

24th March, 1925

THE
LEGISLATIVE ASSEMBLY DEBATES
(Official Report)

SECOND SESSION
OF THE
SECOND LEGISLATIVE ASSEMBLY, 1925



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LEGISLATIVE ASSEMBLY.

Tuesday, 24th March, 1925.

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

MEMBER SWORN:

Mr. George Gall Sim, C.I.E., M.L.A. (Financial Commissioner, Railways).

QUESTIONS AND ANSWERS.

INDIANIZATION OF THE HIGHER RANKS OF THE SURVEY OF INDIA.

1275. ***Maulvi Muhammad Yakub:** Will the Government be pleased to state:

- (a) What steps are being taken in the Survey of India to Indianize the higher ranks of the service?
- (b) What proportion of Indianization in other analogous services is to be effected by (1) promotion from the junior branch of the service and (2) by direct recruitment of the senior branch?
- (c) If the proportion under (b) (1) is less in the Survey of India, will the Government be pleased to give reasons for such differentiation?

Mr. J. W. Bhore: (a) The matter is under the careful consideration of the Government of India.

(b) and (c). I regret that I am not aware to what "analogous services" the Honourable Member refers. If he will kindly specify these, I will be better in a position to answer this part of the question.

Maulvi Muhammad Yakub: By "analogous services" I mean, Sir, other services directly under the Government of India.

Mr. J. W. Bhore: I am afraid the Honourable Member is labouring under a mistake. The other services mentioned are not exactly analogous to the Survey of India. But since he has told me what is in his mind, I will endeavour to give him a reply to his question in due course.

Mr. K. Ahmed: A supplementary question, Sir. I am asking for ruling, Sir, and it is for you to state whether the Member giving notice inquiring about something from a particular branch, as is the case with Maulvi Muhammad Yakub in this particular case, should also mention

the names of the Departments to which the analogous service belongs. I remember, Sir, about two or three years ago it was ruled by the Chair that Honourable Members giving notice of questions must stick to the Department. Sir, there are six or seven Departments. I ask from the Chair for a ruling on this subject and also whether my Honourable friend Maulvi Muhammad Yaqub is entitled to get an answer relating to the services which are analogous to the service mentioned in the question.

Maulvi Muhammad Yaqub: The Honourable Member should wait for the time when he will occupy the Presidential Chair of this House.

Mr. K. Ahmed: May I ask for a ruling, Sir, from the Chair whether the other Departments of the Central Government will give an answer to the inquiry?

Mr. President: It is not for the Chair to decide which Department should answer any particular question.

COMMUNAL REPRESENTATION IN THE SERVICES.

1276. ***Maulvi Muhammad Yakub:** Will the Government be pleased to state since when and in what services effect will be given to the statement of the Honourable the Home Member in the Council of State about giving a due share to the minorities in the services?

The Honourable Sir Alexander Muddiman: The announcement made by me in another place referred to the four Services which will remain all-India Services, namely, the Indian Civil Service, the Indian Police Service, the Indian Forest Service and the Indian Service of Engineers. It has since been decided to apply a similar policy to the Central Services with the possible exception of certain Services for which high technical qualifications are required. The Services to be excepted, if any, are still to be determined. I need hardly add that so far as provincial services are concerned the matter is one for Local Governments and not for the Government of India. Effect has already been given to the policy in this year's recruitment for certain Services and in other Services will be given from the dates on which formal orders are issued in regard to them. These orders will be issued with as little delay as possible.

Maulvi Muhammad Yaqub: Will the Government of India be pleased to indicate their policy to the Local Governments in this matter?

The Honourable Sir Alexander Muddiman: The Local Governments will see the policy of the Government of India from the various announcements which have been made.

Mr. K. Ahmed: Are the Government of India aware, Sir, that some of the Departments or at least the branches of those Departments are directly under and as a matter of fact in the Provincial Governments and the officers of them keep in touch with them?

The Honourable Sir Alexander Muddiman: I am afraid I have not followed the question.

Mr. K. Ahmed: Are the Government of India aware that some of the appointments are made directly by the Provincial Governments, though, as a matter of fact, the Department is under the Government of India, for instance, income-tax, customs, etc.?

The Honourable Sir Alexander Muddiman: No, Sir.

Mr. B. Das: Will Government be pleased to state whether they will consider the claims of the people of Bihar and Orissa amongst the minorities in the services as they always form a minority in all services?

The Honourable Sir Alexander Muddiman: That question, Sir, does not arise. It is the question of communal representation with which we are dealing.

Lala Duni Ohand: Are the Government aware of the existence of a strong feeling in the country that the introduction of any principle other than that of fitness into the recruitment of services is bound to demoralise the services and harm those people whom the services are meant to serve?

Mr. K. Ahmed: Do Government propose to take steps to disabuse the minds of prejudiced persons, as recruitment to these services is made from the point of view of justice and equity by fixing their proportion?

LETTER PUBLISHED BY MR. D. D. KHANDLWAL IN THE *SERVANT*
UNDER THE HEADING "E. I. RAILWAY GRIEVANCE".

1277. ***Mr. Gaya Prasad Singh:** (a) Has the attention of the Government been drawn to a letter by Mr. D. D. Khandlwal, and published in the *Servant*, dated the 9th March 1925, under the heading "E. I. Railway Grievance?"

(b) Will the Government be pleased to say if the statements made in the letter are substantially correct?

(c) If not, what are the true facts; and what steps, if any, have been taken in the matter?

The Honourable Sir Charles Innes: The gentleman referred to by the Honourable Member appears to have sent to the press a copy of a representation made by him to the Agent. The Government have no doubt that the Agent will give consideration to the representation and they propose to leave it to him to deal with it.

ADMISSION OF INDIANS INTO THE ARMY AS COMMISSIONED OFFICERS.

