

Thursday, 10th September, 1925

THE
COUNCIL OF STATE DEBATES

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OF THE
COUNCIL OF STATE, 1925



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COUNCIL OF STATE.

Thursday, the 10th September, 1925.

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

QUESTIONS AND ANSWERS.

EMPLOYMENT OF INDIAN LASCARS TO MAN STEAMERS DETAINED IN SOUTH AFRICAN PORTS.

THE HONOURABLE MR. G. A. NATESAN : Sir, I have given private notice to the Honourable Mr. Chadwick of two questions which I desire to put to-day. Have I your kind permission ?

THE HONOURABLE THE PRESIDENT : Yes.

THE HONOURABLE MR. G. A. NATESAN : (a) Have the Government of India seen the report that the owners of certain steamers detained in South African ports propose to engage lascar crews in India to man those vessels ?

(b) If so, can the Government state whether any lascars have left for this purpose ?

(c) If not, whether the Government have taken action to prevent lascars from undertaking those duties ?

THE HONOURABLE MR. D. T. CHADWICK : (a) The Government have seen the report in question.

(b) and (c) The Government of India have already made inquiries and are informed that no lascars have left the shores of India to join those vessels, and they do not anticipate that any will.

ELECTRIFICATION OF RAILWAY COMMUNICATIONS IN SOUTHERN INDIA.

THE HONOURABLE MR. G. A. NATESAN : Will the Government be pleased to state what progress has been made with the proposals for the electrification of railway communications in Southern India ?

THE HONOURABLE MR. D. T. CHADWICK : The Government are awaiting the development of the sources of power from the various hydro-electric projects which are being investigated by the Madras Government. Proposals have been received from the South Indian Railway for the electrification of the suburban lines which are under examination.

BILL PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

SECRETARY OF THE COUNCIL : Sir, in accordance with Rule 25 of the Indian Legislative Rules I lay on the table a copy of a Bill to provide

[Dr. Sir Deva Prasad Sarvadhikary.]

that, when fire-arms are used for the purpose of dispersing an assembly, preliminary warning shall, in certain circumstances, be given, which was passed by the Legislative Assembly at its meeting held on the 9th September, 1925.

RESOLUTION *RE* PROTECTION OF THE RIGHTS OF INDIANS IN SOUTH AFRICA.

The HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY (West Bengal: Non-Muhammadan): Sir, I beg to move the following as a substantive proposal:

"This Council recommends to the Governor General in Council that in connection with the recent anti-Indian legislation and with the Bill now impending before the South African Parliament immediate steps should be taken to secure and safeguard the rights of Indians in South Africa."

Sir, I owe it to your indulgence and to the courtesy of the Honourable Member in charge of the Department, and to the Honourable Mr. Natesan that I am permitted to substitute these words as a substantive proposal in place of the words of which I had given notice originally. In speaking to this or any Resolution on this subject, one is weighted down with the sense of serious responsibility and of not a little embarrassment, although speaking in the calm and helpful atmosphere of assured Government support and sympathy. One feels, Sir, that not a word must be said on these occasions which may be prejudicial to the interests of those whom we want to help, and whose interests we want to safeguard as far as lies in our power. We feel, Sir, that whatever the irritation and sense of annoyance may be, we have to exercise restraint and self-control. I think it will be conceded that appeals in this direction have not been disregarded in this House or in the other House in the near past. Everyone who had occasion to speak has spoken with this sense of responsibility. The responsibility is not ours so much as that of the Government of India, and not only should we avoid giving cause of offence elsewhere, but we owe it to the Government of India, which we know is doing all that is possible to do in this direction, that their hands should be in no way weakened. All who know anything of the situation must accord the gratitude we owe to all the Viceroys from Lord Hardinge downwards, Lord Chelmsford, Lord Reading, every one has done all that lay in their power to advance the cause of our countrymen in South Africa and to protect them, as far as possible, with due consideration for prestige. And, Sir, when the history of this movement comes to be written, no small place must be assigned—and I say this with gratitude—to the Honourable Sir Narasimha Sarma, who will soon be leaving us, who to our certain knowledge has done all that could possibly be done. It is a matter of gratitude and assurance, Sir, that the Honourable Mian Sir Fazl-i-Husain has taken up the burden—this thankless and immense burden—in a proper spirit that I am sure will be helpful.

Sir, I do not want to take the House into the various phases of this anti-Indian legislation in the Union Government which has been always a sore subject with us. The Honourable Mr. Natesan will enter into the details of that legislation and of the situation as affected by it. We want to strengthen the hands of the Government of India in a way that will induce

the Colonial Office and the Cabinet to afford us—which speaking with the outside knowledge we have not got yet—that assistance and support to which we are entitled. The Imperial obligation in the matter, which are large, must be adequately discharged.

Sir, the immediate measure that has called attention to this question is the Bill recently introduced to make provision for the reservation of residential and trading areas in urban areas for certain persons having racial characteristics in common. They were so precipitate in moving that Bill that, according to newspaper reports, which are not always accurate, the mover of the Bill had not yet the text of the Bill before him. And it was with some difficulty that copies of this Bill could be procured in this country for detailed examination. That Bill, among other things, aims at reducing the Indian population in South Africa to an irreducible minimum. And what is that Indian population, Sir? Near upon 1½ lakhs, of whom more than 60 per cent have been born in South Africa. Whether they should be regarded as South Africans first and Indians afterwards, and whether their interests should not be safeguarded by the Colonial Office more than by our Government and the Secretary of State for India is a question which might be raised, but leaving that constitutional question aside, we have the fact that these 1½ lakhs of people did not go there of their own accord voluntarily, but their ancestors went there to start as indentured labourers, who manured the soil with the dust of their bones. They finished their work and settled down, and it is their families now who are to be interfered with by the proposed Bill. Whether they can be repatriated in the way proposed, or whether the pressure that is proposed to be brought to bear upon them is just, though it may be lawful, are questions that will probably not affect the issue. So far as the South African people are concerned, they are determined, by any means open to them, to have that number reduced to a minimum. Those who have had opportunities of conferring with representatives of South African opinion are fully persuaded that there is very little left for negotiations to achieve. We who speak with outside knowledge are therefore in a more or less despondent frame of mind, and so are, we believe, the Indians in South Africa themselves. But, Sir, Government, which have closer information, are not yet of that frame of mind, and it is believed that the time for negotiations and representations has not yet passed. That being so, although both Houses here adopted some time ago a Bill to take needful action by way of reciprocity, it would be premature, it would be undesirable and unfortunate to raise yet the question of reciprocity or retaliation as we may call it. What can be done in that direction later on is another matter. But the door for negotiations and representations being still open, we ought to do all we can to assist the Government and strengthen their hands and endeavour through representations and negotiations to bring about a better state of things, which it is believed will be possible to bring about in the not unlikely event of a change in the Government of South Africa.

Sir, the question there cannot be one of numbers. As I have said, the number of Indians is only 1½ lakhs in that vast country. There are six millions of coloured people who do not seem to trouble the South African Government or the South African people. Therefore it cannot be a question of numbers. The House will remember that, in view of the troubles that

[Dr. Sir Deva Prasad Sarvadhikary.]

arose in 1911, Government decided no longer to encourage or allow emigration to South Africa, and the understanding arrived at, generally known as the Gandhi-Smuts Pact, provided for no more than 18 people for all the districts and provinces of South Africa from India a year. That cannot be a menace to the South African people. In the same way, Sir, it cannot be the political difficulty that the South African people are exercised about, because even if every one of the Indians had all the franchise and municipal privileges that we would like to see them have, that would not make an appreciable impression on the situation. And, Sir, if the facts of which we have heard are to be credited, I am not sure that those opportunities would be used by the Indian population in any manner prejudicial to the interests that the South Africans naturally value. In a place called, I believe, Stangner, where the Indians have a preponderating majority in the municipal vote, not long ago, in spite of all the troubles and difficulties that they have been experiencing, they returned an Englishman as their representative. It would appear therefore that they are not animated by any adverse ideas with regard to the political or municipal situation. I am informed on very credible authority that in a border province, where there are no more than a hundred Indian people, the Mayor publicly declared that he had never known a more law-abiding, genteel and gentle set of people than the Indians. I do not know whether that testimony would be forthcoming if the number was appreciably larger than a hundred. Sir, I heard from Mrs. Sarojini Naidu, who was here the other day, that at a banquet given in her honour, there were 900 covers laid and as many as 400 white people joined the remaining 500 people. Therefore it cannot be political or social, so far as those particular grades of society are concerned from which that 900 came. I am told, Sir, that there is no colour bar at the Bar, nor is there any moaning at the Bar with the help of the cheap drink they pass out.

Is it then an economic question? One hears that it is not the labourer so much as the tradesman that the South African objects to. One hears the other story also, that it is not the trader so much as the labourer that he is really anxious about. If the latter were the case, one would have expected that minimum wages legislation would have been undertaken, which would have made it impossible for the Indian labourer to indulge in wage-cutting. I am sure the Indians, even under those conditions of handicap, would be able to hold their own.

What is it then that is really troubling the South Africans? I am not sure that we have always the right version of things. There are always two sides to a question. We have seen with regard to Kenya that some of those who were urging upon us to take steps that bordered on the extreme were in the end prepared to accept seats on the Legislative Council and the Executive Council. About this I asked a question a few days ago in this Council; the Department however said they had not the information yet.

Therefore, Sir, it is of the first importance to begin with to get the right facts, the real condition of things from the point of view of the majority of our countrymen in order that in any course of action on which we may embark

we may not, in attempting to help them, really hurt them. From that point of view, I thought a revision of the wording of my original proposal was necessary and I therefore place it before the House in its amended form. If that is accepted, together with the amendments that will be proposed presently, as complete and concrete a proposal as is possible for this House to present to the Government will have been made; and on that the Government of India through the Secretary of State, and indirectly through the Colonial Office, can bring pressure to bear upon the Cabinet and may yet be able to achieve some results, about which many of us are becoming despondent.

In those circumstances, we thought that we should bring up the matter before this House before it disperses. The other House has also taken an equally strong view upon the matter, and we who come in contact with public opinion outside know with what intense feelings, in spite of the seeming smallness of the problem many thousands of miles away from here, this matter is regarded.

We are taking this step on the eve of a discussion on grave constitutional questions. It has often been said with reference to our demands that we who demand rights for our countrymen abroad have yet to think about ourselves. That is a situation from which there is no getting away; but that is a situation about which we are trying to achieve improvements which sooner or later will come. That however ought not to be allowed to cloud the issue; where such rights have come to all citizens. Those who went away from their country many years ago upon representations that for a time were adhered to but that were gradually departed from as time went on, are our own flesh and blood, our own kith and kin. We cannot sit down with folded arms when all these troubles and difficulties are threatening their fortunes in the country of their adoption.

I shall not say any more. I confidently hope, Sir, that Government, which are taking the same view as us right through the trouble, will be further strengthened by what this House is going to say and that they will be able to achieve results by negotiations and representations, the door for which we are assured to be informed is not closed yet.

THE HONOURABLE MR. G. A. NATESAN (Madras : Nominated Non-official) : Sir, I do not think it is necessary that the time of this House should be taken up by a detailed account of the story of the sufferings of our countrymen in South Africa. In March 1924 I had the honour of drawing the attention of Government and this Council to the legislation which was then impending in the South African Union called the Class Areas Bill, and I am very glad to say that the unanimous desire of this House that the Government of India should take effective steps to prevent that legislation from being given effect to was accepted by the Government of India, and I am sure they have made emphatic protest in that direction giving expression to what was the opinion of the public with regard to the question. That Bill fortunately was dropped, not because the South African Union Government was willing to change its policy in the matter, but because the Government which introduced the Bill had a defeat which it certainly deserved, if for nothing else, for introducing that measure, and it went out of office. We are now faced with a Bill of a similar character but with provisions more drastic in their effect. My Honourable friend Sir Deva Prasad Sarvadhikary, who moved the Resolution, desired

[Mr. G. A. Natesan.]

that I should state some facts in regard to the provisions of the Bill which is now impending and which we are now requesting the Government of India to examine very closely and try their very best to prevent from becoming law in the South African Union.

Sir, there is a great deal of literature luckily made available to us not only through the courtesy of the Department which is in charge of this Resolution, but we have also the advantage of having certain communications which have come to us from not only the Union Government of South Africa but also from the expression of public opinion as prevailing in South Africa through certain representative associations which have cabled to us about some of these matters. I find, Sir, that the immediate effect of this new Anti-Asiatic Exclusion Bill, so far as the Indians there are concerned, will be that it provides for allocating residential and trading areas within which only Indians may buy and lease property. In rural districts Indians are confined to 30 miles from the coast line wherein the areas may be defined. The result will be that thousands of Indian business firms must cease on the expiry of the present leases. It is compulsory segregation and deliberate deprivation of Indians' property. The ultimate aim is apparently repatriation with confiscation. The right of *bona fide* Indians to enter the Union is seriously jeopardised. Many provisions in the Bill will enable Indians being declared prohibited immigrants. The domicile rights will be practically forfeited. Mere absence of three years causes forfeiture. The wives and children of domiciled Indians cannot enter the Union after five years from August 1925. Thousands of ex-indentured Indians are now for thirty years there and their descendants may be declared prohibited immigrants and cannot claim domicile. A South African born Indian domiciled in one province must return to the province of his birth and there also into segregated areas. Indians born here could also be declared prohibited immigrants unsuitable to the requirements of the Union. Such prohibited Indians will lose all property and vested rights in the Union and be driven away.

This is, I think, a very fair and temperate criticism of the provisions of this Bill, and the criticism is made by Mr. Ahmed Bayat, President of the Natal Indian Congress, who has sent a cable in these terms to a number of public bodies, politicians and legislators in India, and also, I understand, to the Government of India. A short but telling comment upon the provisions of this Bill has been made by Mr. Gandhi and his remarks as follows :

"It reduces the position of the resident Indian population to such an extent that without the Union Government having to pay any compensation whatsoever there will be no Indian settlers in South Africa within a few years' time if the provisions of the Bill are applied with enough stringency. There will be powers given to the administration to freeze out every Indian, no matter what stake he may have in the land of his adoption and even of his birth, for the Bill makes no distinction between Indians born in South Africa and domiciled.

"The safeguards provided by the Bill are all illusory and can be rendered perfectly nugatory. The Bill is an indication of the determination of the Union Government to starve the Indians out of South Africa."

I do not think it is necessary for me to give this House any further details about this measure. The contention of our countrymen there, and I am very glad to state, the contention also of the Government of India which has taken

up the case of the people there, is that this is a direct violation of the Smuts-Gandhi Agreement. Honourable Members of this House are aware that as a result of the compromise entered into by General Smuts, who was Prime Minister then and Mr. Gandhi, on behalf of Indians, it was understood that though Mr. Gandhi, on behalf of the Indians, gave up the right of theoretical equality with the people there and though also Mr. Gandhi on behalf of the Indians agreed to give up the right of unrestricted immigration, it was understood, it was put on record, it was also subsequently ratified by General Smuts and his Secretary, that the rights of people already there, that is existing and vested rights, should not be interfered with and no fresh legislation which was in any way calculated to take away the rights of people there ought to be undertaken.

I very much regret to say that not only has the recent anti-Indian legislation to which reference has been made by my Honourable friend, Sir Deva Prasad Sarvadhikary, been adopted in Natal, but this Bill, the worst of all, which has been recently introduced, is a direct violation of the Smuts-Gandhi agreement and is a challenge to the 160,000 of our people who are domiciled in South Africa. Referring to the Smuts-Gandhi Agreement Mr. Gandhi said :

"The essence of the arrangement was that an assurance should be given that existing laws especially affecting Indians will be administered justly and with due regard to vested interests."

On behalf of the South African Union Government Mr. Gorges, the Minister of the Interior, gave the following assurance :

"With regard to the administration of existing laws the Minister desires me to say that it always has been, and will continue to be, the desire of the Government to see that they are administered in a just manner and with due regard to vested rights."

It was again stated that in accordance with that promise no further anti-Asiatic legislation would be passed by the Union Government. The understanding clearly was that the legal position of Indians would be gradually improved and that the then existing anti-Asiatic legislation would in time to come be repealed. You will recollect that the Government of India sent Sir Benjamin Robertson on the Asiatic Inquiry Commission, and Sir Benjamin Robertson expressed his views very clearly and definitely. He publicly stated in that document :

"Compulsory segregation in the eyes of many of its supporters is merely a means to an end. The ultimate aim is to force the Indians, and more especially the better class of Indians, to leave the country."

It is important in this connection to remember another observation made by Sir Benjamin Robertson :

"An undertaking to administer existing laws in a just manner is meaningless if the rights which Indians are entitled to exercise under those laws can be restricted at will by fresh legislation."

Sir, the Bill which is now before the South African Union Parliament is a direct violation of this agreement, and it makes the promise given by the South African Union Government not to interfere by new legislation with the existing and vested rights there meaningless. It is against this attempt that we request the Government of India to take effective steps to safeguard the interests of our people there. My Honourable friend, Sir Deva Prasad

[Mr. G. A. Natesan.]

into the minds of people who have always said that nothing was hopeless. In my opinion the situation may not be hopeful, but I certainly do not think it is hopeless. There are some people who say that we do not believe in the pronouncements of statesmen, particularly South African statesmen; but I venture to think for reasons already given, and in the face of the express pronouncements of the Minister of the Interior (Dr. Malan), who was in charge of the Asiatic Bill, that the situation is not so hopeless as it is stated by some. Dr. Malan has said :

"The first point was that the introduction of this Bill must not be taken as closing the door to any negotiations or communications which might pass between the Union Government and the Government of India in regard to the Indian question. The Union Government had been approached by the Government of India with a view to holding a round-table conference on the treatment of Indians in South Africa. These negotiations had not yet closed, and they had taken a very definite course."

