existing Act. Let me quote the kind of case which has actually come under the scope of this section:

"Where a Hindu woman left her husband's house, taking with her her infant daughter, and went to the house of 'A', and on the same day the daughter was married to the brother of A without her father's assent, it was held that A was rightly convicted of the offence of abetment of kidnapping."

Therefore the mother had actually kidnapped her own child from the lawful guardianship of her father, and, though she was not herself prosecuted in this case, yet the husband of the girl was convicted. Are we to legislate in a sense which would make it possible for the law to be applied more extensively than at present to such a class of offences? We should not be swayed in our judgment by ideas derived either from associations connected with the offence of abduction, or from any belief that the words "taking" and "enticing" used in section 361 necessarily imply an evil, a criminal or a dishonourable intention.

A great deal has been said this morning about the necessity of allowing to a girl between the ages of 16 and 18 free choice on certain matters, such as the change of her religion, or her own choice of a husband. It has been pointed out that she has under law very considerable liberty up to the age of 18. That is to say that, although she cannot sign a contract, yet she has great liberty in many matters affecting her own person. But for my part I do not desire to enter into that particular side of the controversy. It seems to be one on which opinions may differ greatly. Certainly we should not in England deny that a girl of 17 had a right to contract a marriage or to change her religion, or hold that anyone who assisted her in this direction had committed a grave penal offence. But I realise that the question whether an Indian girl should be held to have full discretion between the ages of 16 and 18 is very largely a matter for my Indian friends, with far greater knowledge of the question, to decide. I am quite willing to abide by their vote without attempting in any way to influence it. My point is another one. We are dealing not so much with the girl as with the effect which may be produced on the person who removes her from lawful guardianship between 16 and 18 for perfectly honest and honourable reasons. Whatever ideas we may have regarding the right of the girl or the capacity of a girl between 16 and 18 to form her own choice on certain matters, ought we to penalise a third person who takes her away from lawful guardianship unless his intentions are evil? I have brought the House back to exactly the same point with which I started. That is the case put to us in Select Committee and which induced me to agree that the extended age ought not to apply to section 361.

There is only one point more. I may be asked, how I propose to provide for the offence of "bardafaroshi", an offence admittedly rampant and causing enormous harm. Well, in Select Committee I undertook to examine that question carefully, and, if it was found possible to frame a suitable section, either separately or as addition to one of the existing sections, then to introduce a separate Bill. It is not an easy matter because it is difficult to draft a provision which will apply only to that offence without penalising

[Sir Malcolm Hailey.]

innocent transactions. I see that Mr. Joshi has tried to do so; his amendment has not yet come on; if it were to be moved I shall have to point out to him how his own drafting illustrates the difficulty to which I have referred. I should therefore for my own part much prefer to consider that aspect of the question separately and draft a section with greater deliberation than is possible for the moment.

**Pandit Madan Mohan Malaviya:** Sir, may I mention two points which the Honourable the Home Member might kindly take into consideration? Section 368 provides for a maximum punishment of 7 years; but it does not mean that in every case that sentence will be inflicted. That is one point which I want the Honourable the Home Member to consider. Secondly, he mentioned the taking away of a girl by perfectly honourable means for honest purposes. When a girl is enticed away for marriage with the man who takes her or for conversion into another faith, it cannot be said that it is unlawful or dishonourable; but it is a matter which vitally affects the girl throughout her life. Therefore, I submit that these are points which should be considered and protection should be extended up to the age of 18.

**Mr. Abdul Haye** (East Punjab: Muhammadan): Sir, as I rise to oppose the amendment of my Honourable friend from Nagpur, I experience two difficulties. The first difficulty is that on the first day, when I intervened in this debate, my Honourable friend, Pandit Madan Mohan Malaviya, was not here. I am of opinion, Sir, that he has been taken by surprise to-day when he came to this House. There has been some talk of missionaries and conversion and proselytism. Although my learned friend the Pandit is three times eighteen, I saw Dr. Gour—who is very keen about this matter—leaving his seat and coming over to this side and sitting by the side of the Honourable Pandit; and he has, Sir, in five minutes successfully converted him to his view, though he did it with the help of three books that he brought from the Library. Now, Sir, he has handed over that literature . . .