1278. ***Raja Ghazanfar Ali Khan:** (a) Are there any branches of the Indian Army to which Indians are not admitted as commissioned officers? If so, what are those and for what reasons?

(b) If the answer to part I of the question is in affirmative, will the Government be pleased to state the names of Indian commissioned officers serving in various branches of the Army except Infantry and Cavalry?

Mr. E. Burdon: (a) There is no branch of the Indian Army, including the Indian Medical Service and the various Indian Army Departments, to which Indians with the King's commission are not eligible for appointment. In this connection, I would invite the attention of the Honourable Member to item 2 of the statement which was laid on the table on the 2nd July 1923 in reply to starred question No. 55, as also to the reply which was given on the 15th September 1924 to part (b) of starred question No. 1912.

As regards the grant of King's commissions in the Royal Artillery, Royal Engineers and Royal Air Force services in India, I would invite the Honourable Member's attention to the reply which was given on the 22nd January 1925 to unstarred question No. 38.

(b) I lay on the table a statement showing the names of the officers who are in extra-regimental employment. So far, no Indians holding the King's commission are employed in any of the Indian Army Departments. The names of those who hold commissions in the Indian Medical Service will be found in the Indian Army List, to which the attention of the Honourable Member is invited.

Statement giving the names of the King's Commissioned Indian Officers who are extra-regimentally employed.

Names.		Appointments held.
Captain Zorawar Singh . . .	1st Horse . .	Lent officer to the Bhavnagar State.
Captain Pirthi Singh . . .	3rd Cav. . .	Coy. Comdr., 11-4th Bombay Grenadiers, I. Terr. F.
Lieutenant Hissam-ud-Din . .	11th Cav. . .	Adjt., 11-12th F. F. Regt., Ind. Terr. Force.
Lient. Sardar Jai Singh . . .	3-11th Sikhs . .	With Kapurthala State Forces.
Lient. M. Abdula Khan . . .	4-15th P. B. . .	Coy. Comdr., 11-15th P. B., Indian Terr. Force.
Lieut. Uaja Sher Mohd. Khan . .	1-15th P. B. . .	Adjt., 11-13th F. F. Rifles, Indian Terr. Force.
Lient. C. S. Thakar . . .	3-7th Rajputs . .	Coy. Offr., 11-7th Rajput Regt., Ind. Terr. Force.
Lient. Mohd. Ayub Khan . . .	12th Cav. . .	Asst. Recruiting Officer, Peshawar.
Lieut. N. U. K. Janjhua . . .	1-16th P. B. . .	Asst. Recruiting Officer, Lahore.
Lieut. Abdul Samad Shah . . .	18th L. . .	Asst. Instr., Army School of Education (Indian Wing).

Lieut. S. B. S. Roy, 1/7th Rajput Regiment, is under consideration for appointment as Adjutant, Mewar Blul Corps.

GRANT OF SPECIAL PROMOTION TO EMPLOYEES OF THE NORTH WESTERN RAILWAY WHO VOLUNTEERED FOR SERVICE OVERSEAS.

1279. ***Khan Bahadur W. M. Hussanally:** (a) Are Government aware of the fact that in accordance with notification No. 1012-E.—5, dated 21st October, 1916, of the Agent those who volunteered services for overseas were to get special promotion?

(b) Is it a fact that out of those who served overseas some were given the special promotion while others were denied the same?

(c) Is it a fact that in certain cases those who had a break in their services also received this special promotion?

(d) Is it a fact that Mr. J. Lydeen, guard, after a break of about 5 years' services received special promotion without having served overseas?

(e) Will the Government be pleased to state on which grounds this special promotion was granted?

(f) Are the Government aware of the fact that the Anglo-Indian and domiciled European Association represented to the Agent the case of a certain guard, and qualified station master who had rendered overseas service and the Agent replied that he could not see his way to condone the break in his services?

(g) Will the Government state if there are any rules guiding this special promotion?

(h) If so, what are they?

(i) Will the Government state why the rule was not applied in the case of Mr. J. Lydeen?

(j) Are the Government prepared to recommend to the Agent to go into the cases of all who rendered overseas services and give promotion to those who are entitled to it?

The Honourable Sir Charles Innes: (a) Yes.

(b) to (j). Government have no information. But they propose to send the Honourable Member's question to the Agent, North Western Railway, for such action as he may consider necessary in regard to part (j).

HOLDING OF THE NEXT SESSION OF THE LEGISLATIVE ASSEMBLY IN AUGUST.

Mr. W. S. J. Willson: Sir, may I ask the Honourable Member a question of which I have given him private notice? Whether it is correct that the next session of the Legislative Assembly is likely to be held on about the 20th August? Whilst most Members will not fail in their duty to attend if it is really necessary, I wish to point out that it will be most inconvenient for those who intend taking leave to Europe, and a very trying time for travel for those who have long distances to come. I therefore ask if it will be possible to have the Session fixed after the Pujah session instead of before, as the custom really is?

The Honourable Sir Alexander Muddiman: Sir, the Governor General has passed no orders as yet in regard to the holding of the legislative session, but owing to the dates of the various holidays this year, the session is likely to be held somewhere about the middle of August, about the 20th of August. With reference to the latter part of his question my Honourable friend has probably forgotten the fact that the Council of State may be dissolved and that elections may take place this cold weather, which will therefore give an additional reason for holding the session rather earlier than usual.

STATEMENT LAID ON THE TABLE.

The Honourable Sir Charles Innes: With reference to my reply to unstarred question No. 280, I lay on the table a statement giving the information available in the form desired. In order to complete the statement, I have included information for the year 1924-25.