If I had anything to do with this question I would certainly not say that I do not believe this statement. I would accept this statement and see that steps are taken to compel the Minister who has made the proposal to make it good. And, Sir, I also feel that something very unusual happened in one part of South Africa which seems to show that the better minds of the white people do not approve of this drastic method of Asiatic exclusion. I am very glad to be able to read to the House an account of a recent meeting of the Durban Town Council where the following Resolution was adopted :

"That the Government of the Union of South Africa be informed that, in the opinion of the Durban Town Council, the only true method of solving the Asiatic question, in so far as it relates to this country, and particularly Natal, lies in the direction of a round-table conference between representatives of the Union, Britain and India; further, that the Union Government and the Union Parliament be asked to take such steps as may be necessary for convening such a conference in this country without delay."

I regard this Resolution as indicating that it expresses the better mind of at least some of the white people. I have already read the pronouncement made in the South African Parliament by Dr. Malan and I appeal to this House to see that they strengthen the hands of the Government of India to insist on bringing about this round-table Conference. I am sure that the Government of India will do everything in their power to make the Union Government agree to receive a deputation from India. I am also sure that the Government of India will be careful to see that they sent men who will be truly representative of India, who will try all possible means of putting our case before the South African Parliament.....

THE HONOURABLE THE PRESIDENT: The Honourable Member has exceeded his time limit.

THE HONOURABLE MR. G. A. NATESAN: I do not, therefore, think that we should despair. Even if this new legislation became law we should ask His Majesty's Government to disallow this legislation. On a previous occasion an attempt was made in that direction and let us hope that the combined effort of the people of this country in regard to this great question and the sympathetic manner in which the Government of India have been handling it, will result in obtaining justice to our countrymen in South Africa. The Government of

India will thus protect not only the interests of the people of this country but also the fair name of the British Empire.

THE HONOURABLE MR. R. P. KARANDIKAR (Bombay : Non-Muham-madan) : Sir, I propose to move the following amendment to the Resolution that is before the House. I propose to add to the Resolution moved just now the following words :

“ With this object in view this Council recommends to the Governor General in Council that he be pleased to examine the provisions of the Areas Reservation and Immigration and Registration (Further Provision) Bill, 1925, and take steps without delay to signify to the Union Government total disapproval of provisions prejudicial to Indian rights and privileges.”

Sir, in moving this amendment I am trying not to repeat what has been so ably said in connection with the motion before the House, and I entirely agree with the observations that fell from the previous speakers that nothing should be said in this Council which might embarrass the situation any longer. Whatever the temptation in the way of the speaker on such a proposition, I am taking the greatest care possible to express my sentiments consistently with what is supposed to be the dignity of the House and the requirements of the situation. I will therefore restrict my observations to the amendment which I have moved, and in doing that, as I believe there will be speakers here who take various views, speaking from several points of view, I will restrict my attention to one or two points which may appeal to this House as being substantially necessary for a due and proper consideration of the proposal before this House.

As I am restricting my attention to the provisions of this Bill, I particularly wish to request the attention of this House to a measure which is alluded to in the Bill as Act III of 1885. That was an enactment passed by the South African Parliament in 1885. That Act made no distinction between Asiatics and Asiatics. Indians were classed as Asiatic coolies. I went into the history of the matter as to why the South African Government was induced to include Indians in the expression “ Asiatic coolies ”. A little insight into the legislative enactments of the Viceroy's Council will satisfy one why the South African Government had been led to suppose that Indians were coolies. The Act of 1839 prevented the aiding and abetting of emigrants going out of India. Liberty to travel to any part of the globe was no doubt secured as one of the best principles of international law, but at the same time care was taken that anybody who was found aiding and abetting the emigration of any Indian outside India was liable to punishment. Relaxation of the law was made in the interests of the Colonies outside India. Enactments were passed one after another under pressure, as I take it, from the Home Government, to whom representations were made by the Colonies for indentured labour from India.

Just before the Act of 1839, slavery had been abolished, as Honourable Members are aware, in about 1834, much to the credit of Great Britain. Later on the pinch was felt as regards labour that was necessary for the purpose of developing the Colonies, and I am afraid the conditions through which India then passed created the impression that India was a *dépôt* for labour. Every Colony, one after another, indented upon India and indeed the first expressions

[Mr. R. P. Karandikar.]

that the Viceroy's Council emphasized on the point were in terms which are unmistakable. Mr. Peacock, speaking in the Viceregal Legislative Council, in the year 1855, expressly laid down the principle that it was quite open to any emigrants who wished to go outside India to stay as long as their employers asked them to stay, but they might stay there if they liked. There was nothing to prevent Indians going over from here staying in the Colonies if they liked. That was the understanding in pursuance of which Indians were permitted to go out of India. About the year 1860 when the demand came from Natal, not only was the demand sent through the Home Government, but it was represented to the Viceregal Council here that the emergency of the occasion was such that a representative from the Natal Government had come here for the purpose of taking away the emigrants in expectation of the Indian Government passing a law to that effect. Such was the urgency of the occasion, and surely the Government which had indented on India for labour, were fully cognisant of the conditions under which the labourers had to go out and the prospect of their staying in that country as citizens of the British Empire. It was on that understanding that in 1860, when the representative of the South African Government was here for the purpose of taking away labourers, a measure was passed. Standing Orders were suspended and that measure was passed into law with as much urgency as was consistent with dignity. The measure was consolidated in the year 1864. I will not take the House through the expressions that fell from Members who were in charge of the Bills, but I will make a reference to one or two observations that fell from Members who consolidated these measures in the interests of the British Empire generally. They laid down the principles on which labourers and British citizens were to go to any part of the world, and one of the speakers actually referred to a danger that was awaiting India. It was said that there was this danger, that India would be looked upon as a *dépôt* for slavery; that this was another form of slavery when people went out from here and were not capable of selecting their own masters when they went to the South African Colony. It was represented that there were competitors who misappropriated the labourers that were sent out from here, and therefore they said: "Please tie them down so that they may belong to one master only, with the result that the man to whom they were indentured was able to transfer his own concern with the labourers as they were available from India."

This was a danger that threatened India, and one of the speakers said :—

"To the old and false belief that India was a country overflowing with wealth, had succeeded the new and equally false theory that it was a country teeming with men, and whenever benevolent statesmen in Europe were shocked by a revival of negro slavery in any part of the world, it was obvious that their first thought was to replace the demand for negroes by a draft on the population of this country."

He further went on :—

"Now India lay outside the circle of European diplomacy and let the Council suppose Her Majesty to be advised at some future time to agree to a treaty containing laxer and looser stipulations."

. A contingency did arise in 1885. By the time the law of 1885 was passed more than a quarter of a century had gone by and the Natal Government were fully aware of the conditions under which Indian labour had settled there.

There was no intention on the part of the Government in South Africa that the Indian labourer was to continue as a labourer throughout his life. Any labourer in the world could carry his labour into any market where he could place it at the highest value possible, and it was pointed out in 1864 that it was the right of every citizen to travel to the farthest ends of the world if he could and there manage his business as he liked. Those were the conditions under which Indian labour was imported into the South African Colony. After 25 years, what happened?

THE HONOURABLE THE PRESIDENT: I do not wish to interrupt the Honourable Member, but I would remind him that he has only about four minutes left, and his history is still 60 or 70 years back.

THE HONOURABLE MR. R. P. KARANDIKAR: Yes, Sir, that is about my age, and I do not wish to hurry up until India gets freedom. I was just reaching my point. The Natal Government are therefore labouring under a misapprehension that all the Indians now inhabiting their country must be classed as labourers. They are placing themselves in a very false position, and if no other representation is successful, this one should be that the Indian people who went out there from here, did not go out as labourers, but as British citizens, and in that sense the South African Colony had no right whatever to wish to turn them out.

I will now refer to the amendment which I am proposing. The Government of India can scrutinize the provisions of this South African Bill which goes directly against British prestige. Mr. Sastri once said in a telegraph message to Dr. Sapru, "Kenya gone, everything gone," and I do really think that if India is gone, the British Empire is gone. It is the Colonies that decide the prestige which the British Empire possesses. Under these circumstances, I have great pleasure in moving this amendment, which merely requests the Government of India to scrutinise the Bill. I have no doubt that they have already done so. I believe the department in charge of this question has always been anxious to maintain the rights of overseas Indians, and not only that department, but the whole of the Government of India. Whenever any Resolution on the point has been moved, for instance when Resolutions were adopted in the year 1921, in the Assembly, and in 1922 in this House, the Honourable the Leader of the House spoke for Government on both those occasions. Then the prestige of the British Empire was maintained and Resolutions were adopted urging equal status for Indians, and I have no doubt the department at present too are looking after the concerns of Indians. India has every right to follow Indians wherever they are, in whatever capacity they may be working, whatever prospects they may have in those countries, and they have every right also to follow the generations of those Indians that may be in the Colony.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN (West Punjab: Muhammadan): When I get up, Sir, I do not get up to make an oration because I am perhaps not capable enough to do so, but I want to speak of practical politics. There was once a man, who could talk and another man who could fight, and they began to quarrel. One man began to abuse the other and the other man began to beat him. When the second man was tired of hearing the other

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man said to him "if you beat me again I will see what I can do". Then he started again beating him till he left him senseless. When he went home he said "No doubt he gave me a good beating but I also bombarded him with abuse!" In the same way our talking so much does not do any good. On the floor of this House this matter has come up so many times and the House knows that my remarks have been very bitter if not the bitterest. Whenever we have brought forward this Resolution, Government have always been ready to do what they can. But what can the Government do? And if they have not been able to do much hitherto, there is no prospect of their doing more in the future. I think the whole thing comes to this. Instead of being bitter in talk we should look at it from this point of view, i.e., what can be done in the matter? After all, it is their house, it is their country (*An Honourable Member*: "No!") Generally the house belongs to those who are stronger; and they do not care to listen to all we say, all our Resolutions, because they can do what they like in their own house. All we can do is to see what we can do here in India. And to this end I think various people have tried their best in talking matters over and they have even passed a law by which we can bring pressure to bear upon them (*An Honourable Member*: "Retaliation"). It is doing more or less the same thing to them that they have done to us. Now perhaps the men who come to India from South Africa are not more than 150 or 200. If we kick out these 150 or 200 men from India, the next day they will send whole shiploads of Indians back to us. So that is of no benefit to us. The next thing is perhaps they send coal to India. If we do not buy their coal perhaps we may do some little damage to them; but that too is doubtful because some specialists say even that is not of much use, so we cannot even do that. Then the next thing that remains to us is instead of telling these people "We will back you up" when we cannot do anything and only give them false hopes. I think the best thing is to tell them "If you consider you are not being treated well there you had better come back to us," and I think we ought to ask our Government that as they sent all these men abroad they ought to provide for them by bringing them back to this country. I do not think that is very difficult when there are thousands of bighas of land lying fallow which are now to be irrigated. I do not say the Government should give them all the money they want, but give them an honourable place and sufficient to eat. If they say "No, we do not want to go back to India, we get lots of money here", then we will say, in the words of the proverb: which means that the word 'Tama', i.e., greed is composed of three letters which are all devoid of any dot. If they choose to remain there dishonoured, let them do so and let not India try to do anything further for them.

Sir, I have the honour of India at heart perhaps more than many and for this I say, Sir, it is useless to go and ask them with folded hands "Please do this and please favour us". No body cares a bit about this. Our Punjabi saying has it if a man is strong enough and he comes and begs a thing of a man, if he does not do the thing he asks for, the next thing will be that his legs will be on his neck. In these circumstances the only thing I think we can do is to ask Britain and His Majesty's Government that when we are a portion of the Empire, of which we are all members, it is their

business to keep the balance even ; because if nothing is done then the only thing we can do is either to keep quiet or to ask His Majesty's Government that for the sake of practice, for the sake of manœuvres, they should allow both their Dominions to settle mutually their differences by the force of arms. In that way we will both learn to respect each other and I am sure that if Government allow our illustrious present Commander-in-Chief with the Indian Army, it will not take much time—as it did the last time—to bring the Union to its senses. I think he can do that in a quarter of the last time because I know him so well. That of course is the last resort. But if we cannot do that, it is much better not to go in vain to ask like beggars for favours when we have no motive power at our back but simply tell our people that there we are helpless and we can only do this for them, to bring them back to their own homeland, and that is all.

THE HONOURABLE THE PRESIDENT : Before I call on the Honourable Mr. Ramadas Pantulu, who has an amendment also on the paper, I think it would be better to take the decision of the Council on the amendment of Mr. Karandikar. The question is that the following words be added to the original Resolution :—

“ With this object in view this Council recommends to the Governor General in Council that he be pleased to examine the provisions of the Areas Reservation and Immigration and Registration (Further Provision) Bill, 1925, and take steps without delay to signify to the Union Government total disapproval of provisions prejudicial to Indian rights and privileges ”

The motion was adopted.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muhammadian) : Sir, with your leave I beg to move another amendment to the Resolution moved by the Honourable Sir Deva Prasad Sarvadhikary, that is, to add the following words to the Resolution :—

“ and to ascertain the condition and the views of the Indians in South Africa.”

Sir, I was hard put to frame an amendment to the Resolution. I put down several on the paper. At last I sent in one of which the Honourable Emigration Member finally approved. It struck me that the most sensible thing to do was to ask that this Council might be permitted to pray to God to grant wisdom and sanity to the South African Government and strength to the South African Indians to resist their oppressors. The situation seems to me to be as bad as it can be. However, as we are all satisfied that the Government of India are pledged to do their best for the Indians in South Africa, we may still hope that some good will come out of our exertions.

I shall not enter into the history of this South African struggle earlier than 1913. Up to 1913, up to the date of the passing of Act XXII of 1913, it was a series of humiliations to the Indians, and no effort made either by this Government or by the people proved of any avail. Therefore, on the 1st November, 1913, Mr. Gandhi, who was there then, thought that he ought to inaugurate a movement of passive resistance in order to impress the South African Government with the determination of the people to achieve freedom. On the 1st November 1913 he took 2,200 South African Indians

[Mr. V. Ramadas Pantu'u.]

from the Natal Coalfields and marched them to Transvaal across the border in violation of the immigration law. From that time the real struggle ensued, and it came to an end quickly, because by the end of 1914 something was done to give immediate relief to the South African Indians in some matters. I shall mention those matters very briefly. Mr. Gandhi put before the South African Government four definite grievances: the *first* was the restriction on inter-provincial movements—movements from one province to another in the Union. The *second* was the ban put upon marriages celebrated under Hindu and Muhammadan law. The *third* was the imposition of a tax of £3 per head upon labourers as soon as the term of their indenture was over: this was subsequently extended in 1915 even to children. The *fourth* was the unjust administration of the existing laws, specially the Indian Immigration Act, XXII of 1913. There was an honourable settlement in 1914, when the Indian Relief Act was passed which in a way satisfactorily solved the first three grievances. With regard to the fourth, the Union Government assured Mr. Gandhi that they would do nothing to administer existing laws unjustly and that they would endeavour to see that they were always justly administered. Mr. Gandhi wrote back in reply expressing his satisfaction at the assurance given to him and this correspondence between him and General Smuts is what is known as the famous Smuts-Gandhi agreement. I mention this fact particularly because the Union Government by entering into this agreement has made itself morally and legally responsible for the continued existence of Indians in South Africa. If they had told Mr. Gandhi that they did not want Indians any more and that their idea was to extirpate the Indians and to complete the process of purification and disinfection of the South African Colony by driving out every Indian, it would have been a different matter. The struggle would have been continued to a finish or the Indians would have left South Africa once for all. The Union Government having agreed to this arrangement, they were bound to carry it out in its entirety, and I charge the South African Government with gross breach of faith and a gross violation of the pledge they gave by the Smuts-Gandhi agreement. After that they went on piling up *anti*-Indian legislation which was absolutely contrary to the spirit of the undertaking they had given not to administer their laws unjustly. The undertaking not to administer existing laws unjustly, certainly involves an undertaking not to enact more unjust laws. Nevertheless what we see is that as soon as the Great War was over they have enacted not less than six Acts which are all absolutely *anti*-Indian. In 1919, Sir, they passed Act XXXVII of 1919, which prevented the acquisition of new leases in proclaimed areas and the acquisition of properties outside those areas. In 1922-23, they passed no less than three Acts—the Durban Land Alienation Ordinance, the Borough and Township Land Ordinance and the Natal Retail Dealers Licensing Ordinance. The purport of all these Ordinances is to restrict the rights of Indians both in regard to acquisition of property and franchise in townships and boroughs. I have no time to go into those details, but they are all very stringent laws. In 1924, they passed the Natal Boroughs Ordinance—XIX of 1924—which prevents the acquisition of future franchise in boroughs, so that Indians may lose whatever rights they had of electing members to local bodies and of getting anything done for

them. In 1925, there was the "Natal Townships Ordinance" which was to the same effect as the previous one—only it related to franchise in townships. Sir, since then there are a number of enactments which are on the legislative anvil of the South African Parliament, all intended to further restrict Indian rights there. The Natal Townships Ordinance of 1925 is now sought to be supplemented by another draft which is now pending, in which even the existing franchise is sought to be taken away, whereas the laws of 1924 only aimed at the acquisition of future franchise. Then, Sir, there is the Bill to amend the South African Mines and Works Act, which prohibits the grant of a license to a man who is engaged in trade if his trade requires the use of machinery—so as to prevent him from pursuing any trade which is lucrative. Finally, Sir, we have got this Asiatic Act which most of you may have read and which is very drastic. It consists of three parts. The *first part* deals with the restriction of class areas both with regard to trade and residence and also the acquisition of land except in certain areas. That, Sir, is a very stringent measure. The number of people who are engaged in trade in South Africa is as follows: according to the census figures I find that nearly 12,374 are engaged in trades; 7,361 in industries and 3,469 are engaged in transport and communications; while as many as 22,000 are engaged in agriculture. Therefore this hits a very large proportion of the population now resident in South Africa. The *second portion* of it which deals with the immigration law has got some very curious and stringent provisions. I shall just quote one or two of those provisions in order that you may realise the gravity of the measure. Hitherto people could go from one province to another freely. Now in order to go to the Cape of Good Hope or Natal from a neighbouring province you have got to satisfy a literary test, otherwise you cannot get in. Another clause in Chapter II deals with the children of persons domiciled in the Union. If they are born outside the Union they cannot get into the Union if they are over sixteen years of age. Now, the number of women in South Africa is something like 65,000. If these women are sent to India for their confinement and if the child is born there, the child should go back to his father and mother in South Africa before he is sixteen years of age, otherwise the child is prohibited from going there.