**Pandit Madan Mohan Malaviya:** Sir, in justice to Dr. Gour I want to tell my friend, Mr. Abdul Haye, who will no doubt accept it, that I have a little sense left in me and that I made up my mind about this matter before I came to this House; I sought the help of Dr. Gour's books because he had them and I had not.

**Mr. Abdul Haye:** I am afraid, Sir, that we are not going to finish this piece of legislation before night-fall, because that literature which Dr. Gour had in his possession he has handed over to the Honourable Member with the Gandhi cap sitting over there. Now, Sir, I say with all deference to the Honourable Deputy President of the House that the second difficulty is one that was created by him when he introduced the missionary element into this debate. When I opposed the consideration and the passing of this Bill on the first day, I spoke, not as the spokesman of the missionaries—I have had the honour of being educated, throughout my career as a student, in missionary institutions—but with all deference to them I say that I stand here before you not as their spokesman, but as a simple and true Muhammadan. I spoke, Sir, from the point of view of a Mussalman and even now I appeal to you to stay your hands and to give the matter your best consideration. In your anxiety to further the cause of social reform I ask you not to ride roughshod over the provisions of my personal

law which is as dear to me as my own life. I put the case very succinctly before you that day, and I have no desire to traverse that ground again; but for the benefit of my Honourable friend, Pandit Madan Mohan Malaviya, I would point out the case which I then brought to the notice of this honourable House, the case which I had the honour to conduct as a lawyer. It was a case in which a woman of admittedly more than 15 and less than 16 years of age was enticed away by her paramour, as her mother, who was the *de facto* guardian, stood in the way of the contemplated marriage. According to my personal law the girl was free to act in the manner she pleased; and when the girl went away with that man and that very evening contracted a lawful marriage a complaint was filed and they were hauled up before a criminal court and the husband was punished. When the case came to the Civil Courts it was declared, Sir,—I wonder whether the Civil Courts were not stultifying themselves in doing so,—it was declared that they were lawfully married and that they could live as man and wife. Now, Sir, what I submit is that these cases are not only conceivable, but they have actually happened. I would have been perfectly satisfied in the Select Committee if some provision had been made to bring these cases within an exception; it would have been quite satisfactory. But I find that my Honourable friend the Leader of the Labour Party in India, the Honourable Mr. Joshi, has come out with an amendment too late and he did not press it in the Select Committee. I do not think I can deal with that amendment when I am speaking on the amendment of my Honourable friend, Dr. Gour. Now, Sir, briefly, the case from the point of view of Mussalmans is that if you raise the age of discretion from 16 to 18, you will be doing a thing by which you will bring my personal law into conflict with the criminal law of India. Dr. Gour said that the policy of the Government in India was to assimilate the provisions of the Indian Majority Act to the provisions of the criminal law in India. Being a 'juvenile', Sir, I do not claim to know when that declaration was made by the Government. My Honourable friend who is my senior possibly knows better, but I take him, Sir, at his own words, and I say, if the policy of the Government is to assimilate the two laws, I will accept it. But does Dr. Gour know that the Indian Majority Act does not in any way contravene the provisions of the Muhammadan law so far as they relate to matters of marriage, divorce and dower, etc.? Section 2 of that Act has clearly excepted these matters. I only appeal to you, Sir, that you will not enact a law which will come in conflict with my personal law. I do not propose to enter into the question at what exact age in a tropical country like India a boy or a girl becomes a major and is capable of thinking for himself or for herself; but those Honourable Members who have urged a change in the law have not quoted any authority from any medical jurisprudence to that effect. Sir, I may tell you from my seat in the Assembly that you have allowed religious freedom to everybody in this country, and that religious freedom should not be taken away so lightly; otherwise it will be the religious duty of every Mussalman to stand up against this legislation. I say, Sir, with all moderation and in all humility that it shall be my religious duty to break this law so as to bring it in conformity with my personal law. Do not think, Sir, that because I am a married man, I shall have no opportunity of breaking the law. I can have three more wives, if I like, and possibly that situation may arise before I leave this Imperial city and go away to my own place.