Year.	Nature of concession.	Approximate cost of the concession.	BONUSES PAID OR ESTIMATED.		Total for the year.	Equal to a Dividend on the Deferred shares of per cent.	DIVIDEND OR PER CENT. PAID BY THE COMPANY.		Total amount paid out on dividends on all shares excluding debentures.	Amount placed to reserve fund.	Amount set aside for depreciation.	Estimated proportion of costs of Tariff Board attributable to its labours on the steel and allied industries.	Estimated cost to Government of Special Session of the Assembly.	Estimated cost to the Taxpayer.
			To Total.	To Subsidiary Companies.			Ordinary shares of Rs. 75.	Deferred shares of Rs. 30.						
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1913-14	Under-taking to purchase rails at an agreed price if in excess of imported price, etc.	...	Lakhs. Rs. ...	...	Lakhs. Rs. ...	...	6	...	Lakhs. Rs. 18	Lakhs. Rs. 11	Lakhs. Rs. 34	Lakhs. Rs. ...	Lakhs. Rs. ...	Lakhs. Rs. ...
1914-15	...	...	...	...	...	...	8	26	16	...	5	...	...	...
1915-16	...	...	...	...	...	...	15	1501	50	8	11	...	...	...
1916-17	...	...	...	...	...	...	20	201	54	11	48	...	...	...
1917-18	...	...	...	...	...	...	20	201	64	11	48	...	...	...
1918-19	...	...	...	...	...	...	7	221	13	11	26	...	...	...
1919-20	...	...	...	...	...	...	16	202	48	1	63	...	...	...
1920-21	...	...	...	...	...	...	16	202	48	1	66	...	...	...
1921-22	...	...	...	...	...	...	3	...	46	...	41	...	...	...
1922-23	...	...	...	...	...	...	...	...	...	...	15	...	...	...
1923-24	...	...	...	...	...	...	...	...	...	...	...	...	...	...
1924-25	...	...	...	...	...	...	...	...	...	...	...	...	...	...
	Cost of special Simla Session.	...	...	...	...	...	...	...	...	...	...	...	...	...
	Subsequent Meeting of Tariff Board.	...	...	...	...	...	...	...	...	...	...	...	...	...
	Bonuses estimated: Under the Steel Protection Act.	...	...	...	...	...	...	...	...	...	...	...	...	...
	Under the Resolution adopted by Assembly in January 1925.	...	...	...	...	...	...	...	...	...	...	...	...	...
	Additional burden of taxation by higher tariff.	...	...	...	...	...	...	...	...	...	...	...	...	...

* Vide page 225 of Volume I of Steel Evidence before Tariff Board.

* A sum of Rs. 7 lakhs was debited to this account in 1918-19.
 † Plus a sum of Rs. 60 lakhs transferred from prima on new deferred shares.

It is estimated that increase due to enhanced duties imposed in June 1924 in 1925 (up to February 1925).

Note.—The position with regard to the nature of arrangement made by the Railway Board with Messrs. Tata Iron and Steel Company during the period of 1913-14 to 1923-24, is as follows :—

In the year 1906, the Railway Board gave the Company a guarantee that they would order 20,000 tons of rails per annum for a period of 10 years from the date of commencement of output at the *c. i. f.* rates for imported rails.

The Steel Company commenced deliveries in the year 1913-14. The arrangement under this guarantee was abandoned owing to the conditions brought about by the war. A new arrangement by mutual consent was arrived at in July 1915, according to which almost the entire output of the Steel Works was utilised for the purposes of the war. It was only after the armistice that deliveries to Railways were recommenced on the 1918-19 price of Rs. 150 per ton, fixed by the Indian Munitions Board. This rate was applied to all deliveries made up to 31st March 1920. During this period it was practically impossible to import rails from Europe and probably no *c. i. f.* rate for imported rails could be fixed for the period in question but, from the fact that post-war prices in the United Kingdom were abnormally high, there is no doubt that the *c. i. f.* rate would have been considerably higher than Rs. 150 per ton.

In the meantime a new seven year agreement operative from April 1st, 1920, was made on August 7th, 1920, for the supply to all State worked Railways for rails at Rs. 130 per ton and for fishplates at Rs. 160 per ton. These prices, however, were found to be much lower than the *c. i. f.* prices for imported rails, which began to be available about the same time, and on a representation from the Steel Company the above price for rails was revised on 26th April 1921 to apply retrospectively from the commencement of the 7-year contract, and to continue for a period of two years. The revised price was based on the contract price *plus* a percentage, on a sliding scale, but in no case exceeding half of the difference between the contract price and the *c. i. f.* price for imported English rails. This method of making payment to the Steel Company continued for a period of a year and a half, and on June 16th, 1922, the rates were fixed at Rs. 156 per ton for rails and Rs. 186 per ton for fishplates to take effect from November 1st, 1921. This rate for rails was in the neighbourhood of the *c. i. f.* prices, obtaining at the time of making the arrangement, and these rates continued in force up to 31st March 1924 when the original contract rates came into force. As a set off against the increase in prices of rails and fishplates agreed upon in April 1921 the Steel Company allowed the Government a discount of 10 per cent. on the price of steel other than rails to be supplied to State-worked Railways and Government of India Departments, under a pre-existing contract at *c. i. f.* rates. At the subsequent revision on June 16th, 1922, this 10 per cent. discount was changed to a fixed one of Rs. 7.8 per ton below *c. i. f.* cost on steel other than rails.

It will be clear from the facts stated above that, as compared with *c. i. f.* prices, the State-worked Railways effected a considerable saving by obtaining their supply of material from the Steel Company instead of from abroad.