Another clause says that on economic grounds all children born outside the Union will be treated as prohibited immigrants. A new clause provides that the children born in the Union itself may be treated as prohibited immigrants in provinces other than that of their birth. A proviso to clause 17 states that after a certain time the wife or a child of an Indian resident in the Union may not enter the Union. There is thus a limitation to a wife asserting her right to live with her husband or child. There is another clause which tries to kill the very domicile of Indians by three years' absence. If a man resides three years outside the Union he loses his domicile.

There are many other provisions which I do not want to read. These are so very drastic and therefore I have moved this amendment in order to enable the Government of India by such methods as they think fit to place before the South African Government and the Home Government the condition of Indians in South Africa. I claim that the present attitude of the South African Government is a gross abuse of the power of self-government

[Mr. V. Ramadas Pantulu.]

bestowed on them by the Union Act of 1809. In 1899 one of the causes of the war was said to be the ill-treatment of Indians in South Africa. If that was so, I do not understand how the British Government can to-day tolerate such action.

I do not know, whether it is true as my knowledge of Eugenics is limited, but it said that if people are segregated and made to live in separate locations they develop fecundity. So the action of the South African Government tends to increase the Indian population and frustrate their object. Moreover such action tends to antagonise the oppressed people and make them more and more hostile. Such people will ever be a growing danger to the South African Government.

I cannot, while thanking the Government of India for all they have done, acquit the Indian Government and the Government at Home of having failed to discharge their responsibility in this matter. If the Government of India had taken steps to make India free by granting her self-government, this oppression would not have come about. The mere fact that we are slaves and have to depend upon a foreign bureaucracy makes the South African Government bold enough to promulgate such measures against Indians. The Cabinet at Home do not do their duty by us. It is now open to the South African Governor General under section 64 of the South African Act to disallow *anti*-Indian legislation and to advise His Majesty the King not to assent to such legislation or to veto such legislation. All these things were open to them, but they have done nothing, lest they offend the susceptibilities of the white population. The attitude which Mr. Chamberlain took in 1922 on the Kenya question showed the indifference of the Imperial Government to Indian interests. I cannot therefore acquit the English Government of all blame in this matter. When Indians were oppressed in South Africa, it was the duty of the British Government to put a stop to it. I beg therefore to move that the following words be added to the Resolution :

“and to ascertain the condition and the views of the Indians in South Africa.”

THE HONOURABLE MR. K. C. ROY (Bengal : Nominated Non-Official) : Sir, my friend, the Honourable Mr. Ramadas Pantulu has pointedly called attention to the responsibility of His Majesty's Government in this matter, and it is on this I should like to say a word or two. The House will recollect that Mr. Thomas before the Labour Government went out of office visited South Africa and made a notable pronouncement at Pietermaritzburg. There he drew pointed attention to the Imperial responsibility and suggested a conference at which His Majesty's Government, the Government of India and the Commonwealth Government should be equally represented. Since then Mr. Thomas has gone out of office,—a fact which I greatly deplore. Mr. Amery, who succeeded him is an Indian by birth, he is fully acquainted with the South African conditions. He has not repudiated Mr. Thomas's suggestion for a round table conference, and I therefore take it, Sir, that the British Government is committed to the idea of having such a conference in order to safeguard and protect the interests of Indians in South Africa. Then again, Sir, there is the Secretary of State for India, who was the Lord Chancellor. We have seen no visible or tangible sign

of his sympathy in our troubles in Africa. Then, there is our Viceroy, His Excellency Lord Reading, whose consistent and persistent support we know of and fully appreciate. These are the four gentlemen, statesmen of great repute, who are primarily responsible for the solution of this question. It is not this House nor the Government of India who are so much responsible as His Majesty's Government. I submit, Sir, that there is a clear case for intervention, and it is time that His Majesty's Government should seriously take into consideration the grievances of Indians in South Africa. I am here to support a round table conference not because it emanated from this House nor because it has received support from Indians, but because it was a suggestion thrown out by Mr. Thomas. I should like to add one word. We fully appreciate the difficulties of the Union Government and we want them fully to appreciate ours. It is precisely on this account that we want a round table conference which may help us out of the difficulty in solving the Indian problems. The problem will not be solved in the interests of India alone nor in the interests of the Commonwealth of South Africa alone, but in the bigger interests of the British Empire to which we all belong. I therefore support this Resolution.

THE HONOURABLE MIAN SIR FAZL-I-HUSAIN (Education, Health and Lands Member): Sir, the problem of Indians in South Africa is a very important, a very difficult, and an extremely delicate one. It is not my intention to state in detail the various measures passed or orders issued by the South African Assembly or the South African Government during the last six or seven years, nor is it my intention to state in detail the various steps taken by the Government of India in connection with those measures or those orders. That would serve no useful purpose. I will take up this problem from more or less its recent stage. It was on the 20th January 1925 that His Excellency the Viceroy, when addressing the Honourable Members of this House and of the Assembly, referred to the fact that the Governor General of the Union Government had given his assent to the Natal Boroughs Bills in spite of the representations that the Government of India had made, and proceeded to say :—

“ Every endeavour will be made to discover a remedy, but in view of the powers of Dominion Governments in internal and domestic affairs, the position is one of delicacy, and a solution will not be easy to find.”

Well, Sir, it is no use pretending that with a little ingenuity it is possible to solve this extremely difficult problem. And when one sees measure after measure adopted to the prejudice of the Indians in South Africa, in spite of the efforts that the Government of India have been able to put forward on their behalf, I venture to think that there is justification for Indians in India and Indians in South Africa to feel that the problem is altogether hopeless. And yet the proverbial patience of the Orient ought to come to our aid. There are not many rays of hope, but there are still, I feel, a few faint ones. The Honourable Mr. Natesan referred to the speech of Dr. Malan, the Minister for the Interior, who introduced the latest measure on the subject only last July in the Union Assembly. He stated definitely that the door had not been closed. He stated to the Assembly that the Government of India had been pressing for a round table conference, and he also stated quite definitely that the proposals of the Government of India had not been turned down or rejected by the South African Government.

[Mian Sir Fazl-i-Husain.]

Therefore, when I say that I am not hopeful and at the same time that I am not altogether hopeless, I have justification for making that statement. I recognise, Sir, that when we were negotiating for a round-table conference, this Areas Reservation and Immigration and Registration (Further Provision) Bill really came like a bombshell on the Indian public. It is true that it created a strong feeling of resentment all over the country, and I am glad to be in a position to say that that outburst of resentment was led by the English press, edited by Englishmen. It does great credit to India's cause in this struggle that all Indians, including Europeans in India, are united in this matter. And, Sir, the Honourable Members of this House will recollect that it was, I believe, on the 8th of January 1925 that a remarkably representative and influential deputation of Indians and Europeans waited upon His Excellency the Viceroy in Delhi, and His Excellency, while recognising the remarkably influential character of that deputation, and paying a tribute to their moderation, stated :—

“ At this moment when the action now taken in Natal, following on other measures taken or proposed in Natal or elsewhere, suggests that the position of Indians in South Africa has reached a crisis, I should be unresponsive indeed if I did not fully appreciate the sentiment which stirs the country and is well expressed by this remarkable deputation, exemplifying in a striking manner the co-operation of Indians and Europeans of varying shades of opinion and varying interests, firm in the faith of the future of India within the Empire. I am deeply concerned at the turn of events and at the possible reaction on Imperial relationships.”

Therefore, Sir, it is for the benefit of those Members of this House, who have assumed a more or less desponding tone, or a tone of a little bitterness at the possible inaction of the Home Government, that I felt it necessary to remind them of the observations of His Excellency the Viceroy, conclusively establishing how well he had appreciated the Indian point of view and the Imperial point of view in this struggle. And while holding out some hope, I cannot do better than ask the Honourable Members of this House to remember that the Government of India have definitely adopted a very clear and simple policy in this matter. There is nothing that an Indian publicist could suggest should be done for the benefit of Indians in South Africa that the Government of India are not prepared to do, provided it is within their competence to do it. I, Sir, venture to submit that no Government can do more than that. Whether all our efforts will prove fruitless in the future, as to a very large extent they have done in the past, it is impossible to say, and yet, as I have said, the answer to this question must very largely depend upon one's temperament. I, Sir, am not a pessimist, though I may not be a very strong optimist. I feel that the South African Government in course of time will realise on the basis of representations received from us that its true interests lie not in proceeding with a policy which may for the time being appear to it to be economically beneficial, but will look forward to the future, and discover that the co-operation and contentment of the Indians in South Africa is in the best interests of their own country. It is towards that policy that all Indians should act, and, when acting, realise that the South African Government is a Dominion power and as such entitled to a great deal of independence. We Indians, Sir, who hope in the near future to occupy that position ourselves, cannot really be so very anxious to call upon the Imperial Government to

interfere so lightly in the home affairs of the South African Government. As a matter of fact, Sir, I feel it my duty here to mention that when I took over the charge of my office as a temporary Member, due to the enforced absence of the Honourable Sir Muhammad Habibullah on account of illness, which we all regret, I was altogether ignorant of the ins and outs of this complicated case, and as this new contemplated legislation had come at about that time some action was immediately called for. In my dismay I naturally turned to the Emigration Committee, and in order to make sure that I had not only the help and advice of the permanent members of the Standing Committee, but of other leading members of the Indian Legislature, I invited the co-operation of the Honourable Dr. Sarvadhikary, Pandit Motilal Nehru and Mr. Jinnah. They very kindly responded to my invitation and we had a most interesting discussion, wherein the Committee displayed not only a great independence of views, but also a great sense of responsibility. The Committee realised that at this stage they had not the slightest intention of asking higher authorities to interfere with the autonomy of the South African Government or Dominion, or in any way to interfere with the administration of their home affairs. What they advised me to do for the present was to find out what the condition of the Indian people in South Africa was, what their problems really were, so that the Government of India may be in a position to use their good offices in the interests of the Indian people in South Africa and the South African Government.

This was in the hope that such misunderstandings as may exist can be removed and the extent to which help can be rendered by the Government of India to either side can be ascertained. I am very much indebted to the Emigration Committee for giving me most valuable assistance. In that Committee we discussed all sorts of questions in a most dispassionate manner altogether devoid of bitterness and rancour and trying to appreciate the position of the South African Government in this matter. It was really as a result of those deliberations that the Honourable Members of this House, Sir, who had put down their names for certain Resolutions and amendments requested you to permit them not to move those but to substitute others in their place. I am glad to see that the Resolution actually moved is in wide terms allowing the fullest possible liberty to the Government of India to take such action as they deem advisable in the best interests of the Indian community.

The Honourable Mr. Karandikar's amendment, which was adopted only a short while ago, asked the Governor General in Council to have the provisions of the Areas Reservation and Immigration and Registration Bill scrutinised. Well, Sir, I may state to the House that Government have already taken steps to do so. The Honourable Member's amendment further asks that steps be taken without delay to signify to the Union Government total disapproval of provisions prejudicial to Indian rights and privileges. I may state, Sir, for the information of the Honourable Mr. Karandikar and the House, that we have informed the South African Government that a detailed representation on the objectionable items in the Bill will be submitted to them later. Therefore what the Honourable Mr. Karandikar's amendment asks the Governor General in Council to do has already been done.

The last amendment moved by the Honourable Mr. Ramadas Pantulu is to the effect that the condition and the views of the Indians in South Africa

[Sir Fazl-i-Husain.]

should be ascertained. It has been suggested that the deputation which is mentioned in one of the telegrams from South Africa as coming out to India should be received. Sir, for the benefit of the House I may state that a few days ago a telegram was sent to the President of the Indian Congress there that in case their deputation materialises the Government of India will be very pleased to see it. We ourselves are contemplating what further steps can be taken to ascertain the condition and the views of the Indians in South Africa, to find out the conditions under which they are living and to study the position with a view, as I said before, to render assistance to them and to the Government under which they are living. I have therefore no difficulty whatsoever in accepting the recommendations which Honourable Members of this House have made in speeches of studied moderation. As I have already said, Sir, nothing that can be done to help the cause of Indians in South Africa will be left undone. You can, Sir, and the House can, put implicit trust in the desire of the Government of India to do all they can to safeguard the interests of Indians in South Africa. We must not, we cannot, fight out this battle on the ordinary political plane. We ought to appeal to the South African authorities not in a spirit of strife, not in a spirit of begging or humility either; we must appeal to them in the interests of their own country. Our point is not that we want certain privileges, certain licenses for the Indian there. No, we want them to treat the people under them with the sole object of so acting as to serve the best interests of the country as a whole. Nay, we may take the discussion on to a higher plane still and appeal to them, to the Empire and to the civilised world not only on the political plane, not only on the plane of statesmanlike diplomatic discussion, but on the still higher plane and in the name of justice and fair play; and when we fight on that plane, our cause being a righteous one, I do think there is some justification for the faint hope of a fair settlement.

THE HONOURABLE THE PRESIDENT: The question is:—

“That the following words be added to the Resolution as amended:

“and to ascertain the condition and the views of the Indians in South Africa.”

The motion was adopted.

THE HONOURABLE THE PRESIDENT: The Resolution then before the House is the Resolution moved by the Honourable Sir Deva Prasad Sarvadhiary with the addition made on the motion of the Honourable Mr. Karandikar and with the further addition made on the motion of the Honourable Mr. Ramadas Pantulu. The question is:—

“That the Resolution, as amended, be adopted, namely:

‘This Council recommends to the Governor General in Council that in connection with the recent anti-Indian legislation and with the Bill now impending before the South African Parliament immediate steps should be taken to secure and safeguard the rights of Indians in South Africa. *With this object in view this Council recommends to the Governor General in Council that he be pleased to examine the provisions of the Areas Reservation and Immigration and Registration (Further Provisions) Bill, 1925, and take steps without delay to signify to the Union Government total disapproval of provisions prejudicial to Indian rights and privileges and to ascertain the condition and the views of the Indians in South Africa,*”

The motion was adopted.

INDIAN PENAL CODE (AMENDMENT) BILL.

THE HONOURABLE SIR NARASIMHA SARMA (Law Member): Sir, I move that the Bill further to amend the Indian Penal Code, as passed by the Legislative Assembly, be taken into consideration.

This Bill, Sir, embodies a humanitarian measure of some importance. Honourable Members will naturally be surprised to associate with an amendment of the Indian Penal Code a humanitarian measure, which I have described to be of some importance.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Is it not all humanitarian?

THE HONOURABLE SIR NARASIMHA SARMA: I have no doubt that if a careful analysis be made of the provisions of the Penal Code the net result would be an appreciation that the object of the Penal Code is humanitarian in its widest and largest sense; but unfortunately penal laws are not always so appreciated, and that is the reason why I think it necessary for me to explain that this measure is intended really to effect the object set out, is calculated to do it and should receive the hearty appreciation of all true lovers of this country.

This measure has received the support of an overwhelming majority of the Members of the Legislative Assembly, as many as 84 having voted for the Bill as against 11 opposing it. It may be stated, therefore, that as far as public opinion can be ascertained from the views of the elected and other representatives of the communities inhabiting this land, the Government have every reason to believe that the measure which they have promoted in the other House in the first instance has a fair measure of public support behind it.

But I think I should at the outset state for the information of the House in very brief terms the exact effect which this Bill, when passed into law, would have upon the social life of the people. The effect would be merely that sexual intercourse with girls aged thirteen and below, whether with or without their consent, would be unlawful within marital relations, and outside marital relations would be so unlawful up to the age of fourteen. It has also been provided by the Bill that in the case of an offence committed within marital relations the punishment to be awarded should be of a light character and should not be as severe as in the case provided for already by the Penal Code. Numerous other safeguards to which I shall allude later have also been provided.

The history of this legislation may be summed up in a few words. The question has come up before the Government of India on numerous occasions. It was considered in 1913, and later it was brought up on several occasions before the Assembly by the Honourable Members belonging to that Assembly—one from the Punjab—when the measure was thrown out, and then on a later occasion by Dr. Sir Hari Singh Gour, when an effort was made to ascertain the wishes of the outside public and of Local Governments; and after the ascertainment of such wishes and views the Legislature referred the Bill to a strong and representative Select Committee containing all shades of opinion.

[Sir Narasimha Sarma.]

The Select Committee made its report and the Bill was taken up for discussion in March last. The difficulty of the Government then was to prevent the Members of the Assembly from going forward at what the Government considered an unduly rapid pace, because the various amendments that were suggested in the lower House provided for the extension of the age limit to fourteen within marital relations and sixteen outside marital relations. The Government although they knew that, if they were neutral, the measure would be passed by the Assembly, felt that it was impossible for them to take up that attitude and opposed the passing of the measure at the last stage and the measure was rejected. But it showed clearly to the Government the strength of feeling evinced at least by a section of the community for progress in social reform being aided by the Government and the Legislature; and the Government felt that it was desirable that a measure of their own on somewhat cautious lines should be brought forward. Honourable Members who have watched the debates of the Assembly would have noticed also that the difficulty which was experienced in the earlier months of 1925 was experienced during the last discussion; but the Assembly wisely perceived that it would be desirable and safe to proceed along cautious lines and agreed to this measure.