Now, Sir, Dr. Gour has done his duty and when he came and sat by the side of Pandit Madan Mohan Malaviya, I was also tempted and I

[Mr. Abdul Haye.]

felt inclined to go and sit by the side of the only other available Pandit here, I mean Pandit Motilal Nehru. I appeal to him to save the situation. I also appeal to the House that it should not vote in a manner calculated to injure the religious feelings of the Mussalmans of India.

**Mr. Jamnadas Mehta** (Bombay Northern Division: Non-Muham-madan Rural): Sir, it is often the case in this country that when religion enters from one door, reason flies out from another. The moment you mention to a man "religion," it simply frightens him out of his wits as it has done in the case of my Honourable friend there who has not yet put on a Gandhi cap. I hope he will soon put on a Gandhi cap, when religious questions will not frighten him.

Now, Sir, so far as the section under consideration is concerned, a great attempt has been made to show that it will affect innocent persons. My Honourable friend, Mr. Jinnah, attempted to make a great point of it. He laid the utmost emphasis on the fact that it will affect persons who are most innocent, and that this section is irrespective of the intentions of the man who is concerned. The Honourable Sir Malcolm Hailey also asked whether this Legislature was prepared to deal so severely with people whose intentions were honourable and innocent. But they all forget, Sir, the fact that the Legislature itself has taken and rightly taken a most serious view of honest intentions under section 361. It is the Legislature which has penalised people for the most honest intentions under the existing section 361. The Legislature thinks that with the best of intentions, with the most honourable intentions, no man can be trusted to replace the guardian of a minor child. He may be an angel from heaven, he may have the most honourable motives, but he cannot take the place of a lawful guardian, and therefore the Legislature says 'irrespective of intention, regardless of the motives, we take a most serious view of your conduct if you replace the guardian of a man and you take his place and guide the movements of a minor.' Therefore, Sir, the whole point about the innocence and honourable character of the intention in this section is wide of the mark. It does not touch the question at all. The real question is whether the House is prepared to say that a man who cannot deal with a minor of 16 may be permitted to do so with a minor of 17; whether the law makes the same thing a great offence when the minor is 16 and an honourable thing when the minor is 17 or 17½. Intention is no criterion here at all, and the law thinks that, until maturity of judgment is attained, nobody should be permitted to take away a minor out of the lawful guardianship. Sir, we have now liberalised our law of marriage. In India, marriages between different communities are becoming possible and even legal, and there is a great danger that, when the marriage law is further liberalised, unless you also increase the powers and the rights of the guardian and make them more than they are at present, the inter-marriages, inter-communal marriages, inter-racial marriages might prove to be a great disaster rather than the blessing which they are intended to be. Therefore, Sir, I do think that this section is absolutely necessary.

Then again, I do not know why Diwan Bahadur Rangachariar wanted to stand up for Maulvis and missionaries or for people who want to convert Muhammadans to Hinduism; why should he stand up for them? Why should the law be made so easy for proselytism to come in? I never thought

that a piece of legislation was not going to be undertaken here simply because it would impede the work of conversion. That was a novel ground for impeding legislation . . . .