As regards the supply of material to State-owned but Company worked railways, it may be pointed out that from the armistice up to 31st March 1920 the supply to all railways was at one rate, namely, Rs. 150 per ton for heavy section rails, which was that fixed by the Indian Munitions Board by mutual arrangement with the Steel Company. After 31st of March 1920, the post-war contracts came into force. The prices in those contracts of Company-worked railways, excepting the Bengal Nagpur Railway contract, were Rs. 122-8-0 to Rs. 125 per ton for rails, and Rs. 30 per ton extra for fishplates. The Bengal Nagpur Railway price was Rs. 110 per ton for rails. These prices have proved to be lower than the *c. i. f.* prices for similar materials imported in the period during which the contracts have been in operation. No increases were allowed to the Steel Company on these contract rates by the Railways concerned.

It is claimed by the Company that during the two years 1920-21 and 1921-22 total savings amounting to over 142 lakhs accrued to the Railways through their buying from the Steel Company instead of imported rails and fishplates (*vide* pages 22 to 25 of Volume I of the Evidence before the Tariff Board).

MESSAGE FROM THE COUNCIL OF STATE.

Secretary of the Assembly: Sir, the following Message has been received from the Secretary of the Council of State :

"I am directed to inform you that the Council of State have, at their meeting held on the 23rd March, 1925, agreed without any amendments to the following Bills which have been passed by the Legislative Assembly :

A Bill further to amend the Indian Tariff Act, 1894.

A Bill further to amend the Indian Stamp Act, 1899.

A Bill further to amend the Indian Income-tax Act, 1922."

MESSAGE FROM HIS EXCELLENCY THE GOVERNOR GENERAL.

Mr. President: I have received a Message from His Excellency the Governor General:

(The Message was received by the Assembly standing.)

"In pursuance of the provisions of sub-section (1) of section 67B of the Government of India Act, I, Rufus Daniel, Earl of Reading, do recommend to the Legislative Assembly that it do pass the Bill to supplement the Bengal Criminal Law Amendment Act, 1925, in the form hereto annexed."

(Sd.) **READING,**

The 23rd March, 1925.

Viceroy and Governor General."

THE BENGAL CRIMINAL LAW AMENDMENT (SUPPLEMENTARY) BILL.

The Honourable Sir Alexander Muddiman (Home Member): Sir, I beg to move that after clause 3 of the Bill the clauses set out in the paper in the hands of the Members be added.

I will not read the clauses as they are before the House. The object of my amendment is to bring the Bill into accord with the recommendation which you have just read to the House. The matters dealt with in these clauses were fully discussed yesterday, and they have been, in one form or another, the subject of debate throughout this Session. I propose therefore, Sir, to add nothing further at this stage.

Mr. President: Motion moved:

"That after clause 3 of the Bill the following clauses be added, namely:

4. The power of the Local Government under sub-section (1) of section 11 of the local Act to direct by order in writing that any person shall be committed to custody in jail shall be deemed to include a power to direct, by order in writing made with the previous sanction of the Governor General in Council, that such person shall be committed to custody in any jail in British India; and, for all or any of the purposes of the local Act, an order so made shall be deemed to be an order made under section 11 of that Act and all the provisions of that Act shall apply accordingly:

Provided that the powers exercisable by the Local Government under section 20 of the local Act in respect of any person committed to custody in a jail outside Bengal, and under section 22 of that Act to provide for the manner of custody of any such person, shall be exercised by the Local Government of the province in which the jail is situated, and rules made by such Local Government in exercise of such powers shall be published in the local official Gazette.

5. References to the local Act in sections 24 and 25 of that Act shall be deemed also to be references to the local Act as supplemented by this Act.

6. The powers conferred by section 491 of the Code shall not be exercised in respect of any person arrested, committed to or detained in custody under the local Act or the local Act as supplemented by this Act."

Diwan Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I want to put to the House the plain English of this motion made by my Honourable friend Sir Alexander Muddiman. Sir, I cannot help regretting that His Excellency the Governor General has chosen to

adopt this course of recommending these amendments to this Assembly. Sir, what are the public interests or the interests of the province of Bengal which require that His Excellency should adopt this extraordinary course? Sir, without our consent and without our being a party to this measure, the Bengal Criminal Law Amendment Act, that extraordinary Act, has become law, and there it is for the Government to work it as they have framed it. This measure before us is purely a supplementary Act in two respects, in which the local Legislature had not the power to pass the necessary legislation, namely, in this case the Governor of Bengal, for the local Legislature refused leave to introduce the Bill, and therefore this legislation has become an Act of the Legislature by virtue of the act of the Governor of Bengal, and by signification of the assent of His Majesty. Now, Sir, what are the amendments or supplementary provisions which this Act provides? The one substantial amendment made is in clause 8 of the Bill, namely, giving facilities of appeal and reference in the cases of persons who are convicted and sentenced under the first part of the Bengal Criminal Law Amendment Act. Sir, that is perhaps a provision which is necessary and no Government can rest content perhaps if such provisions were not found even in a special enactment like the Criminal Law Amendment Act. We saw the justice of that course and therefore, although we did not want to be a party to the Bengal Criminal Law Amendment Act in any sense or term, we allowed that clause to pass this House. The other clauses which we refused to give assent to are the clauses relating to the extra-territorial jurisdiction under which these unfortunate persons, who are going to be arrested and detained and not brought to trial, will be sent out of the province. What is the public interest of the province of Bengal which is going to be served by not sending them out of Bengal? They are going to be detained and confined at the pleasure of the Executive, at the pleasure of the police, naturally no doubt endorsed by the head of the Government. They can be detained in that big province of Bengal in any jail whatsoever. But what is the interest within the meaning of section 67B under which His Excellency has chosen to act in this case, and under which he proposes to take the further step of certification, I take it. What is the interest of Bengal which requires this extraordinary action on the part of the Governor General of India? What will be the harm done if these people are detained only in Bengal in the numerous jails of which there are plenty in that province? Now that is one aspect of the amendment. And I ask my English friends to take note of this because they are lovers of liberty, because they made war in defence of the liberty of nations, big and small. I ask my European friends to take note of this, what is the other amendment which His Excellency the Governor General, ex-Lord Chief Justice, thinks is necessary to be made in this Criminal Law Amendment Act? It is to deprive the High Court of that very small, and not altogether effective power of examining the case of any person who has been arrested under this Act and detained without being brought to trial. Is it that the Bengal Government are afraid even that this shaded light of the High Court should not penetrate the dark corners of the action of the Executive in this matter? What is the fear of the Executive of the High Court? Why are they afraid of their own High Court in which you have got eminent judges? All that the High Court can do under section 491 of the Criminal Procedure Code is to call for the record, or rather to call upon the officer who detained the person without trial to show that the detention of the person is not illegal or improper. Sir, what is the great harm that will be done if the High Court do exercise that power in this case? Is this the action of a British