I may say at once that the question may be divided into two parts—firstly, that dealing with the offence outside marital relations. I do not think there is any difference of opinion whatsoever, within the Council or outside, that the age limit should be extended up to 14. In many cases Members who opposed the revision of the law in regard to marital relations went so far as to say that they would be prepared to have an extension, in the case of non-marital relations, up to the age of 16, 18 or even 21—so that a gentle mockery was made at their expense and they were represented as saying that it would be right to extend it up to the age of fifty! We may take it, therefore, at any rate I can assume that there would be no difference of opinion whatever anywhere that so far as the Bill provides for its being an offence to have sexual intercourse with a girl of fourteen or below, with or without her consent, outside the marital relations, that the provision would receive universal acceptance.

With regard to the other category, namely, the relation between husband and wife, there has been some divergence of opinion, and it is but natural that we should expect such a divergence. Here, again, it may be stated that there is no difference of view that it is desirable, nay, that it is absolutely necessary and vital to the interests of the nation and to the future well-being of the people of this country that every effort should be made to raise the age at which young men and women should begin to lead their married lives. Those that have watched especially in some of the coast provinces these baby marriages, if I may so call them, and recognised the effects thereof, premature decay, consumption and tuberculosis, feeble babies, early widowhood, have all been equally strong, whether social reformers or conservatives, to do all that lies in their power to eradicate this evil. The only difference is whether we should proceed further and help what is in the mind of everyone by means of legislation, namely, the arrival, possibly speedier arrival, at the same goal.

And herein I ask for the sympathy of the House with the Bill which has been brought forward in the Assembly. I know that there are some who are awfully distressed that the Government has failed to do something more in order that the measure may be really useful, namely, to raise the age to 14. They are deeply dissatisfied at the undue conservatism of Government, at the temerity and fear that they exhibit on some occasions. But Honourable Members will bear with me when I say that no Government can proceed too cautiously in a matter of this description where misconceptions may easily arise, unnecessarily no doubt, but still may easily arise and may be difficult to remove. Although, therefore, the Government have every sympathy with those who wish to raise, with the consent of all concerned, the age to a higher limit, still I venture to think that every reasonable person will agree that it would be a very wise course to set their face decidedly against any further increase in the age limit. Sir, in some quarters the cry is raised, though feebly, that some sort of interference with religious practices is inevitably bound up with this measure. I will ask Honourable Members to remember that there is not much foundation for that criticism, that the same objection could have been levelled, and was levelled against the Government in 1891, when the age was raised from 10 to 12. The smooth working of the Act from 1891 to date may be calculated to inspire confidence in us that no untoward results would eventuate from the passing of this measure. It is but a small step forward, but a wise and prudent step.

I do not propose to take you into the ancient Hindu texts on the subject on the ground that this is one which may be considered to affect largely the *divyas* of the Hindu community. I do not want to take you into those texts, unless the point is raised here, but I think I am right in stating that if we are to pursue the ancient ideals, if we are to reverence the ancient ideals which were healthy and life-giving, there is no doubt that we shall have to look upon marriage not merely as a sacrament, which it is, but also as a gift and contract of whose nature it partakes. No doubt the ancient texts contemplated that husband and wife, with the consent of the parents, were contracting parties in a limited sense, and that they knew what they were doing. The *saptapathi sanskar*, the seven steps, and the other *mantras* which are repeated are clear indication that the husband and wife at the time of marriage knew very well the implications of the marriage ceremonial, and were contracting parties in the true sense of the term. If there should be any objection raised, I think it might be necessary to trouble the House, but at this stage I think it is unnecessary to proceed further. But whatever it may be, the first step had been taken in 1891, and the only point now is whether it is desirable in the interests of society that Government should give a helping hand towards the introduction of a measure which is calculated to help Indian society. I have no doubt that this House will give in no ungrudging manner its support to this measure.

Sir, I will read but one extract to show the beneficial effects of the present system upon Indian society. In the Census Report, dealing with Tuberculosis in India, Lankester writes :

"Everyone is aware of the consequence of sexual excess, the weakness of mind and body which results, and the extreme slowness with which restoration comes, if indeed it comes at all. Many people seem to think that such excess is only harmful if untimely, forgetting the fearful strain upon the constitution of delicate girls of 14 years of age when

[Sir Narssimha Sarma.]

which results from the thoughtless incontinence of the newly married boy or, still more, the pitiless incontinence of the re-married man. Serious as these causes or strain are upon the health of the young married girl they sink into insignificance in comparison with the stress of maternity which follows."

I may say that the death-rate of females, per thousand, compared with those of males, in Bengal and the United Kingdom, bear out these results most forcibly. The death rate per thousand in Bengal, between the ages of 15 and 20 amount to 1,254 as against 880 in the United Kingdom, and between the ages of 20 to 30, 1,214 as against 850. Between the ages of 10 and 15 it is 735; but it is in the later stages that the effects are felt.

Honourable Members will therefore realise that both from the point of view of the future generations of the race, as well as from the point of view of humanity, speaking mainly from the point of view of the welfare of the girls themselves, this measure has not been undertaken a day too early. I am glad to say, however, that so much importance need not be attached to this measure in the case of Upper India as in the case of the coast provinces from which all the opposition comes. I am glad that those who have dissented from the lower House are only some of the representatives from Bengal, Madras, Bombay and Berar. I may say at once that I realise fully the difficulties of the Members coming from those provinces, because I am one of those who belong to that very orthodox community which believes fully in many of those practices to which a check would be given by means of this legislation.

No one can therefore more fully sympathise with and appreciate the difficulties of the communities from which a voice of doubt, difficulty and hesitation comes. But I would ask whether it is not in the true interests of India that these intellectual classes, who may be said to possess in a large measure the brain power of those provinces, should not ungrudgingly and unhesitatingly assist their brethren elsewhere and the Government by accepting this measure which, after all, will be more for their benefit than for the benefit of others who may not require it. It has been said that this measure will only apply to very small communities, and therefore the Government need not worry themselves about it. If it affects only such small communities, may I not ask for their co-operation for the benefit of the wider humanity at large in India, because I know in communities which do not think they need observe the later Shastric injunctions or to be more accurate practices the example of others has been very baneful indeed. I was surprised to hear that among the cultivating community, in one of the villages I own, there was not a single unmarried girl. They had had two or three years of plenteous crops. The result was they, being mutually related to one another, arranged the marriages imitating the others and there was not a single unmarried girl. This argument may cut both ways. I fully realise that, but the age of puberty does not play the same important part in those classes as in the higher classes where the pernicious effects are more clearly felt.

Sir, I have no doubt that this measure, when the safeguards are duly considered, will inspire confidence. Honourable Members will realise that nothing can be done under this Act without the matter coming up fully before a Chief Presidency Magistrate or a District Magistrate. The case cannot be

taken up and cannot be tried by any officer of a lower grade, and the smooth working of similar provisions in the past may fully justify our hopes that the administrative machinery which will lend a helping hand in the working of this measure will in its personnel be no less prudent, no less wise, no less gifted with discretionary power than in the past, and that it is only when it is absolutely necessary that the machinery will move for the vindication of justice and the upholding of the majesty of law. I began by saying that this is a humanitarian measure, and I hope the House will recognise it as such. I have no doubt in my mind that it is such. There has been a tendency in some quarters lately to cultivate a reverence for the past and for ancient ideals. I hope therefore they will follow the ideals of the past when their doctors laid down the ages of 16 for women and 25 for men and when their lawgivers contemplated the marriage of adults, and that those ideals will again become the normal feature of life throughout India. India is ambitious, is eager, is anxious to become a nation, to become a vigorous, healthy nation, and this is but a small step, a feeble step, but a step in the right direction, which will enable the community to achieve that ambition. I would ask all those who love children, I would ask all those who have tender hearts, to realise in their own minds the harmful effects of some of the existing practices in some parts of India and to assist the Government and assist the Legislature in bringing on to the Statute-book a Bill embodying provisions which will after all ensure for the benefit more of the intellectual class than of others, and I have no doubt the House will respond to my appeal unanimously.

THE HONOURABLE SAIYID RAZA ALI (United Provinces East : Muhanmadan) : Sir, at this stage I rise to say a few words with reference to the general principles underlying the Bill. I welcome this small measure of social reform because it is really the case that a representative Assembly, an Assembly truly representing the people, can introduce measures of social reform with a freer hand than a Government, such as the Government of India. I must acknowledge that whatever charges may be brought at the door of the Government in regard to the slow pace with which it chooses to walk in the field of political reform, Government's action in the domain of social reform has very frequently anticipated, often been ahead of, public opinion. Indeed I would go further and say that at a time when there was hardly any public opinion in this country, the Government introduced such vast measures of social reform as the abolishing of *sati* and slavery. In this spirit I welcome this small measure also. But, Sir, much has been the credit claimed for the Bill introduced by the Honourable the Law Member. Let us see whether it really satisfies the present demand. On going through the Bill carefully, Honourable Members will find that it makes two important departures from the existing law. Sir, the existing law with reference to the age of consent makes no distinction whatever between marital and non-marital relations. Section 375 puts the age of consent at 12 years, both in the case of married and unmarried girls. The very first departure which this Bill makes is that it creates a distinction between marital and non-marital relations.

It raises, and very rightly raises, the age of consent from 12 to 14 in the case of unmarried girls, but it fixes, and very wrongly fixes, the age applicable

[Mr. Saiyid Raza Ali.]

to marital relations at 13 only. This is a violent departure from the existing law. As I have pointed out section 375 of the Indian Penal Code makes no distinction between the case of married and unmarried girls. I would have expected Government, supported as it is by a very large representative Legislative Assembly and the Council of State, which after all is not unrepresentative in its character, to have fixed the age of consent at 14 in both cases. If for one would be curious to know what are the reasons which have induced the Government to make a distinction between the two cases.

The second departure is more sad, more deplorable, than the first. And what is that? This Bill creates a minor offence, if a husband commits the offence of rape on his own wife whose age is above 12 but below 13. Sir, the existing law makes absolutely no distinction in the case of an offender, be that offender a husband or be he not a husband, when he commits the offence of rape. The difference prescribed in the Criminal Procedure Code is one relating to procedure. The only concession that at present the offending husband has is that he can be let out on bail. As regards the sentence that is to be passed on him if he is found guilty, it is exactly the same as in the case of one who is not a husband. Let us see what the present Bill lays down. The present Bill creates a minor offence, and that minor offence is that if a girl's husband ravishes her before she has attained the age of 13, then the law would be so indulgent to him that it will not treat the offender in a harsher manner than it treats one who is guilty of an offence under section 354, namely, the offence of outraging the modesty of a woman. The procedure made applicable in both cases, namely, the offence of a husband against his wife under 13 and over 12 and an offence under section 354, is identical. There is no distinction made between the two cases. Sir, in the name of the public opinion of India, in the name of this Council, in the name of the larger public that is outside this Council, I must protest against the policy that has been adopted by the Government.

Sir, the present measure represents a small measure of advance in the domain of social reform. I am entirely free to admit it. But having regard to the enormous difficulties with which the prosecution is faced, if they have to prosecute a husband for an offence under section 376 and those difficulties cannot be unknown to the official Benches, I submit this lenient procedure puts a premium on breaches of the law by a husband on a wife who has not attained the age of 13. The Honourable the Law Member himself gently hinted that there had been no difficulties since 1891 when the age limit was raised from 10 to 12 in the smooth running of the legal machinery. That in other words, reading between the lines, means that it is extremely difficult to bring home his guilt to a husband as regards a breach of marital relations. I entirely agree with my Honourable friend Sir Narasimha Sarma. But is it reasonable to suppose that we will be living under a new heaven after the passing of this Bill and that everything will be changed under the proposed law? Sir, the effect, I must sadly confess, will be only this, that an offending husband, secure in the knowledge that though he is committing the offence of rape on a wife above 12 but below 13 yet he is not amenable to the stricter provisions of the law, will at times not

seriously mind committing these breaches of the law. I submit whatever else might have been the case, whether the Government might have fixed the age limit in the case of marital relations at 14, or whether they are right in fixing the limit at 13, as is the case in the Bill, I have not the slightest doubt that they are positively wrong in introducing a fresh procedure which is to be made applicable to the case of a husband of the description I have been discussing. Sir, in saying what I have said, let me make it clear that I do not represent any particular community. I represent the educated people of my country.

THE HONOURABLE SIR MANROKJI DADABHOY : I thought you said you represented the Council sometime ago !

THE HONOURABLE SAIYID RAZA ALI : I represent what others in the Council do not seem to represent, namely, the educated, the enlightened public opinion of the country, be it Christian, Jewish, Sikh, Hindu or Moslem. Sir, after what I have said it will be seen that as a matter of fact in my own community the question hardly arises, and as a Mussalman I am perfectly prepared to support the measure of my Honourable friend ; but as one belonging to the bigger, larger community which I have described as the enlightened public opinion of the country, I do not think I would be right in opposing this Bill. However, I must record my and that enlightened public opinion's extreme sense of disappointment at this small measure of reform.

The Council then adjourned for Lunch till Twenty Minutes to Three of the Clock.

The Council re-assembled after Lunch at Twenty Minutes to Three of the Clock, the Honourable the President in the Chair.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN. (West Punjab : Muhammadan) : Sir, I do not know if I will be in order if at this stage, with your permission, I put forward an amendment to the effect that the Muhammadan community should be exempted from the operations of this law.

THE HONOURABLE THE PRESIDENT : The Honourable Member will not be in order at this stage.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN : Very well, Sir. I wish like the previous speaker who preceded me I also could say that I represent the educated classes, but I represent the uneducated classes of my constituency as well. But, Sir, in this matter I cannot, as the representative of any classes, express my own opinions, because the Muhammadan religion is such that everything is written in our Koran, and if any Muhammadan goes against the opinion which is written in our book and puts forward his own individual opinion, he will not be called a Muhammadan, that is he cannot remain a Muhammadan, because he breaks the religious law enjoined on all Muhammadans. Sir, the Muhammadans are allowed to marry when they are minors. If the girl is a minor, her father or wali enters into a contract of marriage, and the same is the case with regard to boys. But when the girl reaches the age of puberty, she is authorised even to break the Nikah or contract ; that is to say, on attaining

[Colonel Nawab Sir Umar Hayat Khan.]

the age of puberty, she is given complete liberty even to break the whole *Nikka*, that is marriage. If she does not break the *Nikka* on attaining her puberty, it will mean that she has practically consented to the contract and that she will remain as a wife. Of course, the climatic considerations of each country will have to be taken into account when we are considering this matter. There are some hot countries, and in such countries generally the age of puberty is reached earlier, whereas in cold countries the girls reach their puberty somewhat later. In the same way, each individual differs from the other so far as his or her constitution is concerned. Some may get some kind of disease when they are young, and their bodies may not develop even at the age of 15. Therefore, for Muhammadans it is entirely against their law to lay down any age limit. Sir, it is very kind of Government to have pledged themselves not to interfere with the religious law of any community in this country. It is really a great pleasure to us, and the Muhammadans are particularly thankful to Government in this matter, because for this they can say their Juma prayers. Juma prayers are allowed only in a country where the religious law of the Muhammadans is not interfered with. Therefore, Sir, I submit that when the Government have decided not to interfere with the religious laws of the Muhammadan community, it will be a great pity indeed if they make a law now which is contrary to our religious law. Some people might say that the law already has got an age limit. Well, to that my answer is, if that law is against our religion, then the limit already imposed is not also right. There is, Sir, no question of custom among Muhammadans, because there too one has to stick to what is stated in our book.

Then, Sir, nature is such that it would be a great mistake for anybody to interfere with its laws and substitute for them artificial laws. This is an ordinary thing. In our religion it is distinctly said that one who interferes with the religious law in this connection should be very severely punished; the punishment is very deterrent. If a married man commits a breach of our law, then he is half buried alive under ground and is beaten with stones to death; and if he is unmarried, he is beaten by 80 *durras*, a sort of club. It is really the old Mosaic law, but we Muhammadans consider it all right and now our law. The great Khalifa Umar, when his own son made such a mistake gave orders that his son should be given 80 *durras*, but finding that he was all powerful, he thought that his servants who generally administered this sort of punishment in other cases, would not administer it properly where his own son is concerned, and therefore he gave the punishment himself. He gave 70 *durras* to his son until he was killed, and the other ten *durras* were given to his dead body. Such is the law. I therefore think that it is wrong to introduce a measure of this character and make it applicable to Muhammadans. I would therefore ask the Honourable Member in charge, who is representing the British Government which have given their pledge not to interfere with the religious law of any community, to consider the case of Muhammadans and exempt them altogether from the operation of this measure. If he cannot exempt Muhammadans alone from the provisions of this Bill, then let him exempt everybody, because certain customs of orthodox Hindus differ from the present law, though I do not know whether it is against their religious law to accept the present measure or not. Now, Sir, when everybody is against this Bill,

I do not know why such a law should be thrust down our throats. There may be a few social reformers who may not care about their own religion, but the masses do care for their religion, and if a few Members in this House consider that the law should be changed in this matter, I do not think their view should prevail, because the view of the masses is entirely different in these matters.

THE HONOURABLE MR. G. S. KHAPARDE (Berar : Nominated Non-Official) : Sir, I wish to oppose this motion on three grounds. The first is that the principle of the Bill appears to me to be wrong. The Preamble says it is expedient to amend the Code. I humbly submit it is not expedient to amend it. I say so not because I say it. I quote a passage from the speech of the Honourable the Home Member :—

“ Three Judges of the Calcutta High Court, two of whom are Bengalis and the other a Muhammadan, consider that there is no necessity for legislation so far as married persons are concerned.”