**Diwan Bahadur T. Rangachariar:** That was not my point at all.

**Mr. Jamnadas Mehta:** That was my anxiety. If it is not, I have nothing to say.

**Diwan Bahadur T. Rangachariar:** There is no question of impeding conversion, it is impeding change of religion.

**Mr. Jamnadas Mehta:** All right, Sir. Then, Sir, as the Honourable Pandit Malaviya has said, the Government of India also thought that it would be logical that when the age was being raised in case of other offences it should be raised in this case also if the law continues to take a serious view of this offence. If the law thinks that honourable intentions are a sufficient answer, then abolish section 361 altogether. But, Sir, honesty and honourableness are not the criteria under section 361, but the sanctity of the lawful guardianship of the minor. Therefore, Sir, it would be illogical and even dangerous not to extend the age from 16 to 18. It may be that an honest man may sometimes be implicated. Let him play the game. If he is really honourable, if he is so devoted to the girl whom he has taken away that he wants to marry her, I think simple imprisonment for a day or two would be a nice thing for him. It would show that he was devoted to the girl when he was prepared to take risks for her sake and therefore it would make the bond of affection between them more lasting. Why is it difficult? I think the convicting magistrate will take into account his good intentions and his honourable motives and the imprisonment will be like a scar in a battle, and therefore a thing all the more in favour of this section. Why are my friends afraid of it? If the man is honourable, let him be hauled up before a magistrate. What does it matter? The magistrate is a human being and must have been at one time a lover himself. He knows these things and will take all facts into consideration. Sir, I do not see any justification for the opposition to this simple piece of social legislation which merely keeps up rights of guardianship. This bogey of good intentions being endangered will always be brought up, that is certain. But this plea of honest intention has no place in this section. The only question is whether you will not bring into line all these sections as you have brought sections 372 and 373. And lastly, Sir, if you do not allow a girl who is a minor to dispose of a trumpery thing in civil law, if she is not competent even to sell a trinket or a paltry thing worth a few rupees, it is absurd that she should be free to surrender her person, and that also when we are liberalising our marriage laws and when inter-communal unions have become possible. Therefore, Sir, I have great pleasure in supporting Dr. Gour's amendment.

**Mr. K. Rama Aiyangar** (Madura and Ramnad *cum* Tinnevely: Non-Muhammadian Rural): Sir, so much has been said about religion and social reform. I am an orthodox Brahmin but I propose to support this amendment. And I will put my case before you briefly. I am afraid the law has not been as thoroughly read as it ought to be. Mr. Mehta and Mr. Jinnah, both of them, assumed that the intention was not of any consideration in the section, and I think that was also brought out by the

[Mr. K. Rama Aiyangar.]

Honourable the Home Member. But I draw the attention of the Assembly to the *Exception* to section 361:

"This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or an unlawful purpose."

I do not say that it protects this man, but I only mention it to bring out the fact that intention also is taken into consideration in the section in the whole of its phrasing. But that does not affect the present question, I concede. What I am saying is that the question of the intention will in some cases have to be considered. There is also the frame of the present section where it says up to 16 years removal from a lawful guardian is an offence. All the arguments that have been advanced both by my friend, Mr. Rangachariar, and my friend, Mr. Abdul Haye, will apply in the already existing section to cases where girls are taken away before 16. But though my Muhammadan friend was able to quote an instance in which a person was convicted, my friend, Mr. Rangachariar, was not able to quote one. Ordinarily, as far as I know, there have not been cases in which the question has taken shape. It is expected it might do so if the section is left as it is and if there is provision expressly made that 18 should be substituted there for 16 or for 14. Therefore, I say you cannot easily leave out of account the marital customs either of the Muhammadans or of the Hindus. The whole matter might be put in the *Exception* with a slight modification. And the Honourable Dr. Gour, when he opened his speech, was prepared to see that suitable provision was made in the section for such cases. That ought to be made. I do not see how it can be argued that simply because Mr. Rangachariar expects a girl to be given a more suitable residence before 18, the whole lot of unmarried girls who need not be given such residence, should not be protected. For example, there are a lot of Sudra unmarried girls aged over 18 who will also come under this category; they may have to be protected, and it is better not to allow the law to affect either the husband or the parents. In all these cases, suitable provision might be made in the *Exception* or otherwise under the section. But certainly it is necessary that once you make 18 the age for all these purposes of sections 372 and 373 and the new Act of 1923, it must be 18 for every purpose including section 361. Of course, I do not agree with the Honourable Pandit Madan Mohan Malaviya that the Majority Act affects this question. It will not. You will have to make a suitable provision in the Penal Code in the *Exception* to include Hindu and Muhammadan minor girls from the operation of the section for the specific purposes. I request therefore that the amendment be accepted and the matter reconsidered in the Select Committee so that a suitable provision may be made and I feel that my friend, Mr. Abdul Haye, will be satisfied if a provision is made that Muhammadan marriages and also Hindu religious customs and marriages are not affected by this provision. But the provision is needed to protect the one hundred and one cases of females between 16 and 18 that will have to be protected. I therefore support the amendment.

**Pandit Shamlal Nehru:** I move, Sir, that the question be now put.

**Dr. H. S. Gour:** Sir, I shall very briefly reply to the Honourable Sir Malcolm Hailey. He cites an extreme case. He says that under section 361, if a person takes a minor below 16 years of age, however innocent

and honourable his intentions may be, he is exposed to the penalty provided in section 363, to which I reply that that is the existing law and has been the existing law since 1860. It is not only the law of this land but also the law in England itself.