[Mr. M. A. Jinnah.]

scheme and design. They wish to persist in that policy obstinately, and I say once more on the floor of this House that you will regret it and you will create more trouble than you imagine.

Mr. O. Duraiswami Aiyangar (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, the treatment which was accorded by this Assembly yesterday to this supplementary black law was just what it deserved. This kind of piecemeal legislation, introducing a portion in the local Council and another portion in the central Legislature, to achieve but one aim is novel and unprecedented. This Assembly by its vote on the Resolution regarding the Bengal Ordinance invited the Government of India to introduce a measure of suitable legislation in the Central Legislature to meet the necessities of a situation alleged to have arisen in Bengal and to have necessitated the promulgation of an Ordinance. Just at the same time as this Assembly was discussing the Ordinance a recommended Bill called the Bengal Criminal Law Amendment Act was being rushed through in the Bengal Council. It was not then too late for the Government of India to get that Bill withdrawn so that they might take prompt steps early in this session of the Assembly to introduce a full piece of legislation which, while superseding the Ordinance, might have made some suitable provisions for meeting the situation in Bengal in a civilized manner. It is a mystery why the Government of India fought shy of the Central Legislature with a calmer atmosphere and a tame Council too. The Local Government would not have introduced the Amendment Act without consultation with the Central Government. Between the two Governments together it must have been pretty clear that the Bill of the local Council should have become incomplete without the aid of the Central Legislature to give a fresh life to the short-lived Ordinance. Inasmuch as the Ordinance was on the field there was no hurry for any kind of legislation in the local Council, especially as the Central Legislature has been in session from January. The Governments of India and Bengal having together adopted a novel procedure the Central Legislature was called upon to deal with only a supplementary fraction of a grave piece of legislation yesterday in this Assembly.

Coming to the merits of the several provisions of the Bill presented to the Assembly one finds that the only redeeming portion of it is the right of appeal granted to the comparatively smaller number out of those who may become victims to the local Act. It provides for a right of appeal to those who are actually tried and convicted by the Court of Commissioners. But the mischief contemplated by the Supplementary Act is so enormous that the right of appeal to a few becomes quite a negligible factor.

Clause 6 of the Bill is the prince of clauses in this little referendum. By this provision the Bengal Criminal Law Amendment Act was sought to be added to the list of excepted Regulations under clause (3) of section 491 of the Code of Criminal Procedure. In other words the privilege of the highest court of judicature of the province to issue a writ of *habeas corpus* for protecting against improper, illegal or inordinate detention of a King's subject is sought to be taken away. Apart from the question of compensation paid thereby to a High Court, there arises the legal and constitutional question whether such a right can be taken away. For the protection of the liberty of the King's subject two writs are absolutely essential under any civilised constitution, namely, a writ of *habeas corpus* and a writ of *Homine Replegiando*. We are now concerned with the writ

of *habeas corpus* which after all is not as perfect under section 491 of the Criminal Procedure Code as it is in all civilized countries. By successive *habeas corpus* Acts, namely, 16 Charles I, c. 10, 81 Charles II, c. 2 and 56 Geo. III, c. 100 personal liberty was completely safeguarded. Blackstone says:

"To bereave a man of life, or by violence to confiscate his estate without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole kingdom; but confinement of the person, by secretly hurrying him to gaol where his sufferings are unknown and forgotten, is less public, less striking and therefore a more dangerous engine of arbitrary government."

It is a well-established rule of law that the Habeas Corpus Act can be suspended only when in cases of rebellion or invasion the public safety may require it. A reference to the judgment of the Supreme Court of the United States in the famous case *ex-parte Milligan* will throw a good deal of light on the principles. A few extracts from the judgment of Justice Davis in that case will be of great educative value. To understand the question, the facts of that case may be briefly stated. The Congress of the United States suspended the writ of *habeas corpus* in the solitary instance of the Act of March 3, 1868, providing that,

"During the present Rebellion the President of the United States, whenever in his judgment the public safety may require it, is authorised to suspend the privilege of the writ of *habeas corpus* in any case throughout the United States or any part thereof."

Under the authority conferred by this Act President Lincoln issued a proclamation suspending the writ of *habeas corpus* throughout the United States under certain circumstances. Lampkin P. Milligan was tried and convicted before a military commission in Indiana for offences amounting to treason and sentenced to be hanged. He applied for a writ of *habeas corpus* and obtained his discharge. Now I cull a few passages from the judgment:

"No graver question was ever considered by this Court nor one which more nearly concerns the rights of the whole people; for it is the birthright of every American citizen when charged with crime to be tried and punished according to law."

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour and to have the assistance of counsel for his defence."

"No doctrine, involving more pernicious consequences was ever invented by the wit of man than that of any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the Government, within the constitution, has all the powers granted to it which are necessary to preserve its existence."

"If, in foreign invasion or civil war, the courts are actually closed, and it is impossible to administer criminal justice according to law, then, on the theatre of active military operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority, thus overthrown, to preserve the safety of the Army and the society. . . . Martial rule can never exist where the courts are open and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of the actual war."