He goes on to give an analysis province by province showing how it is opposed by certain provinces. The Central Provinces Government state that officials and non-officials are strong against any advance within the marital relations, so my province has opposed it. Nearly all the other provinces opposed it. I do not quite understand how it is made out to be expedient. It was also admitted that a similar Bill was rejected in March last. If so, according to the ordinary rule the matter could not come up again within one year, but it has come up now because Government have introduced the same provisions under another name and in a distinct Bill. Under this heading I also say that anything which transgresses nature and tries to improve nature is neither utilitarian nor expedient. In this case we know that nature itself gives warning. There is here a thing by which nature herself says that a person has attained puberty. Ladies especially when that event happens, in the Hindu law as well as Muhammadan law, know that a girl is fit to do the duties of a wife and also to have the pains and pleasures of being a mother. That matter is a fixed matter and is a sort of sliding scale given by nature. Different individuals may have different natures, different dispositions and constitutions, and nature in each case gives a warning that here it is, this event has happened, this girl has attained puberty. Different ancient lawgivers laid down that on the attainment of puberty, as shown and evidenced by nature herself, the duties of motherhood and wifehood would be now upon the girl. Our marriage merely is a ceremony, consummation is the important thing among Hindus, so the consummation of marriage is a sacred thing. We have to wait till puberty is attained, that being the principle. This idea of overriding that principle and fixing it within a certain number of years appears to me inexpedient, wrong, and perhaps not even at all humanitarian, because in the case of some, more suffering will be inflicted, in the case of others the limit will be no limit at all. So on principle I submit that this Bill is wrong and not correct.

My second objection to this Bill is that it is imperfect ; it is rather daring on my part to say that it is imperfect, as the amendments when they have been dealt with will show. It means that a thing is lawful to-day ; when this Bill is passed it becomes unlawful, and to-morrow a person who has been living as a husband with his wife becomes a criminal and can be brought up and

[Mr. G. S. Khaparde.]

punished under this law. Acting on the old law, one day before this Act comes into force he may not be punished, but the next day when this comes into force he can be punished. There is nothing to show that such a person will be prosecuted. There is an amendment moved and I shall speak of this when it comes up.

Thirdly, my objection to this is that this Bill seeks to introduce social reform by legislation. I always think that legislation is the last expedient to which a reformer should have recourse, for this reason that legislation, when forced upon a large number of people who do not approve of it, leads to evasion, often to disobedience, and ultimately results in greater misery than the evil sought to be cured.

THE HONOURABLE MR. YAMIN KHAN : Sir, I rise to a point of order. Is the Honourable Member moving his amendment or is he only opposing the whole Bill ?

THE HONOURABLE THE PRESIDENT : I understand the Honourable Member is discussing the principle of the Bill.

THE HONOURABLE MR. G. S. KHAPARDE : I have all my life opposed social reforms by legislation, more especially when those social reforms are not purely social but partly religious and partly social. Marriage is a religious sacrament, this ceremony of consummation of marriage is also a sacrament. Brahmins are invited and the whole thing is treated as a religious ceremony. So an affair which is partly religious and partly social I do not think is fit to be put in the shape of legislation, because such legislation leaves no option ; a man has to obey or go to jail for breaking the law. In this particular case what will happen is this, that this amendment is introduced as a side wind. They only want to amend section 375 and for 12 they want to substitute 13. This will not attract public notice, people will not understand this. It is only the lawyers who will be able to say what the difference is. It passes people without their knowledge, and many of the people in their villages will not know that the law has been altered. In that case there will be much infringement of the law, more than the Magistrates will be able to manage, and it would spread a great deal of disaffection ; so taking together all these things it is wrong in principle because it is not humanitarian when it leaves nature behind and becomes ideal. Therefore it is wrong in principle, imperfect in its conception, and, lastly, inexpedient because being brought in so to say by a side-wind and introduced as an amendment to the section, it does not attract that amount of attention that it ought to attract. I do not think this sort of mandate was given to anybody.

On these three grounds I oppose the motion that this Bill be taken into consideration.

THE HONOURABLE RAJ BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, I rise to oppose the motion. I fully endorse what my learned friend the Honourable Mr. Khaparde has said in this matter. It is needless for me to say, Sir, that the devotion and sacrifice of an Indian wife stands unparalleled in the world, and it seems to me, Sir, that it is a loathsome thing that a devoted wife should be an instrument of conviction of her husband, in

case her husband makes the mistake which this Bill wants to remedy. I agree with the Honourable Mr. Khaparde, Sir, that social reform through legislation is not a proper thing. I hold, Sir, that social reform ought to be left to social bodies, and as far as the Punjab is concerned I might mention for the information of the Council that usually girls and boys in the Punjab are not now married in tender years. The average age for marriage for girls now stands somewhere near 16, if not more. I quite agree, Sir, that it is fully a humanitarian measure, but at the same time, Sir, I think that in so far as the "Pativrata Dharm" of the Indian women are concerned, this Bill gives a death-blow to it.

Even in case this Bill is passed, it will result in turning married life into
 2 P.M. a very unhappy and miserable affair for those who have
 been convicted under this Bill. After all man is a human
 being, and if he finds his wife is the instrument of his conviction, he will throughout all his married life, have a great dislike for her, and thus his domestic life will be doomed to unhappiness.

With these few remarks, Sir, I oppose the Bill.

THE HONOURABLE DR. DWARKANATH MITTER (West Bengal : Non-Muhammadan) : Sir, so far as the Penal Code is sought to be amended with regard to the age in non-marital relations, I welcome the Government's introduction of this measure in the other House, but I am inclined to doubt the wisdom of the measure when it seeks to raise the age of consent from 12 to 13 so far as marital relations are concerned. Sir, I have always believed, and very strongly believed, that there should be no legislative interference in matters of social reform, unless the evil is of such a kind that no civilized country can tolerate it. Reference has been made by my Honourable friend Saiyid Raza Ali to the abolition of *sati* in 1833. That is a position which I can understand. That was a barbarous and inhuman practice, and the Government of Lord Bentinck did not interfere a day too soon when it stopped that barbarous practice, although it was sanctioned by some canons of Hindu law. But in a case of this description, where there are divergent opinions with regard to this change which is now sought to be introduced, I think the Government should stay their hand. And as I understand the genesis of this legislation, the Government did not in the first instance move it. It was a lawyer in the other House who drew the attention of the Government to it and wanted to increase the age to 14 years, and his Bill was circulated for opinion to the different provinces and, as far as I can gather, the Bill met with unfavourable comment from practically all the provinces. The opinions were distinctly against raising the age of consent to 14 years, but at the same time some of the opinions which were then collected by the Local Governments, mainly the opinions which were collected from my Province, will show that there is no justification to raise the age even to 13 years. The last Age of Consent Act, which was introduced by the Government of Lord Lansdowne, had worked smoothly as it was rightly said, for so many years. Where then is the necessity of raising the age to 13 years? I am prepared to recognise this, Sir, that in the town of Calcutta the marriageable age of girls has, by the natural course and progress of ideas, been raised to 13 years, but the same thing cannot be said with regard to the major parts of the Bengal mofussil, where

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[Dr. Dwarkanath Mitter.]

girls are still married at the age of between 12 and 13 years. What I submit to this House, Sir, is that where social ideas change, where there is an advance in the direction of social ideas, society should be left to work out its own salvation, especially in a country like India, where social ideas and social rules are intermingled with rules of religion. The Honourable the Law Member, the Leader of our House, said there was no canon of Hindu law which fixed an inflexible rule with regard to the age of marriage. It is true that an excellent, but now somewhat obsolete ordinance of Manu enjoined 12 as the age of marriage, but of course that is not followed in practice. It always takes some time before you can discover a suitable bridegroom for your girls. Consequently the marriageable age has in some parts of India been raised to 13 years. Why for that purpose should legislation interfere with the fixed routine of social life, for what does the interference by legislation mean? If there is even one case where there is a violation of the law as it is now sought to be amended, it would undoubtedly interfere with the peace and happiness of both the husband and the wife, and this has to be recognised in bringing in such a Bill. In India amongst the Hindus marriage is an indissoluble tie; it is a sacrament; it is sacred. Once a person has been united in the marriage bond, it can never be dissolved, and if there is one case it will lead to perpetual unhappiness and life long misery of both husband and wife. Sir, I can well recall to my mind the time when I was very young, when the Government of Lord Lansdowne wanted to introduce the Bill which was known as Sir Andrew Scoble's Bill, the Age of Consent Bill, and I can remember the huge demonstration which took place outside Government House, Calcutta, at a time when, clause by clause, this Bill was being discussed under the presidency of Lord Lansdowne, the crowd clamouring with a loud voice that they did not want any such legislation, and they had to be dispersed by the police. Notwithstanding the advance in public opinion, I think, if Calcutta had been fortunate to be still the Capital of British India, the same scene would have been repeated to-day. Sir, in this connection I have also to draw the attention of the House to the fact that three Judges, two of Bengal, two of whom are representatives of the educated community, two of whom are of course very orthodox Brahmins, have raised their voices against the raising of the age to 13 years. Another Judge, who is a member of the Muhammadan community, has similarly raised his voice. The Vakils' Association, which consists of 400 representative educated Indians have on the last occasion when their opinion was asked, said in reference to this measure, that this legislation is unnecessary. I find the opinion of the British Indian Association in Bengal, of which my friend Sir Provash Chandra Mitter was Secretary, was that the raising of the age to 13 was wholly undesirable. I submit therefore, having regard to the volume and the strength of the opinions on the previous proposal—and the Government have not on the present occasion asked for opinions, or circulated for opinion the question whether the age should be raised to 13, and having regard to the previous opinions collected in so far as Bengal is concerned, it should not be so raised. Whatever my personal views may be, I am here to represent to the House the views of the community which I represent. I am of course a very humble member of the educated community of Bengal and not having

perhaps the enlightened views of my friend Saiyid Raza Ali have to oppose the Bill. There is one word more in regard to this matter which I want to say before I conclude, and that is this, *viz.*, with regard to the matter of social reform. I am inclined to agree with the view insisted on by Horace Bushnell that "the soul of all improvement is the improvement of the soul." If the soul of the Indians requires reform let them improve it, and the reform which we are seeking by legislation will come by itself.

This is, I submit Sir, really an indirect attempt by legislation to raise the marriageable age. I can understand this, that the Honourable the Leader of the House may wish to raise the marriageable age to 13. Well, it often happens that when girls are married before 12 some of them are without guardians; and it is impossible, (and you have not got the organisation) to prevent husband and wife from meeting together even if she has not attained the age of 13. Those are circumstances which should be taken into account before the House can be asked to assent to legislation which it is true has been assented to by the other House. I do not know if in every instance the other House can be said to represent the true opinion of the people. If a referendum or mandate were taken from the country I think the majority of the people would be inclined to the view that the less interference in matters of social reform by penal legislation the better. I therefore oppose, Sir, the principle of the Bill in so far as it seeks to raise the age to 13 inside the marital relation.

THE HONOURABLE MR. P. C. DUTT (Madras : Nominated Official) : Sir, I rise to support the Bill. The Bill which is now before the House for consideration aims at a very modest measure of social reform and it is a matter for surprise and regret that it should have met with any opposition at all. The Government have been very cautious in framing their proposals as the history of this Bill will show. In February, 1924, Sir Hari Singh Gour introduced a Bill to amend section 375 of the Indian Penal Code by raising the age of consent from 12 to 14 years both within and outside the marital relationship. The Select Committee which considered the Bill introduced many changes and the Government thought fit to circulate the Bill to Local Governments for opinion. The Bill was sent back again to a Select Committee, and that Committee by a majority fixed the age of consent at 13 years within the marital relationship and 14 years without it. When the Bill came before the Assembly for consideration this was changed and the age was raised to 14 years within the marital relationship and 16 years outside. The Government thought it fit to oppose it and the result was that the Bill was thrown out. The Government have now however brought forward this Bill fixing the ages at 13 and 14, as finally proposed by the Select Committee.

Sir, like my Honourable friend Dr. Dwarkanath Mitter I too remember very well the agitation which was set up in Bengal in 1891 when Sir Andrew Scoble's Bill was introduced to raise the age of consent from 10 to 12 years. In Bengal the cry was raised that religion was in danger. A tremendous agitation was set up in support of what I consider to be a most scandalous and outrageous wrong perpetrated on little children. The people of Bengal are proud of some of the agitations which they have carried on from time to time on public questions, but I believe they are sincerely ashamed, they are

[Mr. P. C. Dutt.]

thoroughly ashamed, of the part they took in the agitation over Sir Andrew Scoble's Bill. The religion which was alleged to have been in danger has managed to survive and the age of consent was raised from 10 to 12 years in spite of the protests made. This time it is matter for congratulation that the same cry has not been raised at least to the extent it was raised on the last occasion.

THE HONOURABLE LALA RAM SARAN DAS: People are being westernised.

THE HONOURABLE MR. P. C. DUTT: There is a considerable body of opinion in the country which supports the Bill, otherwise the elected Members of the Assembly would not have passed the Bill and would not have been ready to pass another Bill more stringent in character. I know of no truer measure of the moral advance which the country has made since 1891, none more significant than the changed attitude of the people of this country towards the present Bill.

Sir, one of the grounds on which the Bill has been assailed is that we ought not to legislate on a social question like this affecting as it does the most intimate relationship of man and wife. Sir, I consider this an extremely untenable position to take up. Is the Legislature to be barred from remedying admitted social wrongs? Is the Legislature of any civilised country barred from remedying any such evils? What does the Legislature exist for if it is not to remedy these social wrongs? All the world over it primarily and increasingly exists to remedy social wrongs. In this country we seem to have an idea that the Legislature exists mainly to extort political concessions from the Government and for baiting the bureaucracy as the officials are called. The sooner we disabuse our minds of this idea the better it is for us and for our country. The late Mr. Ranade once remarked that no country in the world suffered more from self-inflicted and therefore avoidable evils than India. That is undoubtedly and very unfortunately too true. That is more the reason why we should try and remove those evils. There was some justification for a situation when the legislating bodies in this country were composed mostly of European officials. That is not the case now. If the Legislature is representative enough to claim self-government for the country, as it does every day in the name of the people, is it not representative enough to legislate on social questions?

THE HONOURABLE LALA RAM SARAN DAS: This is a religious question.

THE HONOURABLE MR. P. C. DUTT: And also legislate on religious questions. If the Legislature has a mandate from the country to demand Swaraj, as we are often told it has, has it not a mandate from the country to pass this very small measure of social reform? Whatever we do or fail to do, I do trust that we shall at least be straightforward and sincere and above all not try to deceive ourselves.

Sir, another objection has been raised, namely, that the Bill, if passed, will be ineffective and so it is not advisable to legislate. There are many sections of the Indian Penal Code under which cases do not come up often before our Criminal Courts. For that reason it cannot be said that those sections are

ineffective. The would be wrong-doers would know that if they violated the provisions of this Bill when passed into an Act they would do so at their peril. In any case the Members of the Imperial Legislature have the right and the duty of giving a lead to the country in a matter like this. You are the chosen of the people and the ordinary people have a right to know from you what you think on a question like this. If you say in no uncertain voice that no relationship should be established between a man and a woman before the age of thirteen, then they will try and shape their conduct accordingly, even if they do not approve of what you say at present. So I think that even if there be very few prosecutions under the amended Act, it cannot be said for that reason that the Act will remain ineffective.

Sir, if any objection can be taken against the Bill with any show of reason, it is that it does not go far enough. The age ought to have been fixed at the lowest at fourteen both inside and outside the marital relationship. I think sixteen would not have been unduly high. I think at the same time that the Government were wise in fixing the age at thirteen and fourteen as they did not want to antagonise any section of the community, and as they wanted to take with them even the most orthodox. From that point of view I think they are very wise and very prudent and we ought to be thankful to them for that. After all this is a compromise between the progressive and the orthodox sections of the communities inhabiting this land and the orthodox sections ought to know that the progressive sections cannot yield to them any more than what they have done. Sir, I support the Bill most whole-heartedly.

THE HONOURABLE HAJI CHAUDHRI MUHAMMAD ISMAIL KHAN (West Bengal: Muhammadan): Sir, I must voice the sentiments and feelings of the Muslim masses who are extremely agitated over this Bill. This piece of legislation under consideration before the House is one for the solution of a very difficult problem and for the removal of a social evil. I am an individual who always welcomes social reform. I admit the evil which this Bill seeks to eradicate is one of the worst type. But I cannot agree with the method going to be adopted for its removal.

Sir, the societies of the west and the east are not the same. The manners, customs and ways of living of the people of the two parts of the world are not the same. The age of puberty depends also on the climatic conditions of a country. So if in spite of all these differences we want to import western methods for removing the eastern social evils, I am afraid it will do more harm than good to the country.

Now I come to the practical utility of this Bill. I take it for granted that the Bill is passed into law. Suppose a man commits rape on a girl of 12 or 13 years of age in marital relations. Is there anybody here, Sir, who believes that the guardian of the girl will ever think of going to a court of law to send his own son-in-law to jail and thereby to end the happiness of the girl for life? I think my colleagues who are under the idea that criminal cases of the type mentioned will ever come to the courts of law for adjudication are under a false delusion. The Bill will remain in future as in the past a dead letter. In the circumstances, where is the utility of passing such a legislation which simply militates against the sentiments of the masses without doing any good to the country? In my humble opinion this Bill, if passed into law, will do

[Haji Chaudhri Muhammad Ismail Khan.]

more harm to the different communities of India and will turn out to be an engine of oppression. Sir, I have no objection to the raising of the age of consent to the fourteenth or even up to the fifteenth or sixteenth year in non-marital relations. I may inform the House, which is already aware of it, that the ordinary age of puberty in tropical countries is about twelve years, and as such the age of consent should never be raised above twelve years in marital relations.