My friend's next point was, "supposing the first intentions are honourable, why should he be punished" to which I reply, Sir, that if his intentions are honourable and the girl is willing to go, then she is not "taken" within the meaning of section 361. She will follow him and the provisions of section 361 are not contravened. I would invite the Honourable the Home Member to read the weighty words of Bramwell, B., who said:

"I am of opinion that if a young woman leaves her father's house without any persuasion, inducement, or blandishment held out to her by a man so that she has got fairly away from home, and then goes to him—although it may be his moral duty to return her to her parents' custody, yet, his not doing so is no infringement of this Act of Parliament . . ."

**Mr. M. A. Jinnah:** Which Act?

**Dr. H. S. Gour:** 24 and 25 Vict. which is reproduced verbatim in section 361:

" . . . for the Act does not say he shall restore her, but only that he shall not take her away. It is, however, equally clear that, if the girl, acting under his persuasion, leaves her father's house, although he is not present at the moment, yet, if he avails himself of that leaving which took place at his persuasion, that would be a taking her out of her father's possession because the persuasion would be the motive cause of her leaving."

**The Honourable Sir Malcolm Halley:** That proves my point.

**Dr. H. S. Gour:** Therefore, I submit, Sir, that it is the intention, the persuasion and bodily taking of her away from the lawful guardianship that makes section 361 a penal section, for which provision is made as regards punishment in section 363. The Honourable the Home Member set out a simple case. He said "If a person takes a girl away with an honourable motive, why should he be punished?" But that is no argument against my amendment. That is an argument against the Statute law that exists to-day, and if it is a crime for a man to take a girl away under 16 because she is a minor, why should it not be a crime to take her away when she is over 16 and under 18 because she is still a minor? It is in this view, Sir, that I press my amendment.

**Diwan Bahadur T. Rangachariar:** May I ask my Honourable friend, Dr. Gour, this. If a minor is under the Court of Wards, the age of majority is 21 years. If a guardian is appointed under the Act the age of majority is twenty-one. Then why not apply the same argument in this case also?

**Dr. H. S. Gour:** You move an amendment and I will support it.

**The Honourable Sir Malcolm Halley:** I think I have a right of reply to Dr. Gour, but I shall make it as short as possible. He in the first place denies my point that "mere taking away" is sufficient in itself and that the section does not refer to any evil or dishonourable purpose in taking away. I have already quoted much to the House on this subject and I need perhaps say little more. It will be sufficient for me to repeat to the House the words of Baron Bramwell's judgment:

"Yet if he (*that is to say, the man who takes the girl away*) avails himself of that leaving, which took place at his persuasion, that would be a taking her out of the father's possession, because the persuasion would be the motive cause of her leaving."

[Sir Malcolm Hailey.]

As I interjected before, that proves my point. But it is not necessary that I should depend entirely upon that judgment. Take another:

"Where a girl was persuaded by the defendant to leave her father's house and go away with him, without the father's consent, and accordingly left her home alone by a pre-concerted arrangement between them, and went to a place appointed"

--there is no following, there is no actual possession, there is no physical contact--

"where she was met by the prisoner and they went away together, without the intention of returning; this was held to be a taking of the girl out of the father's possession and certainly it would amount to an enticing."

That is a further confirmation of my point. Let me take another judgment:

"So, too, it would be a taking where the prisoner induced a girl to go with him and get married, although she returned after an hour and continued to live with her father, who knew nothing of what had happened, as the girl, after her marriage, could not be held to be in her father's possession, although she was in his house, because she was in the lawful possession of her husband and never could be in the possession of her father in the same way as before."

That proves, first, that there is a constructive offence of taking, and, second, that evil intention is in no sense an element in the offence. But a further argument has now been adduced, that this offence has always been a part of the Statute law, both Indian and English. The extension proposed would therefore create no new offence. That is perfectly true. But hitherto we have limited the operation of the section to the age of sixteen years. My protest was merely against giving a further extension to that principle. That is the real point of difference between us. We say that it is not unreasonable to regard this as an offence up to the age of sixteen years, but that there does arrive a time when it is unreasonable to regard it as an offence. That is the simple reason why we in the Select Committee after mature consideration decided that section 361 had better be omitted from the new Bill, and at the same time we were willing, as we are still willing, to consider a change in the Act so as to provide for particular classes of offence, namely, for the enticement or taking away of girls for the purposes of marriage when a gain or profit accrues to the person who so takes them away.