In the light of these observations let us judge the situation in Bengal and the necessity for the suspension of the writ of *habeas corpus*. Is Bengal in a state of civil war or a sweeping rebellion? Are not the ordinary courts functioning without an interruption? Are the ordinary

[Mr. C. Duraiswami Aiyangar.]

law of the land and the machinery for the enforcement of the same impeded in their efficient operation? Is the High Court of Bengal incompetent to judge whether or not a particular case is fit for protection by a writ of *habeas corpus*? Is the liberty of an Indian subject not so sacred as that of a King's subject in Great Britain? Sir Alexander Muddiman did not make even an honest attempt to justify the suspension of the writ of *habeas corpus*, a matter whose gravity and importance were wholly ignored. The Legislative Assembly was fully alive to the fact that the Bill gave it only a Hobson's choice. Still it took the only course, namely, allowing the clause relating to the appeal alone to stand and voting down all the black articles of the Bill.

Sir, let us next see how the back-ground of the supplementary Bill stands, for there can be no law to supplement an unsound law. The Bengal Criminal Law Amendment Act, 1925, has become a full-blown Act by the assent of His Majesty. Still, if it is inherently *ultra vires* of the local Council, if even otherwise that Act is intrinsically an erroneous measure, then the Assembly could not countenance it even remotely. Its object is stated to be the continuance and commemoration of the Bengal Ordinance. Section 1 (2) of that Act runs as follows:

"This Act shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, direct."

What is the full statutory implication of this provision? It enables the Local Government to notify that the Act is put into operation, fixing any date, even before the death or collapse of the Ordinance. It may be remembered that the Ordinance is now in force and will be in force till the 25th April 1925 as all the chances of its supersession are now over. Reading sections 67, 72 and 80A of the Government of India Act together, it will be clear that the only authority that can supersede, control, amend or alter an Ordinance once promulgated is the Central Legislature. I pointed this out in my remarks on the Bengal Ordinance Resolution on the 28th January 1925. In view of this fact the Local Government of Bengal cannot give effect to the local law on any date it pleases. Suppose the said clause said "It shall come into force on the 1st of April", the entire Act will become illegal. It makes no difference in principle that the clause enables the Local Government to fix a date after the 25th April or that the Local Government may fix only a date after 25th April. . .

Mr. President: Consideration of the provisions of the local Act is only in order in so far as it refers to the powers under clauses 4, 5 and 6 of the present motion. The Honourable Member cannot roam over the whole field of the local Act; he must confine himself to the provisions of these three clauses in so far as they may relate to the local Act.

Mr. C. Duraiswami Aiyangar: I am only pointing out to the House, Sir, that this being a supplementary Act, a supplementary Act cannot be sanctioned by this Assembly unless the Act which it supplements is a legal and enforceable Act and therefore it is that I am bringing out briefly the provisions of that Act, in order to point out that it is an illegal Act. The Act is to supplement that illegal Act. If, Sir, the Chair should rule that after these amendments are passed and the Bill is taken up for being passed into law it will be time for me to move this portion of the matter, I am perfectly willing to wait till then. But, if on the other hand, the Chair

agrees with me that the principle of this Bill cannot be separated from the principle of the Bill which it is asked to supplement, then I submit I am in order

Mr. President: The Honourable Member, for the purpose of this discussion, must assume that the local Act is a legal Act. The motion made by the Honourable the Home Member covers clauses 4, 5 and 6, as they originally appeared in the Bill; and the debate is confined to them.

Mr. C. Duraiswami Aiyangar: I submit, Sir, with reference to that point that if there is a legal Act under which a man is arrested, the Court may not have power to release him under a writ of *habeas corpus*. If the Act is improper, the power of *habeas corpus* must be retained. Therefore, I am justified in pointing out that that Act being an improper and illegal Act, the power of *habeas corpus* must be provided for by the present Bill. May I continue, Sir?

Mr. President: The Honourable Member is confusing political undesirability with actual illegality. The two things are not necessarily the same.

Mr. C. Duraiswami Aiyangar: I am pointing out to the Chair the illegality of the Act and that it is *ultra vires* of the Bengal Council altogether.

Mr. President: If the Honourable Member really wanted to take objection on the ground of the illegality of the original Act, he ought to have done so on the introduction of this measure to show that it was founded upon an Act which was *ultra vires* in the local Legislature. It is now too late to take that point.

Mr. C. Duraiswami Aiyangar: May I suggest, Sir, that according to the practice of this House, the Chair is allowing the general principles of the Bill to be discussed at the third reading of the Bill when it is passed into law.

Mr. President: This is not the Third Reading.

Mr. C. Duraiswami Aiyangar: I will confine myself to the illegality of it, and not the political impropriety of it. In the interpretation and legal effect of a statute it is not what a particular authority in its wisdom may do or not do that matters but what the statute itself empowers one to do. In this view the operative clause of the Bengal Criminal Law Amendment Act is illegal. The power conferred on the Local Government to put the Act into operation even if the Ordinance had not exhausted itself or been superseded by the proper authority vitiates the Act itself.

In this connection section 25 of the Act may also be noticed. The title of this section is "Effect of the Act". Though a marginal note is not legally a part of an enactment, still it indicates the nature of the provision. This section runs as follows:

"Where prior to the commencement of this Act, anything has been done or any action has been taken under the provisions of the Bengal Criminal Law Amendment Ordinance, 1924, which thing or action might have been done or taken under the provisions herein enacted *had this Act commenced on the 25th October 1924*, such thing or action shall be deemed to have been done or taken under the provisions of this Act and every consequence which would have ensued if *this Act had commenced as aforesaid* and such thing or action had been done or taken thereunder shall thereupon ensue in all respects as if *this Act had so commenced and such thing or action had been so done or taken.*"

[Mr. C. Duraiswami Aiyangar.]