Lastly, Sir, I being a Mussalman am bound to bring to the notice of the House that Islam has never fixed any age as the age of consent, and as such I think the present Bill which wants to fix it at thirteen years in marital relations is directly against the tenets of Islam. I may further add that Islam has never put any bar to the consummation of marital relationship after a girl attains puberty at whatever age it may be.

There are many other things which may be said against this Bill ; but I do not like to take up much of the time of the House and therefore with these few remarks I feel it my duty to oppose the passage of the Bill in consonance with the sentiments of the masses.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General) : Sir, I consider this as an epoch-making legislation. This Bill marks a most momentous stage in the history of social legislation in this country. I use the word "momentous" advisedly, momentous because it seeks to protect the helpless, it seeks to guide the unwise, it further seeks to punish the wrong-doers. I quite realise that there should be opposition to this measure from some of my Honourable colleagues. I have no desire to belittle that opposition. I know that that opposition is based on deep conviction, on sentiment and on religious feelings which have been inherited from generation to generation. As such it is entitled to our respect. But, if I felt that this legislation in any way came into conflict with the true religious principles of Hinduism, I, for one, in deference to the wishes of many of my Honourable colleagues, would stay my hands from supporting this Bill. But the past history of social legislation in this country and the past history of sentimental opposition which gradually disappeared convinces me that the opposition to a measure of this kind is founded more on sentiment than on religion. What does this Act seek to do ? Does it cause any catastrophic changes in the everyday life of the people ? Does it cause any revolutionary change in the sentiment of the Hindu religion or of the Vedas ? I fail to see that that is so. Since the time of Lord Macaulay, when the Indian Penal Code was prepared and when first the age of consent was fixed at the age of ten, and subsequently in 1891 the age was raised from ten to twelve ; and after an interval of a generation when the ideas of the people have materially changed, when education has been widely diffused, when even the phases and aspects of religion have been viewed from standpoints entirely different from those from which they were viewed at one time, would any of my Honourable colleagues sincerely say that this Bill is going to make catastrophic or revolutionary changes in the conditions and ordinary life of our people ? How does then this enhancement by one year in the matter of consummation of marriage affect the position in any way ? If it is against the religion of the Hindus, even the limit of 12 years which the

legislation has imposed for consummation of marriage cannot be upheld. If you upheld the limit of 12 years in the past, with what show of reason, with what argument, can you now come forward and say that merely because one year is added to this limit, it is so grossly sinful, it is entirely against the religious tenets, it is barbarous, the Government are interfering with our religious matters, and that we should throw out this piece of legislation? If Honourable Members will view the matter from the aspect which I have laid before them, I am sure they will be convinced that really no serious objection could be taken to a measure of this kind.

Sir, it has been said that the Government have no right to introduce social legislation of this character, and that it ought to emanate from the people themselves; it should grow by custom among communities and become crystallised into unwritten law. That is all very well. I do not for a moment dispute that proposition. But is it not a fact, does not our Statute-book afford abundant testimony, abundant proof, of the Government having acted with caution and with circumspection, in matters of social legislation? Honourable Members are aware that slavery at one time formed a part and parcel of our ordinary life in this country, but it was abolished by legislation. Reference has been made this morning to *sati*. Now, *sati* was abolished by legislation; infanticide was abolished by legislation. We have even gone to the extent of providing legislation to prevent the injustice caused by the disinheritance of property by conversions from one religion to another. We have prevented by legislation funds which are subscribed for the maintenance of temples and deities from being misappropriated by Mahants and others. If legislation of that character could be undertaken, can any one tell me why legislation in a case like this, where great physical injury is inflicted on unprotected girls, should not be undertaken? I think the Government have moved in this matter with great caution and circumspection. I believe that the Government rejected the proposals which were placed before the Assembly in March last to raise the age of consummation to 14 and against strangers to 16. That very fact is abundant proof of the concern of Government not to interfere unduly in religious matters. And when the large public demand elicited by the circulation of the Bill and the opinions received thereon have been found to be satisfactory, is there anything seriously wrong in raising the age by one year?

Now, Sir, let us just consider the humanitarian aspect of the case and let us compare it with our ordinary affairs. If a man hits me, or if a man strikes me, I can go to a court and ask for a remedy. If a man cuts my hand or my ear and causes grievous hurt to me, I can get redress. But if a helpless little girl of 12 is raped by her husband, causing grievous hurt—sometimes such an act in the case of young girls causes death,—is there to be no prevention of such crime? If such acts cause death in the case of young, unprotected girls, they fall under the category of culpable homicide not amounting to murder. Are we, as legislators, to sit quiet and take no notice of such things? Is that consistency in legislation? Does our religion, be it the religion of the Hindus, or the Muhammadans or Parsis, prevent us from saving innocent girls and children whose lives would be otherwise ruined? I think I have shown that from the point of view of social matters, the Government are not in any way unduly interfering.

[Sir Maneckji Dadabhoy.]

I shall now deal with some of the objections which have been raised in the course of the debate this morning. My friend, Saiyid Raza Ali, who I am sorry to see is not here, has told the Council that the present Act makes no distinction between marital and non-marital sexual intercourse, and that the Legislature has no business to make such a distinction now. It is true that the existing legislation has fixed a limit of age of consent both against the husband and the stranger at 12 years. But is it such a novel departure, is it such a momentous change that we are now trying to introduce? Many of my lawyer friends fully know that the English law makes a distinction. When an offence of rape is committed on a girl who is below 13, it comes under the denomination of felony, and when the offence is committed on a person between 13 to 16 it is a misdemeanour. The English law makes that important distinction. Is there anything very objectionable in making a similar distinction in this country and does that distinction affect the question? On the other hand, it mitigates the severity of the law. At present the limit of 12 years is kept irrespective of any consideration whether the girl is a wife or a stranger.

Now, if a man has sexual intercourse with his own wife, not being under 12 years of age, the punishment is imprisonment of either description for a term which may extend to two years, or with fine or with both. If the sexual intercourse takes place with his wife being under 12 years of age, the punishment is transportation for life or imprisonment of either description for 10 years, and fine. In the latter case where the offence is committed with a girl below the statutory age the punishment is more serious.

My friend, the Honourable Mr. Khaparde, objected to this Bill on three grounds. Most of his observations were based on the ground of expediency. He asked what was the expediency in introducing a measure of this kind. To my mind the expediency is very great. Apart from protecting innocent children, legislation of this character would indirectly have the effect of improving the physical condition of our people. If early consummation of marriage is avoided, we shall have in course of generations a race of people physically much stronger than what we now have, and when India is trying for self-government, when every day we are fighting for the Indianisation of our armies, is it not necessary, is it not expedient, I may ask my friend, the Honourable Mr. Khaparde, that we should have a nation of men physically strong, intellectually robust and able to take part in the martial activities of the country? View it from that point of view and you will find this proposition absolutely undisputable.

It has also been said that when the Bill is passed, married lives will be unhappy; the unfortunate little girl will have to come forward as a witness. There will be police harassments and all sorts of atrocities. May I ask Honourable Members since 1891 when the limit of age was raised from 10 to 12, how many such cases have come before the public? Can they tell me the number of oppressive and harassed cases, the number of unjust prosecutions, how often a young girl has come into the witness box and her married life totally ruined, and the married life of her boy husband similarly ruined?

Sir, then there is one further argument which is of an important character which was urged by my friend the Honourable Mr. Khaparde. He said that nature in the case of a girl has fixed the limit and when she attains puberty she is free to have intercourse with any person.

THE HONOURABLE MR. G. S. KHAPARDE : With any person ?

THE HONOURABLE SIR MANECKJI DADABHOY : I mean with her husband. Sir, my Honourable colleague is distinctly wrong. As far as I know Hindu law it does not prescribe any limit either for marriage or for the consummation of marriage. Hindu law only says that consummation may take place after puberty has been attained, but it does not say that consummation must take place on attaining puberty. I have great respect for Hindu law. The Hindu lawgivers and jurists had more regard for the sacredness of the human body than many of my Honourable colleagues here now seem to have. The old laws of the country did not tolerate a practice which is now being attempted to be defined in this House.

Then my friend talked about sexual intercourse taking place on the attainment of puberty and relied on a passage which was quoted in another place. I will give a significant answer to my friend. It is from a medical book. It says :—

“Menstruation is not a sign of bodily maturity. It is in most cases merely a sign of puberty and ovulation, with a possible pregnantability or capacity to conceive.”

It is quite a different thing from stating that a woman no sooner she attains puberty is physically fit for the performance of natural sexual functions. I therefore state, Sir, that if we view this Bill dispassionately and considerately, we will come to the conclusion that there is no such serious objection to pass this Bill as many of my Honourable colleagues seem to think. As pointed out by the Leader of the House, it is a humanitarian measure. We are all interested in the protection of humanity, that part of humanity which is defenceless, which is not able to take care of itself, which is prevented by false notions of religion and sentiment from repelling such cruel acts. I therefore submit that my Honourable colleagues will certainly consider this measure. We are progressing very rapidly, we are asking for a good many political privileges and concessions. If we reject a simple Bill of this kind, what will the world say, what opinion will the world form of us ? They will judge us in this connection by our actions. They will judge of our capacity and enlightenment by the manner in which we view a fundamental and vital question of importance like this.

THE HONOURABLE MR. R. P. KARANDIKAR (Bombay : Non-Muhammadan) : Sir, I rise to support the Bill. Unless I had a few things to mention in this House I would not have risen. During the course of the last few months we had a sort of conference of Hindus at the capital of His Highness the Nizam of Hyderabad. I was present on the occasion. Learned people assembled to consider the question of the marriageable age of girls. From what I learned and heard there I have come to the conclusion that it is desirable to raise the age as the Bill contemplates doing. I cannot say much on Hindu law, but if I mistake not, it leaves it open to the girl, after she attains puberty, if the parents do not want to get the girl married, to wait for three years and then

[Mr. R. P. Karandikar.]

make her choice. That means that the age of free consent approximates to 15 or 16 years.

There is no harm in raising the age of consent to that period in other cases. I was much struck by some cases where the marriage takes place as early as 12 and below that. I have seen child mothers succumb to the effects of early marriage, and the only way of putting an end to this is to raise the age of consent. We will imperceptibly, in consequence of this amendment, raise the age of marriage.

There is another question which affects the consideration of the social problem. It affects the education of girls. Directly a girl is married her education ends. Parents put her to school for a certain time. She is given in marriage and the education ends, unless the family into which she has married care for education, a thing which rarely happens. Raising the age must therefore assist female education, which we want in order to advance.

There is a nother side to this question and that is that, unless we make an endeavour in the Indian Legislatures as they are at present constituted, it will take a very long time to improve the social condition of the masses generally. It was said that social questions should not be dealt with in the Legislatures of the country. I was one of those who witnessed what happened in 1891. I must confess that I was of the same view as others who held that it would not do for the Legislature of the country to interfere in social matters and customs. Those were the days when, as was pointed out by my Honourable friend on my right, the Legislature of the country contained very few real representatives of the social customs and manners which were affected by that particular enactment. We people here do represent the people who are affected by these social conditions. In order that it may not be said outside that we are merely hankering for political rights, we must set our own home right first. Unless we do that there is no prospect of our progressing. We do not educate our women and the education of women is stunted. Where can we find assistance in the discharge of the political objects we want to further? It is because of these considerations that I am convinced in my mind that it is the duty of the Legislature to further the cause of social reform, even at the cost of the little odium which usually exists in connection with any interference in social matters.

THE HONOURABLE MR. YAMIN KHAN (United Provinces West : Muhammadan): Sir, this Bill has got two portions, one is that which deals with the offence where the carnal knowledge of a girl below 14 years of age has been had by a man. As far as I can see, no Honourable Member who has opposed the consideration of this Bill, has opposed this part of the Bill at all. This means that they are really not opposed to the consideration of the Bill, but they want certain amendments which are discussed at this stage when we are discussing whether the Bill should be taken into consideration. When I find that, as far as I understand, nobody is opposing that portion of the Bill, I think it is generally accepted by the whole House, and there only remains the other portion when the case of a husband is concerned. I doubt whether the interpretation of Muhammadan law, which has been put forward by several Honourable Members here, is a correct one. I have studied Muhammadan law very care-

fully, and I have found nowhere that it is essential for a girl that as soon as she reaches the age of puberty, she must have sexual intercourse with a man. It is nowhere laid down that it is incumbent on the parents to allow their daughter to go to her husband for sexual purposes, and it is not incumbent on the husband to have sexual intercourse with his wife as soon as she reaches the age of puberty. This is not laid down in Muhammadan law. It is an absolutely different thing that a woman has got a free choice to have sexual intercourse with her husband when she has attained the age of puberty. That is an absolutely different thing.

Now, Sir, the expression "when a girl attains the age of puberty" is an absolutely vague expression. This must differ in different countries under different climates and different social conditions under which she has been brought up. It is found in a great portion of this country that the age when a girl first attains puberty, that is when she starts having menses, is about 13 years of age. It is in very very rare cases that we find she attains it earlier. If it is admitted that she attains the age of puberty at the age of 13, then I do not see where the objection of my Honourable friend Nawab Sir Umar Hayat Khan comes in. If she attains puberty before she is 13, then of course that involves only one question, and that question is, whether she should compulsorily have sexual intercourse or not. I do not see that there is any such thing in religion which forces a woman to act in this way. So from the Muhammadan point of view there is no objection at all to the passing of this Bill.

One point which had been raised by the Honourable Nawab Sir Umar Hayat Khan is that if a girl is married when she is a minor by her father or grandfather, she has got the option of nullifying her marriage as soon as she attains her puberty. About this there are various conflicting rulings. Some doctors of Muhammadan law have laid down different ages. Of course, Sir, after all, it was found that the consensus of opinion was that it should be left to the country and the climate where she is living, and it is to be strictly proved when she attains her puberty. Before she has had sexual intercourse with her husband, she can nullify her marriage, so if she is not allowed to go with her husband until she is 13, she has the option to nullify that marriage. That objection of Nawab Sir Umar Hayat Khan will be safeguarded because she will have the option of nullifying her marriage if she had been married during her minority, until she is 13.

Of course once she has sexual intercourse she has no option. So in her own interests, if she had been married by her parents against her will, she not knowing what kind of man she was marrying, if between the ages of 12 and 13 she learns that her husband is not a fit and proper person, she can nullify that marriage. It is more in the interests of the girl than in the interests of the man that this age of consent should be raised in the case of married girls.

Another point that puts us into a little difficulty is from my Hindu friends' point of view. The Hindu law undoubtedly lays down—I do not say that is believed by everybody, but it is believed by some ignorant classes of people and of course it is based on another Hindu principle, this is derived from that,—the Hindu law lays down the duty of a woman is to produce children just as the duty of every man is to

[Mr. Yamin Khan.]

have a son because for a man to have a son is essential for the performance of *keeria karum*. Just in the same way it is laid down as the duty of every woman to produce a child and on this principle some people have thought—I am not concerned to prove whether it is right or wrong but that is what my Hindu friends say, that is the law as it is believed by a good number of Hindu gentlemen—that as soon as a woman attains the age of puberty she must have sexual intercourse in order to produce children (Cries of “No, no.”). Well, that was the view adopted in the Legislative Assembly when a similar Bill came under consideration there.....

THE HONOURABLE SIR MANECKJI DADABHOY: There is no such text.

THE HONOURABLE MR. YAMIN KHAN: In the Legislative Assembly when I was a Member of the Assembly that view was brought up as an objection by a gentleman, when a similar Bill was introduced by a gentleman from the Punjab. If that is not an objection from the Hindu point of view then there is nothing left to say. In accepting this Bill, I found myself in some difficulty in that respect, but as I hear “No, no” from some corners of this House and I think most of the voices are of Hindu gentlemen though very prominent among the dissentients I think I heard the Honourable Nawab Akbar Khan; if it is not true, then my difficulty is to a great extent removed.

The only other point which remains for consideration and a difficult point is this. How are the proceedings going to be taken under this Act? In the case of an offender being a husband, are you going to allow the prosecutors, that is the police, to interfere in the marital relations or the domestic and private life of people or not? Of course there is a safeguard, that the offender shall not be arrested without a warrant. But how is the warrant obtainable, how will the warrant be issued? That must be issued on certain information received by the Magistrate and that information of course need not necessarily be from the police. That may be from a relative of the girl concerned. But in many cases it might be on account of some enmity. It might be intended to involve the person in question on account of certain domestic quarrels. That places me in a difficulty as to how the proceedings will be taken. I cannot think how and by whom these proceedings are to be begun, and what will follow when these proceedings are taken against the husband. But at the same time this point has been made by the Honourable Mr. Dutt, that up to now the age of consent has been 12 and if the offender is a husband of course he is liable to be prosecuted. But very few cases have come, practically as far as I know no cases have come, before the courts. There is no reported case at least under this head, in which a husband has been found to be an offender. So if the age is raised from 12 to 13, this difficulty will not arise in practice; it will lie in abeyance. The other point is that it will do some good. What will be the benefit by raising the age. Of course that may be a dead letter, but in other respects it will have a good effect and that effect will be that if the age of consent in the case of a wife is raised from 12 to 13, the parents of the wife will be very careful in sending their daughter to her husband's home before she attains the age of 13. Although she may be married she will not go. She may have undergone

the marriage ceremony but she will not go to reside in her husband's home until she has attained the age of 13, because if the parents deliberately send their daughter to the house of the husband, knowing that he will have sexual intercourse with the girl, they may be prosecuted as abettors under this section. That will have a great effect in persuading parents to take great care not to send their daughter away before she is 13. So in this way, Sir, I think there will be a moral effect created by this law even if it may remain a dead letter in practice as was pointed out by my Honourable friend Mr. Dutt. There may be no prosecutions but parents will not send their daughters away through fear of consequences.