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

"That clause 2 stand part of the Bill."

Since which an amendment has been moved:

"That in clause 2, after the word 'sections' the figures '361' be inserted."

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

The Assembly divided:

AYES—16.

Ahmad Ali Khan, Mr.  
Asjad-ul-lah, Maulvi Miyan.  
Belvi, Mr. D. V.  
Dalal, Sardar B. A.  
Fleming, Mr. E. G.  
Gour, Dr. H. S.  
Gulab Singh, Sardar.  
Joshi, Mr. N. M.

Lohokare, Mr. K. G.  
Malaviya, Pandit Madan Mohan.  
Mutalik, Sardar V. N.  
Roy, Mr. K. C.  
Sarda, Rai Sahib M. Harbilas.  
Singh, Mr. Gaya Prasad.  
Sinha, Mr. Ambika Prasad.  
Venkatapatiraju, Mr. B.



## NOES—61.

Abdul Haye, Mr.  
 Abdul Karim, Chwaja.  
 Abul Kasem, Maulvi.  
 Ahmed, Mr. K.  
 Akram Hussain, Prince A. M. M.  
 Alimuzzaman Chowdhry, Mr.  
 Allen, Mr. B. C.  
 Bahawal Baksh, Chandhri.  
 Bell, Mr. R. D.  
 Blackett, The Honourable Sir Basil.  
 Burdon, Mr. E.  
 Butler, Mr. M. S. D.  
 Calvert, Mr. H.  
 Chatterjee, The Honourable Mr. A. C.  
 Chetty, Mr. R. K. Shanmukham.  
 Cocke, Mr. H. G.  
 Dunk, Mr. H. R.  
 Dutt, Mr. Amar Nath.  
 Faridoonji, Mr. R.  
 Fraser, Sir Gordon.  
 Ghose, Mr. S. C.  
 Ghulam Abbas, Savvad.  
 Goswami, Mr. T. C.  
 Hailey, The Honourable Sir Malcolm.  
 Hira Singh, Sardar Bahadur Captain.  
 Holme, Mr. H. E.  
 Howell, Mr. E. B.  
 Hyder, Dr. I. K.  
 Innes, The Honourable Sir Charles.  
 Ismail Khan, Nawab.  
 Jeelani, Haji S. A. K.  
 Jinnah, Mr. M. A.

Kartar Singh, Serda.  
 Kazim Ali, Mr. M.  
 Kidwai, Shalkh Mushir Hossain.  
 Lindsay, Mr. Darcy.  
 Mahmood Schamnada Sahib Bahadur.  
 Mr.  
 Moir, Mr. T. E.  
 Moncrieff Smith, Sir Henry.  
 Nag, Mr. G. C.  
 Neogy, Mr. K. C.  
 O'Malley, Mr. L. S. S.  
 Owens, Lieut.-Colonel F. C.  
 Parsons, Mr. A. A. I.  
 Percival, Mr. P. E.  
 Pilcher, Mr. G.  
 Ramachandra Rao, Diwan Bahadur M.  
 Rangachariar, Diwan Bahadur T.  
 Rhodes, Sir Campbell.  
 Richey, Mr. J. A.  
 Rushbrook-Williams, Prof. L. F.  
 Sadiq Hassan, Mr. S.  
 Sarfaraz Hussain Khan, Khan Bahadur.  
 Shams-uz-Zoha, Khan Bahadur M.  
 Singh, Rai Bahadur S. N.  
 Singh, Raja Raghunandan Prasad.  
 Tottenham, Mr. A. R. L.  
 Turing, Mr. J. M.  
 Ugiar Singh Bedi, Baba.  
 Wajihuddin, Haji.  
 Yakub, Maulvi Muhammad.

The motion was negatived.