Sir, this provision of section 25 of that Act clearly makes out that the Bengal Criminal Law Amendment Act is an act to supersede the Ordinance itself in such a way that it is entirely opposed to the Government of India Act. This section gives a retrospective operation to the Act so as to enable it to adopt and assimilate all that has been done under the Ordinance. This is controlling the Ordinance itself, or it may be taken as a power to override the Ordinance. Then again, it is also imaginable that this Act may take effect some days and months too after the Ordinance elapses. Those who have been arrested under the Ordinance might still be continued under detention, even after the 25th April 1925. If the new Act takes effect say on the 1st May, 1925, it has the effect of legalising the interim illegal detention or wrongful confinement as the Act shall be treated as though it commenced on the 25th October, 1924 and as though all who were arrested under the Ordinance were arrested under this Act. Hence it is clear that section 25 of the Act is illegal and mischievous. Can it be that these provisions together point to a view on the part of those who have been responsible for the local Act that thereby the Ordinance may be replaced by this Act? Such a view is also traceable to the speech of His Excellency Lord Lytton at St. Andrew's Dinner. But that is opposed to the main provisions of the Government of India Act.

I am tempted to go back to section 1 clause (2) and to point out another consequence that may flow from it. Suppose by the 26th April, 1925, from which date alone the Bengal Criminal Law Amendment Act can be given effect, the political horizon in Bengal gets clear and the Local Government sees no necessity to use this new weapon, then there will be no notification of effect for the time being. All the same, the local Act with its supplement will be kept in some pigeon hole in the Statute Chamber. Ten or fifteen years hence the Local Government may again imagine a situation arising when there may be a requisition for these Acts. Then the Local Government will have no need for approaching any legislative body with an explanation of the situation and a request for legislation. They have simply to wake up a sleeping Statute, remove or not remove even the dust on it and issue a notification putting it into operation. It will take effect and have a life of five years from that date. It will be another Bengal Regulation III of 1818. Therefore, Sir, if this Assembly now countenances this piece of monstrous legislation, it will be answerable to the future curse of the people of Bengal too. Hence the duty of this Assembly to-day is perfectly clear that it must oppose this Bill.

Sir, there is one more point that I may refer to. The local Act contains a special rule of evidence a rule of evidence of which the Honourable Sir Alexander Muddiman has been very much enamoured. In reply to my remarks on the Resolution moved by me about the Bengal Ordinance, Sir Alexander Muddiman said:

"The first part provides a special form of trial and lays down rules of evidence to which my Honourable friend appeared to take the greatest objection. I must confess I was surprised at it. I should have thought that a provision to enable evidence of a murdered witness to be laid before the Court was a provision that I should have had no difficulty in defending before any Assembly."

Sir, I fully sympathise with his sad confession. I wish to know the precedent for admitting such evidence. (Compare sections 32 and 33 of the Indian Evidence Act and sections 509 to 512 in the Code of Criminal Procedure.) Further, the special rule of evidence enacted in the Ordinance as well

as the local Act covers cases of living persons—persons within the reach of the Court too, but it was designed to meet the wishes of Lord Lytton who said :

“ I have finally decided not to produce any witness before a Court unless his safety is guaranteed if he speaks the truth.”

Who is to guarantee this safety if not His Excellency himself?

Turning to the legal aspect of the provision, this rule is enacted only in the local Act which does not bind the High Court. If the High Court hears an appeal on a decision based on such a rule of evidence, is the High Court not entitled to reject such evidence?

Sir, considering the inequitous and illegal provision of this Act this Assembly is clearly bound to oppose the passage of this Bill except in the form in which it was put by the vote of the Assembly yesterday. Nevertheless I know this Bill will become law in the course of 24 hours. But then it is in the fitness of things that a recommended local Act must have a recommended Central Act to buttress it.

That, Sir, will be our sole consolation.

Pandit Motilal Nehru (Cities of the United Provinces: Non-Muhamadan Urban): Sir, I should like to say only two words about this motion. I should have preferred to say nothing at all and record my silent vote which would have been as eloquent as any number of speeches that I can make, but as some Honourable Members have spoken, I feel, Sir, that I should take this opportunity to make one or two observations.

Now, Sir, the first observation that I have to make is this. We have been asked to-day to do what we refused to do yesterday, and we are being asked to do so with a loaded pistol pointed at our heads. We are now given to understand that the provisions we have rejected must ultimately find a place in the Act. Sir, I have only to ask the House whether there is any Member of it so devoid of self-respect as to do some thing which it does not like when a loaded pistol is pointed at his head, something which he would not otherwise have done and which he has shown that he did not like to do by his vote yesterday.

The next point that I wish to urge is this. I took it upon myself yesterday to say that the principal object of this supplementary Bill was not to give a right of appeal, but that under cover of a very shadowy, unsubstantial right of appeal what was really aimed at was to deprive the subject of what little protection he enjoyed under the existing law. To-day, Sir, the cat is out of the bag. It was only a speculation yesterday: to-day it is a proved fact. My Honourable friend, the Home Member, in the Statement of Objects and Reasons appended to this Supplementary Bill said that the principal provision of the Bill was clause 3 which gave this right of appeal, and in his speech also he referred to that clause as the principal clause. That principal clause has been allowed to be passed by this House. But what do we find? The Government are not satisfied with that. Clauses which were supposed to be only subsidiary clauses are now being forced down our throats by a recommendation from His Excellency! They have now become essential because, otherwise this procedure would not have been adopted. Now, Sir, I ask the House whether under these circumstances it would permit these clauses, which according to the Government were not so essential as the right of appeal to be passed over their heads in the manner that is proposed to be done? I have nothing more to say; but I again repeat that it is a disingenuous attempt on the

[Pandit Motilal Nehru.]

part of the Government to deprive the subject of a right which is recognized now in England and elsewhere to be one of the elementary rights which every free citizen of every country has, namely, the right to obtain a writ of *habeas corpus*. That was the real object, and that object this House I am perfectly certain will not allow the Government to achieve.