Sir, a very pertinent remark has been made by my friend the Honourable Saiyid Raza Ali. He could not understand why the age in the case of a husband is 13 and in the case of a stranger 14. We all know, Sir, that the House is divided even when the age is to be raised from 12 to 13 in the case of a husband; and perhaps that was the reason why the Government made this distinction. If the Government had raised the age up to 14 from 12 in the case of a husband, I do not know how much opposition they would not have found in this House to day. That is one consideration I suppose that induced Government to make this distinction. Of course, the analogy of English law, as given by my Honourable friend Sir Maneckji Dadabhoy, is quite correct. That to a great extent led to the adoption of this difference in this measure. The other distinction about the difference in punishment has also been taken from English law, under which if a person has carnal knowledge of a girl who is below 14 the offence is one of felony and he receives a much higher punishment.

THE HONOURABLE THE PRESIDENT: The Honourable Member is repeating something that the House was told just now. If he intends to use that as an argument, the House will be glad to hear the argument but not to hear the same statement.

THE HONOURABLE MR. YAMIN KHAN: Sir, the Honourable Saiyid Raza Ali said that since he was the representative of the educated and enlightened classes therefore he supported this Bill and objected to this distinction between 13 and 14 years. I suppose, Sir, that all the Honourable Members who are here are representatives of the educated and enlightened classes—at least, Sir, I think my constituency is very enlightened and educated; and there is no Member here who represents the uneducated and unenlightened classes. Everybody represents educated and enlightened opinion; even the nominated Members here represent, I suppose, very enlightened classes.

THE HONOURABLE MR. R. P. KARANDIKAR: I represent the masses as well.

THE HONOURABLE MAJOR NAWAB MOHAMED AKBAR KHAN: What is the proportion of uneducated people to educated people in your constituency?

THE HONOURABLE MR. YAMIN KHAN: I do not know what is the proportion of uneducated to educated people in the Honourable Nawab Major Akbar Khan's constituency.

[Mr. Yamin Khan.]

This Bill, Sir, does not change the present law in the case of husbands when the girl is below 12 years and prescribes the same punishment which exists at present. I do not make any observations on it. Otherwise I would have thought that even in that case there ought to be lesser punishment and that there should be a distinction between an offending husband and an offending stranger in all cases.

With these few words, Sir, I support the motion.

THE HONOURABLE SIR NARASIMHA SARMA : Sir, this subject has been discussed fully on the floor of the House this evening and at this late hour I do not propose to make any very lengthy remarks. I was not surprised when I saw a certain amount of opposition developing amongst Honourable Members because on such a subject as this there is bound to be a conflict of opinion. But I may assure the House that as far as can be judged from public opinion expressed in the Press, in the other House as well as here, the Government are satisfied that they have moved cautiously and not too much in advance of public opinion and only in response to public opinion. I remember the feeling of dismay, disgust and dissatisfaction expressed on the countenance of many of my Honourable colleagues and Members of the lower House when the Government resolutely opposed the passing of the Bill as amended, which proposed to raise the age to 14 and 16. There was a certain amount of disappointment, keen disappointment I may say, expressed throughout the Press that the Government should not have been cognisant of the real public opinion on the subject amongst the classes which were affected by this legislation. Well, Sir, we steered a middle course and I think we were right. We have not undertaken this legislation ourselves, of our own accord, but in response to public opinion, and we have proposed a measure which was a measure supported by a majority of a strong Select Committee appointed on the subject, supported by public opinion as far as we could judge, and I think this House will endorse that view when it comes to the question of voting.

The Honourable Sir Umar Hayat Khan has asked whether the Muhammadan community might not be exempted from the operation of this Bill. May I suggest to him that he might reconsider his position, when I inform him that there was only one Member belonging to the Muhammadan community who opposed the Bill in the other House and he was from Bengal? Muhammadan Members from all other provinces cordially supported this measure. The *Muslim Outlook* which represents the views of a certain section of the Muhammadans at any rate of the Punjab, if not of the whole of India, is very enthusiastic about the passing of the Bill and stoutly denounces the opposition that was raised to the measure, specially by certain Hindu Members; and it goes on to say :

“The Muslim conception of law is very definite on the point that the Legislature owes it as a duty to the people to enforce social reforms”.

I am not now endorsing every word of what is stated here, but I am only quoting it for the purpose of showing that there is a strong opinion on the Muhammadan side that the Government have taken a correct attitude in this matter.

Government, Sir, always respect the religious usages and practices of every community, be it Hindu, Muhammadan, Parsi or Buddhist, and they have not the slightest intention of offending the susceptibilities of any class. But in this case they have felt that it was a duty they owed to the communities in this land to keep pace with public opinion as expressed in the manner I have suggested, and give a helping hand to the various communities so that the social structure may be placed on a sound footing. And in this I feel confident that they have followed and not transgressed the true principles of religion of every community.

I may invite the attention of Honourable Members to the fact that we are at the stage of consideration of the Bill, and as has been pointed out by my Honourable friend, Mr. Yamin Khan, there is a consensus of opinion in this House that the age limit should be raised in the case of non-marital relations. That is one of the principles of the Bill; and I would also draw attention to an amendment which is proposed by my Honourable friend, Mr. Khaparde, with regard to the law being kept as it is in the case of marital relations. I dare say that question will be considered when that amendment comes up after the consideration stage is passed. Indeed I am sure that there will not be any necessity for any lengthy discussion of the question because all that could be said has already been said.

I therefore ask Honourable Members, especially those from Bengal, to remember that this Government and this House have taken cognisance of the real needs specially of Bengal in this matter. They would, therefore, do well to extend their helping hand in placing the Bengali community on the road to social reconstruction which would help them and India as a whole. I can understand their opposition, because the community to which I belong is also to a certain extent in the same plight as the Bengali community. But I heard with great pleasure from my Honourable friend Dr. Dwarka Nath Mitter and others that there is really nothing except custom which stands in the way of this legislation. I hope, therefore, that they will recognise that it is the duty of the Legislature, of the Government and of every enlightened Indian to advance, by enacting the necessary laws, in the desired direction. But this, as I have said, is but a feeble step, and I ask the House and all those Honourable Members who have some doubts in the matter, to revise their opinion and unanimously support this measure.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill further to amend the Indian Penal Code, as passed by the Legislative Assembly, be taken into consideration".

The motion was adopted.

THE HONOURABLE THE PRESIDENT: The question is:

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

THE HONOURABLE MR. G. S. KHAPARDE: To this clause, Sir, I move as an amendment:

"That the words 'and in the *Exception* for the word 'twelve' the word 'thirteen shall be substituted' be omitted."

Now, the effect of this amendment is, that so far as the marital relations go, the age of consent will remain at 12, and will not be increased to 13. Well,

[Mr. G. S. Khaparde.]

It has been said in arguing the matter that this age is raised by one year in order to have a strong nation, an able nation, an intelligent nation, a virile nation, a patriotic nation, and everything else of that kind. But I wish to point out in this connection that until 1919, in England the age of consent was only 12. It was only after 1919 some changes were made, but I do not think that England produced a very weak population before 1919. Therefore, the argument that, if we raise the age from 12 to 13, we will be able to produce a strong progeny and such things, entirely falls to the ground in the light of the English law itself.

Then the next point which I wish to urge is this. It has been pointed out to me that if we raise this age to 13, we will not revolutionise the world, the skies will not come down and so on. But my reply to that is, because we had committed a wrong previously, it does not follow that we should commit another wrong now, because two wrongs do not make a right. There was certainly interference in the framing of the Indian Penal Code, but in those days there was not proper representation, our views were never represented, we were not vocal. We got representation only after 1919 when our Council was constituted.

Then the next point that I should like to refer to is this. It has been said that this measure has been accepted, but as a matter of fact the opinions which I read out show that all the provinces like Madras and Bombay have rejected this Bill totally, taken together without any exception all the provinces have rejected this Bill. So if those opinions count for nothing, and if, as my Honourable friend says, the Bill has been universally accepted, I can only ask the House kindly to verify those opinions. It is said that this is a very small thing, there are no difficulties, and so on. To that my reply is that all things which are introduced by a side-wind are always dangerous. I believe I told the story before that in the days of the Tudors or the Stuarts,—I forget which, a Knight of the King said—"Sire, I knocked off the hat of the Bishop. Will Your Majesty pardon me?" The King said, "Well, I pardon you," the Knight added: "When I say that I have knocked off his hat, the head of the Bishop also was in the hat and I knocked it off also," which meant that he had cut off the head of the Bishop and had asked for pardon. So in this way, you will increase the age from 12 to 13, 13 to 14 slowly and revolutionise the whole life and bring about changes in the Hindu and other laws. Therefore, I say, Sir, that this Bill has not been carefully considered; it has not attracted the attention of the people; it was brought in in a surreptitious way and by a side-wind, and even then it is urged that the opinions that have been received fully support this measure, though as a matter of fact, as I have shown to the House by citing the opinions received from the different provinces, there is strong opposition to this measure. Now, about the age of the stranger being raised to 14, I have nothing to say, it might be raised to 16 or 21, or it might even be raised to 50. That does not much matter to me. But in the case of marital relations, it does seem to me that the change will bring about a great difference, it will revolutionise the home life, it does introduce many changes, and at this rate, I suppose some day we will have to bring in a Bill to the effect that the age should be brought back to 12. With these words, Sir, I place my amendment before the House.

THE HONOURABLE MR. V. RAMADAS PANTULU: Sir, I beg to oppose this amendment most emphatically. I consider, Sir, that the most important part of the Bill is really that which relates to marital relations. The other portion is not of great consequence, because, it is of rare occurrence. I felt, Sir, some difficulties in practical life with regard to consummation of marriages at a very early age. As a member of several Committees of my University, I found that when I tried to advocate some kind of compulsory military training for the boys or to enforce the rules of the University Training Corps, many of the students in the University classes pleaded inconvenience on the ground that they had young wives at home and that some of them were encumbered with children. That is really a very deplorable state of affairs, and the sooner we get rid of this state of things the better it will be. In the name of a cruel custom, I am bound to say, that we are perpetrating an outrage against humanity. We are taking, as Sir Maneckji Dadabhoy said, of Indianizing the Army and things of that sort. I do not think that my friends on the Treasury Benches will take any Indian seriously when he says that he wants to serve in the Army, if he insists in the name of an old custom that a girl below 13 should be married to him and that she should be encumbered with a young and weak child. It was all very well, Sir, in the old days when the fighting classes like the Kshatriyas had to fight and the other classes looked to their respective professions. But in these days, everybody has to fight, the Brahmin has to fight, the orthodox man has to fight. Therefore, I think the sooner we get rid of this custom the better, and we should try to invent some means by which we may develop a strong and virile nation.

Sir, I do not wish to take up much time. I only wish to say this that the social opinion in this country is strongly in favour of raising this age. Though there are some people who object to legislation on social matters, yet they concede very gracefully that they would personally like the age of consent put at 16. If it was a matter of not legislation but merely conviction and opinion, men like Pundit Madan Mohan Malaviya would vote for the proposition in any Assembly in which it was proposed to raise the age of consent even to 16 years. I do not see why this modest measure of social reform which Government are trying to effect by means of this legislation should be opposed. I therefore strongly urge the Members of this house not to oppose this very modest attempt at removing a social evil and not to vote for the Honourable Mr. Khaparde's amendment.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, I rise to support the amendment made by my Honourable friend Mr. Khaparde. The Honourable Sir Maneckji Dadabhoy asked what material difference will it make in case the age of consent, as far as married people are concerned, is raised by only one year to 13. I take it, Sir, as a religious question and I say that as far as the age of consent limit of 12 years is concerned, it is in consonance with Hindu law.

THE HONOURABLE SIR MANECKJI DADABHOY: What is the text?

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Not being a lawyer I do not remember the text by heart, but I shall give it to my Honourable friend later. As far as religious questions are concerned, it is

[Rai Bahadur La's Ram Saran Das.]

unwise to bring in piecemeal legislation. One day a certain measure is brought and then another, and it is brought about because unfortunately the orthodox community is not very well represented in the Legislatures. All the same, Sir, I will say that I am an advocate of social reform and as far as my own community is concerned, we are working social reform at a good pace. I must say that in the Punjab without any legislation we have raised the age of marriage. You will find girls in the Punjab in many educated families who are 25 years of age and have not been married. If you take the average of the marriageable age of girls, 16 will be the average. As I have already informed the House, no legislation has brought about that change. It is the result of our own social organisations which are accomplishing this. I think Honourable Members of this House who having failed in organising such social organisations will be showing great weakness on their part by seeking protection of legislation, which I think is not right. We ought not to break the Hindu law piecemeal. Many Members have said that marriage is a social function. As far as Hindus are concerned it is not a social but a religious function, so I humbly say that, though I agree that it is a humanitarian measure, and I also say we are already following it and advancing at a good pace, in many provinces I see no reason why we should ask Government to legislate in a matter which is already in our hands and in which we are progressing rapidly. The Honourable the Law Member said that in Madras Presidency and in one of his own proprietary villages he knew of baby marriages being celebrated. I might inform the Honourable the Law Member that in the Punjab and in Upper India baby marriages are quite unknown. No baby marriages take place in Upper India, and in case Madras requires such a law, let the Madras Legislative Council undertake it. We are advancing with the times and we do not want recourse to legislation. Therefore, Sir, I have to ask the House not to interfere in religious matters and to accept the amendment of my Honourable friend.

The Honourable Mr. Dutt from Madras said that it is a social measure and in social measures Government ought to legislate. Government started with *sati* and went on to other things. I may inform the Honourable Member that to abolish *sati* was not against the Hindu religion. To abolish slavery was not against the Hindu religion, but I think this measure is. I have full sympathy with the proposal to legislate to raise the age of consent for those outside the marital relations and give my full support to the measure, but as far as the age of married people is concerned, I strongly object.

THE HONOURABLE MR. K. V. RANGASWAMI AYYANGAR (Madras: Non-Muhammadan): Sir, the present Bill proposes to change the criminal law of the land. What is legal to-day is to be made illegal to-morrow as soon as the Bill is passed. For this the reasons given are that civilisation has advanced and so they want to change the law of the land. For effecting a social reform they are bringing the offence under the rape section. Unless it is proved that the age of puberty has advanced from 12 to 13 years and the country has become cooler than what it was before, no case can be made out for this enactment.

Sir, I am an orthodox Brahmin, but I am for this reform. On other grounds also as for instance to restrict the population in India I will welcome this measure of reform that the age of marital relations should be raised even a little higher; but what it is proposed to do now is to bring the proposed reform under the rape section and penalize the poor husband. Sir, I also want to ask this question, and that is who is the aggressor and who the aggressee. In many cases I know the poor husbands are the victims of temptation and the other side is the main aggressor. I am very sorry that this aspect has not at all been considered when this measure was taken into consideration.

Sir, the Honourable Mr. Ramadas said that this measure should be considered when the other sex come to this Council and exercise its franchise. I agree with him and the case made out by that argument is that we may wait for some time until the other sex exercises the franchise and comes in numbers to this Council to vote for a measure of this sort. Sir, I do not agree that the *Shastras* are in danger, that orthodoxy is in danger and that Hinduism is in danger, because by raising the age by one year nothing will be lost, and the country will certainly be benefited; but what I object to, what I do not approve of, is the penalty of imprisonment. I do not approve of the proposal that in the case of the marital relation, intercourse with the girl when she is less than 13 years should be penalised with two years rigorous imprisonment and within 12 years with transportation for life. Sir, this section, which deals with rape, means generally that intercourse should not be committed before puberty, and as I have already said, unless it is proved that the age of puberty of our girls has risen from 12 to 13 years, no case can be made out for this measure. I therefore support the amendment of the Honourable Mr. Khaparde that at least in the case of marital relations, the raising of the age from 12 to 13 need not be done, but I agree to the raising of the age of consent in the case of others from 12 to 14. With these words, I support the amendment of Mr. Khaparde.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: Sir, I support the amendment because I think in a tropical country 12 is nearer the puberty age than 13. It has been said, Sir, that in another place all the Muhammadans were in favour of this change.....

THE HONOURABLE SIR NARASIMHA SARMA: Except one.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: I may say this Sir, in the present educational system of the country unfortunately religion is not made compulsory, and those who pass their B.A. have got so much hard work to do that they have not got time for learning their religion. I fortunately, Sir, learnt my religion instead of becoming a B.A., so when I say something in the matter, it requires particular consideration. I was misunderstood perhaps when the Bill was put in parts by a speaker, and the age of 14 was specified in cases outside marriage. If my friend knew the religion, he would have said that it is not only at 14 years, but even at the age of 50 years if a man who is not married commits anything of this nature he commits a sin. There is nothing in the age.....

THE HONOURABLE THE PRESIDENT: The Honourable Member is discussing the clause itself. What is before the House at the moment is Mr. Khaparde's amendment, which is merely to restore the age of 12 instead of 13 in the Bill.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: The only thing I wanted to say in this connection was that we were not laying it down that we should marry at such and such a time in life; we are allowed not to marry till 30 or 40 if we like, but at the same time, puberty being the proper time, and that being near 12, I say that the age of 13 should not be fixed because it will be interfering with that particular age. Supposing puberty did occur at 12 or 12 years and six months, if any Act stopped any one from marrying till 13, or prohibited intercourse till 13, that will be against the law of religion and I am glad that, when my friend was trying to contradict me, he could not get over this point. This is the point that I emphasized.

Then, Sir, it has been said that, as the people marry very early, perhaps they are not strong enough, and as it is wanted that everybody should take part in fighting and get into the Army, those will be made fit for it. I will say this. Before this the age was not more than 12 in the law. Was the army any less fit under the present law with the age of 12? That is not the case. The point is that those fighting classes, which have been fighting classes, will remain fit for that work and as to the others, no marriage, early or late, will help them to become that.