**Mr. N. M. Joshi:** As the amendment of my Honourable friend has failed, I propose my amendment which is a safe one, as it removes the objections of several Members of the Assembly on the ground that they wanted to kidnap the girl before marriage. Sir, my amendment reads thus:

"That after clause 2 of the Bill, the following new clauses be added:—

3. In Section 361 of the said Code, for the word 'sixteen' the word 'eighteen' shall be substituted.

4. To section 363 of the said Code the following proviso shall be added, namely:

Provided that no offence shall be committed if a female under the age of eighteen years and over the age of sixteen years is kidnapped from lawful guardianship by any person with a view to her entering upon a marriage, with her own consent, with himself or some other person, no force or deceitful means such as would amount to abduction being employed."

**Mr. President:** The Honourable Member cannot move the first part of his amendment (which stands as No. 3). It has just been disposed of. Under the Standing Order relating to the repetition of a motion raising substantially the same question, the Honourable Member is precluded from moving the substitution of the word "eighteen" for the word "sixteen." The House has just decided not to do that.

**Mr. N. M. Joshi:** Since the operation of my amendment restricts the scope of the section, it is quite a new amendment and I think therefore I am in order in moving it?

**The Honourable Sir Malcolm Hailey:** May I point out that the Bill does not deal with section 363?

**Mr. N. M. Joshi:** My amendment combines the inclusion of section 361 under certain conditions and I therefore think I am in order?

**Mr. President:** The Honourable Member might have tried to save Dr. Gour's amendment by moving it as an amendment to his amendment. I cannot go back on the decision of the Assembly, which is explicit now, that the age shall not be raised to eighteen.

**Mr. N. M. Joshi:** It was necessary, Sir, for me to support Dr. Gour's amendment in order to find out if the House was with us so far as to accept that amendment. After that had failed, I move mine . . .

**Dr. H. S. Gour:** May I point out that my amendment was that the increase should be unconditional. His is that it should be subject to conditions and consequently . . .

**Mr. President:** The House has just decided that there should be no increase at all. As I just pointed out to the Honourable Member, if he wished to restrict the scope of Dr. Gour's amendment, he should have moved it as an amendment to Dr. Gour's amendment, in which case the two amendments could have run together. If the Honourable Member tells me that Numbers 3 and 4 hang together, then I am afraid he cannot move 4 at all.

**Mr. N. M. Joshi:** It is not my intention to move the second part, if I cannot move the first part.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

**The Honourable Sir Malcolm Hailey:** Sir, I move that the Bill be passed.

**Mr. President:** The question is that the Bill, as amended, be passed.

**Dr. H. S. Gour:** Sir, it is perhaps rather late in the day to oppose the passing of the Bill. But I would still ask the Honourable Member to reconsider the position he has arrived at and do what he asked the Local Governments to do and adhere to the opinion he expressed himself in his letter to the Local Governments that it would be wholly illogical, with section 361 of the Indian Penal Code remaining unaltered, that sections 368A, 372 and 373 should raise the age from sixteen to eighteen years. The Honourable the Home Member has promised a carefully considered piece of legislation in the near future. I would invite him in that connection also to consider the question of raising the age in section 361 not only in the case of females but also in the case of boys. I do not see any reason why a boy between 14 years and 16 years of age should not be protected equally with girls. Cases, Sir, are well known where *jakirs* and *hairagis* decoy these young lads of 14, 15 and 16 and afterwards they are trained to purposes which I need not describe in detail. I therefore suggest, Sir, that the raising of the age in the case of boys from 14 to 16 at any rate in section 361 is imperatively necessary, and I hope, Sir, the Honourable the Home Member will hark back to what he has already written or caused to be written when circularising the Local Governments regarding the raising of the age and bring section 361 into line with other cognate sections of the Penal Code.

**The Honourable Sir Malcolm Hailey:** We shall take into consideration the point last mentioned by Dr. Gour. But when he asks me to retire from the illogical position which he asserts that I have taken up, I can only point out to him that my illogicality has brought many new friends into my lobby. I do not want to lose their support, and, if I can only retain it by being illogical on this or other matters, I prefer that to a profitless logic.

**Mr. President:** The question is that the Bill further to amend the Indian Penal Code for certain purposes, as amended, be passed.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 28th February, 1924.

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