Then, Sir, there is another point worth consideration. If the age of 13 is fixed, and if any young man who was married to a girl of the age of 12 did commit breach of the law—we are making the law such that it would not be respected; that is not good for the law itself—then what will happen? Suppose there is a good family and the police will like to come in and accuse a husband and say we will take your wife to the doctor. How bad that will be for the parents of that girl as well as for the parents of the man, her husband? The police will be able to extract any amount of money from them which they will give to save their honour. That is a thing the police will be able to do. And there will be some people who will marry their girls at an early age, and then some of those to bring the husband into trouble will institute a case and get the husband into trouble and marry the girl to someone else. All sorts of such difficulties will occur. One thing I want to say, if the Government say they are doing a favour to the people by bringing in this very nice measure, I say thanks, and I hope they will not force this on to us. I think the House is sufficiently sharply divided on this issue, and if the people like it let them decide it themselves; do not come and help them. We are here Hindus and Mussalmans, take our votes, and if the Bill is passed it will be passed, but I do not think it is at all right for the officials to come in and help one side to win. I hope they will consider this.

THE HONOURABLE SIR NARASIMHA SARMA: Sir, this question was argued fully when the Bill was at the consideration stage, I think my Honourable friend Mr. Khaparde is drawing no real distinction between marriage laws and the laws relating to intercourse with girls. Of course the marriage laws of England might permit marriage at the ages of 14 and 12, but it is felony to have intercourse with a girl below 13, with or without consent, and it is a misdemeanour to have intercourse with a girl between the ages of 13 and 16, and the age has since been raised to 18.

And we are following the analogy of the English law exactly. We are
 5 P.M. not prohibiting any marriage ; we are not restricting the
 marriage of any girl or of any man.

THE HONOURABLE MR. G. S. KHAPARDE : Sir, on a point of personal explanation. I was speaking about the age of consent in England for purposes of rape which was only 12 until 1919.

THE HONOURABLE SIR NARASIMHA SARMA : It is 13. I may point out the name does not make much difference. It is either a felony or a misdemeanour. It has always been a misdemeanour beyond 13. Up to 13 it corresponds to rape but we have reduced the punishment to the punishment for misdemeanour. In the case of marital relationship between 12 and 13 the maximum will be two years and not transportation. We have therefore reduced it to the category of a misdemeanour providing a light punishment and have done everything that we can in order that the Act may be worked smoothly, without any friction and without any hardship being inflicted.

Now, Sir, I think my Honourable friend was also overstating his case when he said that several Local Governments and others were opposed to this particular piece of legislation. The question referred to them originally was whether the Bill which provided for the raising of the age to 14 was one which was acceptable to them. Naturally there was considerable difference of opinion. Opinion was not all one way ; opinion was divided ; and we were advised that such a measure should not be accepted ; and the Government therefore refused to accept the proposal to advance the age from 12 to 14. I admit that there was opposition to any raising of the age. All the papers and opinions relating to the subject were placed before a strong Select Committee composed of all shades of opinion, including Pandit Madan Mohan Malaviya and other very orthodox men, and they came to the conclusion by a vast majority that although it was inadvisable to raise the age to 14 it could be raised to 13. Our difficulty then was to induce the others to agree to 13 ; they were for insisting upon the age of 14 being fixed. The Government naturally refused to be a party to any legislation which raised the age at once from 12 to 14 and as a compromise this Bill has been put forward fixing the age at 13. I submit, Sir, that this is a very reasonable modicum of advance and I have already said it has received the approval of the vast majority of the public as we may gather from opinions in the Press and the other indications to which I have alluded.

There is naturally some doubt as to the manner in which this Act would be worked. I have already stated that there are sufficient safeguards provided which will be strictly enforced in the working of the Act. I have said that no Magistrate other than a District Magistrate or Chief Presidency Magistrate in a Presidency town can take cognizance. It is not open to a 3rd class Magistrate, or a 2nd class Magistrate, or even a 1st class Magistrate as such to take cognizance. The matter can be inquired into only by officers above a certain rank and from the fact that hitherto there have been absolutely no complaints against the manner in which the machinery has been enforced under the existing law. Honourable Members may rest assured that the Government, in their own interests, in the interests of the people and in the interests of the peaceful administration of the country, will see that this Act is worked

[Sir Narasimha Sarma.]

with moderation and worked in a way which will not really inflict any hardship upon the people.

I do not think I need add any more to what I have already said. This raising of the age from 12 to 13 is a compromise. It is a very very small rise and as far as I can gather the Honourable Lala Ram Saran Das is taking up the cudgels not on behalf of his own province or of the people he knows but on behalf of provinces with whose conditions he is not acquainted. It is of course very chivalrous of him to take up the case of other provinces and speaks well for his catholicity of outlook, but I would submit that if really the Punjab has raised the age it does not inflict any hardship whatsoever upon the people of the Punjab. With regard to others, I can see a certain trepidation on behalf of Bengal and on behalf of a certain section of Madras and Bombay, specially among the Brahmin and Vaishya communities who may be particularly disturbed by this legislation. But even with regard to them I may assure you that the women now have progressed to such an extent that, as far as I have been able to see, their real sympathies are in favour of some outside help being forthcoming for the purpose of protecting their daughters and their sisters. At any rate I noticed that in my own part of the country where people are very very orthodox indeed. I have already alluded to the fact that I belong to a very orthodox community and the orthodox community is therefore not unrepresented either here or on the Government Benches at any rate for the time being. If I agree it is because I believe that apart from national interests there is a growing sentiment even among the orthodox class and among women particularly, who are now realising the baneful effects of early marriages, which we hope will to a certain extent be discouraged effectually by this piece of legislation. I hope therefore that the doubters will again revise their opinion and that the Council will wholeheartedly support the measure.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, on a point of personal explanation. I took my stand on the religious ground and in religious matters there cannot be any compromise.

THE HONOURABLE PANDIT SHYAM BIHARI MISRA (United Provinces : Nominated Official) : Sir, as one of the most orthodox Members of this House, if not decidedly the most orthodox, I rise to oppose the amendment proposed by my Honourable friend Mr. Khaparde. I think, Sir, that this Bill has not come a day too early, and the provision which the Honourable Mr. Khaparde seeks to amend is really the crux of the situation. We are dealing really mainly with marital relations rather than with others. As a matter of fact it is really marriages that are completed early which we seek to put an end to, rather than sexual intercourse outside marital relations. Those are rare instances, and they do not count very much. What really counts is the consummation of marriages at an early age. It has been pointed out, Sir, that this is against religion. The Honourable Lala Ram Saran Das has laid emphasis upon this ; but when my Honourable friend Sir Maneckji Dadabhoy asked him to quote the text he was unable to do so. Well, I do not claim to be a lawyer, but as a Brahmin I think I should know Hindu law better than Lala Ram Saran Das who is after all a Vaishya.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : I am not a Vaishya ; I am a Kshatriya.

THE HONOURABLE PANDIT SHYAM BIHARI MISRA : Well, even then I think a Brahmin ought to know Hindu law better than a Kshatriya.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will you cite the text, please ?

THE HONOURABLE PANDIT SHYAM BIHARI MISRA : I will cite one text which he might have cited himself —

(Text cited in the vernacular.)

This in effect means, Sir, that a girl had better be married before she is over eight years of age.

This is one of the texts which might be taken to support him ; but at the same time I say that this text was rightly set aside when the law of 1891 was passed, and was passed in spite of the opposition to which my Honourable friend, Dr. Mitter, has referred. I am glad that the present Bill has not been brought forward in Calcutta, as he says there might have been a crowd outside to oppose this Bill also. If that is the condition of Calcutta, I am glad that the capital has been removed from Calcutta to Delhi. I expected a better lead from Calcutta, and my own opinion is that if this Bill were really introduced in Calcutta, probably there would have been more supporters for it there than here ; but what really count are the representatives of the people in this House, rather than the mob knocking at the door outside ; and after all, all the Honourable Members here represent all classes of the community. An Honourable Member said that he represented the educated classes : I am not an elected Member, but I do believe and strongly believe that the Government nominate only those people whom they consider to be representative individuals and not those who do not represent anybody. Government after all do represent the whole of the country, and it is for Government to look after their interests ; I think the Government have proved most emphatically on the present occasion that they do look after the interests of the people more than many people seem to suspect. It is quite clear that in the Assembly a Bill which went much further was about to be passed, that is, in the case of marital relations the age of consent was to be raised to 14 and outside marital relations to 16. But Government in deference to the wishes of the majority of the people, orthodox as well as heterodox, decided not to go so far, and they very wisely refused to allow that more drastic Bill to be passed : they have been very cautious, in deference to the wishes of the people, and they have brought forward this measure as a compromise. I see no reason why this measure, which is a compromise and which has been passed by the popular Assembly by an overwhelming majority, should not be passed by us here. I oppose the amendment and support the Bill.

THE HONOURABLE DR. DWARKANATH MITTER : Sir, if I rise at this very late hour it is only to make a statement with regard to the appeal which has been made by the Honourable Leader of the House as to whether it is not possible for us to revise the opinions which we furnished just a few minutes ago stating that we are opposed to the principle of the Bill. So far as my personal will is concerned, the position might be different. But we are here to put forward our views as representatives of the community and of the electorate

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to which we belong. So far as Bengal is concerned I referred to the views of the Vakils' Association which consists of about four hundred graduates of the Calcutta University who are picked from all parts of the province, from East as well as West Bengal, who are opposed to the provisions of this Bill so far as it affects marital relations. I ought to have referred also to the view of the Bar Library of the High Court of Calcutta which consists of 250 barristers, the majority of whom are Indian barristers (*An Honourable Member*. "Returned from England")—all of whom have of course crossed the seas and have had at least three years' training in the Inns of Court. What is their view with regard to the provisions of this Bill so far as it affects marital relations? They sympathise with the motive of the proposed amendment as affecting marital relations, but they are of opinion that the time is not ripe for such interference by legislation. In view of the social conditions and sentiments prevailing at present in India it appears to them that such an enactment would, instead of being generally welcomed, be likely to cause considerable opposition and resentment. They recognise that the age at which marriages really take place in India is being perceptibly though slowly raised owing to certain causes, mainly economic, and they are of opinion that it would be more expedient to let such causes have their way unassisted by legislation. Further, they are of opinion that the proposed amendments so far as it affects marital relations would be extremely difficult to enforce and may on the other hand be utilised by unscrupulous persons for purposes of harassment and oppression.

This is the opinion of persons who are regarded as enlightened persons who have had full training in the Inns of Court in England.

THE HONOURABLE SIR MANECKJI DADABHOY : And nurtured in the Dayabhaga school of Hindu law !

THE HONOURABLE DR. DWARKANATH MITTER : Yes, and eminent lawyers and jurists in Calcutta : that is not the monopoly of barristers outside Calcutta. Therefore, my Honourable friend, Pandit Shyam Bihari Misra is not right when he says that he seems to know more about Bengal than I do, and that if this Act were passed at Calcutta public opinion there would have been in any way different from what it was when the Act of 1891 was passed under the presidency of Lord Lansdowne.

I will wind up this debate by stating as my view, notwithstanding the appeal of the Honourable the Law Member, not the opinion of an Indian Barrister or of an educated Indian but of a distinguished European Judge of the Patna High Court, Mr. Justice Foster. He says :

"In my opinion the proposed amendment of the Indian Penal Code is not only un-called for but is likely to have mischievous consequences. * * *

* * * The present law fixes the limit of age at twelve years. Not if the act of the male person is not essentially criminal, but is to be made criminal by a fiction which will not appeal to the community at large, it cannot be expected that the criminal courts will have much assistance from the general public. You cannot improve the morality of a people by the agency of the police and the magistrates. All that you can look for is the negative result, namely, the prevention of crime. * * *

* * * These limitations have been recognised in the law as it exists, and I do not see how any alteration of the law can work any good. I have no sympathy with the proposed amendment of the Penal Code. I consider it misguided and meddling."

Sir, that is exactly the view which I submit to this House and I support the amendment of the Honourable Mr. Khaparde.

THE HONOURABLE THE PRESIDENT : The original question was :

“That clause 2 do stand part of the Bill.”

Since which an amendment has been moved.

“That in clause 2 the words ‘and in the *Exception* for the word ‘twelve’ the word ‘thirteen’ shall be substituted’ be omitted.”

The question is that these words be omitted.

The Council divided :

AYES—7.

Akbar Khan, Major Nawab Muhammad.	Khaparde, Mr. G. S.
Ayyangar, Mr. K. V. Rangaswamy.	Mitter, Dr. D. N.
Ismail Khan, Haji Chowdhuri Muhammad.	Ram Saran Das, Rai Bahadur Lala
Umar Hayat Khan, Col. Nawab Sir.	

NOES—25.

Abbot, Mr. E. R.	McWatters, Mr. A. C.
Amiruddeen Ahmad Khan, Nawab Bahadur.	Misra, Pandit S. B.
Chadwick, Mr. D. T.	Mitra, Mr. K. N.
Charanjit Singh, Sardar.	Nateson, Mr. G. A.
Commander-in-Chief, H. E. the	Parsons, Mr. A. A. L.
Crerar, Mr. J.	Ramadas Pantulu, Mr. V.
Dadabhoy, Sir Maneckji.	Sarma, Sir Narasimha.
Dutt, Mr. P. C.	Sen, Mr. B. C.
Fazl-i-Husain, Mian Sir.	Tek Chand, Diwan.
Karandikar, Mr. R. P.	Thompson, Mr. J. P.
Laird-MacGregor, Mr. E. G. L.	Vedamurti, Mr. S.
MacWatt, Major-General Sir Charles.	Yamin Khan, Mr.
	Zahir-ud-din, Khan Bahadur Saiyid.

The motion was negatived.

THE HONOURABLE DR. DWARKANATH MITTER : Sir, I beg to move the amendment that stands in my name which runs thus :

“That the following be added to clause 2 of the Bill :

‘And after the *Exception* the following proviso be inserted, namely :

Provided however that sexual intercourse by a man with his own wife shall not constitute rape if at the date of the passing of the Indian Penal Code (Amendment) Act, 1925, the wife had attained the age of twelve but had not attained the age of thirteen years ’”.

This is really a saving clause. This Act will come into force on a certain date in the near future. It is not intended that persons who have entered into marital relationship soon after the passing of this Act or on the date of the passing of this Act should be affected by this if the wife has already attained the age of 12. It will take some time before this law filters down to the masses. One has to get oneself acquainted with the provisions of the law, it will take some time before the people at large come to know of the passing of this law. Therefore, Sir, I think some time should be given before the offence can be regarded as an offence under the Indian Penal Code

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(Amendment) Act. It is a very necessary provision, Sir, and it is really a saving clause, and I submit it ought to be accepted. I fully recognise that it really spends its force after the period of one year. But the whole intention is to give the public exemption for a period during which they may get themselves familiar with the provisions of this law. I therefore propose this amendment.

THE HONOURABLE SIR NĀRASIMHA SARMA. Sir, there is no point of substantial difference between the Honourable Dr. Dwarka Nath Mitter and myself with regard to the object which he proposes to attain by means of his amendment. Honourable Members will see that the same object or substantially the same object is sought to be attained by another amendment standing in the name of the Honourable Mr. Karandikar, and the Government are willing to accept that amendment. But they cannot, I regret, accept the amendment moved by the Honourable Dr. Dwarka Nath Mitter, for this reason, that as the amendment is worded an offence of rape which might have been committed by a married person before the passing of this Act may possibly be construed as being condoned under the amended clause. Supposing a man is married and commits this offence on a girl, 11 years and 9 months old, and she attains the age of 12 on the passing of this Act. The law at the time of the trial may be the amended clause with the proviso running as follows :

"Provided, however, that sexual intercourse by a man with his own wife shall not constitute rape if at the date of the passing of the Indian Penal Code (Amendment) Act, 1925, the wife had attained the age of twelve but had not attained the age of thirteen years."

The law that would be administered should be clear and not be open to subtle arguments, and when we are drafting an amendment, I would suggest to the House that we ought to be somewhat cautious. The very same object which the Honourable Member has at heart will be achieved by accepting the amendment which seems to have been examined in our Department. I would therefore ask my Honourable friend Dr. Dwarka Nath Mitter, if he has no objection, to waive his amendment in favour of the second amendment. But if he persists, I regret, for reasons I have already stated, I would have to oppose his amendment.

THE HONOURABLE THE PRESIDENT : The question is :

"That the following be added to clause 2 of the Bill :

'and after the *Exception* the following proviso be inserted, namely :

Provided, however, that sexual intercourse by a man with his own wife shall not constitute rape if at the date of the passing of the Indian Penal Code (Amendment) Act, 1925, the wife had attained the age of 12 but had not attained the age of thirteen years.' "

The motion was negatived.

Clause 2 was added to the Bill.

THE HONOURABLE THE PRESIDENT : The question is :

"That clause 3 do stand part of the Bill."

THE HONOURABLE MR. R. P. KARANDIKAR : Sir, after what has been said by the Honourable the Law Member, I do not think I need ask for more indulgence than to allow me to read the amendment standing in my name.....

THE HONOURABLE THE PRESIDENT : The Honourable Member's amendment is not strictly to clause 3. It comes a little after clause 3. I will therefore put clause 3 first.

The question is :

"That clause 3 do stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

THE HONOURABLE MR. R. P. KARANDIKAR : Sir, I beg to move :

"That the following clause be inserted after clause 3, namely :

'4. Notwithstanding anything contained in section 2 sexual intercourse by a man with his own wife is not rape although the wife had not attained the age of thirteen years, if he was married to her before the date on which this Act comes into operation and she had attained the age of twelve years on that date.' "

As I find there will be no difficulty in this amendment being accepted, I will not weary the House with any speech.

The motion was adopted.

Clause 4 was re-numbered clause 5 and 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 and amended by the Council of State, be passed.

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Friday, the 11th September, 1925.

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