Mr. M. C. Naidu (Burma: Non-European): Sir, I rise to support the Supplementary Bill. (*Cries of "Shame, shame."*) I know you will say that—never mind. I am glad that I have been fortunate to catch your eye to-day, though I have been trying in vain for the last few weeks. Nothing has impressed me more in the course of the debate—(*An Honourable Member*: "Who wrote the speech for you?"). These are notes made by myself. Nothing has impressed me more in the course of the debate on the issue of the Ordinance in all that I heard a few days ago and what I have heard yesterday and to-day, than the reality of the dangers which threatened the public safety, the safety of the State, in Bengal. (*Inaudible interruptions.*) I know all these things, I have heard enough of such things in this House. I do not want to be bullied by you.

Mr. President: The Honourable Member must address the Chair. If he is interrupted too much, I shall protect him.

Mr. M. C. Naidu: The facts recounted in the speech of the Honourable the Home Member a few days ago regarding the conspiracies and revolutionary movements in Bengal have not been seriously questioned then or even yesterday and to-day. (*Several Honourable Members*: "Question.") Those facts have indeed been supported by the admission of the Honourable Mr. Bipin Chandra Pal the other day of the existence of disturbances in Bengal. In my opinion, Government have proved the existence of an emergency which justified His Excellency the Governor General in Council in exercising the powers conferred on him. (*An Honourable Member*: "You know nothing.") It was the duty of Government to protect its peaceful citizens at all costs, even at the cost of this exceptional legislation. His Excellency is a most eminent lawyer and a liberal minded statesman, and the facts that His Excellency and the Executive Council accepted the necessity of the Ordinance and that His Excellency found the necessity of this Supplementary Bill, knowing fully well what *Habeas Corpus* is, are to me powerful arguments to show that the measure was unavoidable. (*An Honourable Member*: "You know nothing about the *Habeas Corpus*.") I know everything about the *Habeas Corpus*.

Mr. President: Order, order.

Mr. M. C. Naidu: It was said the other day that before promulgating this Ordinance Government should have placed the facts before this House during the last September session. On the other hand, Sir, Government have informed us that at that time the papers were incomplete, and that consultation with the Assembly would have defeated the ends for which the Ordinance was issued. I see no reason why this explanation should not be accepted. Another charge which has been brought against the Ordinance the other day is that, under it, innocent persons as well as guilty persons may have been arrested. My Honourable friend Pandit Motilal Nehru had stated the other day that many Swarajists were arrested when no lead or powder was found in their possession. Sir, such arrests

of innocent persons are not confined to action taken under Ordinances. They are common enough under the ordinary law of the land. (Hear, hear.) Are not warrants issued for the arrest of persons merely on the sworn statements of complainants, their accusers? It is only in exceptional cases that a magistrate calls for any further evidence than that of the complainant. Such persons, however, if they are really innocent, have their remedy later, and there is no reason to believe that innocent persons arrested under this Ordinance will not likewise have a similar remedy open to them.

It is not, I do not believe it is, the intention of Government to arrest innocent persons. (A Voice: "You are not the Government.") The machinery with which Government work, the machinery of the police, may be defective, and it is possible that, through wrong information of the police, an innocent man may be here and there arrested. I do not think it would be just to place the entire blame upon the Government for these acts of their agents, and so to condemn the Ordinance and this Supplementary Bill out of hand. (Inaudible interruptions from several parts of the House.)

Mr. K. Ahmed: Sir, should we have consistent and insistent interruptions like these

Mr. President: Order, order. Is the Honourable Member from Bengal rising to a point of order?

Mr. K. Ahmed: Yes, Sir.

Mr. President: What is it?

Mr. K. Ahmed: There are these consistent and insistent interruptions raised on this side and that side by a handful of people who are objectionable Members of this Assembly

Mr. President: The Honourable Member from Bengal seems to have forgotten the proverb that those who live in glass houses. Mr. M. C. Naidu.

Mr. M. C. Naidu: Though I find that other sections of opinion in this House are opposed to these views of mine, and have voiced their opinions with great force and eloquence, I do not think, Sir, that this country can be run by oratory alone. For action in an emergency like the present, I prefer the guidance of His Excellency and his advisers, provided I am convinced, as I am in this case, that they have acted sincerely, honestly, and on a due consideration of all the circumstances. I therefore support

the action taken by His Excellency and the Executive and I would point out that the interests safeguarded by this Ordinance include, as no small part, the interests of this very Assembly itself. After all, what has the honest man to fear from the existence of this Ordinance or other laws of a similar nature? The ordinary man who lives within the law never comes into contact with them. They do not affect the life of the law-abiding citizen. Sir, I think the Government are on the whole sympathetic to our natural and national aspirations. (*Honourable Members:* "Question.")

Mr. V. J. Patel (Bombay City: Non-Muhammadan Urban): Sir, on a point of order

Mr. President: I understand the Honourable Member (Mr. Patel) wishes to raise a point of order. Mr. Patel.

Mr. V. J. Patel: I understood your ruling to be that we are not allowed to discuss the Bengal Criminal Law Amendment Act, which my friend is discussing. We are merely concerned with the three clauses which are proposed to be introduced by the recommendation. My friend is dealing with the whole thing.

Mr. President: The Honourable Member did not think it fit to raise that point of order when the Honourable Member from behind (Mr. Duraiswami Aiyangar) was speaking.

Mr. M. C. Naidu: Sir, Government are on the whole sympathetic to our natural and national aspirations. (*Voices: "Shame, shame"*), that they are earnestly desirous of removing our legitimate grievances if properly placed before them and that they do not interfere with our lawful avocations. I therefore support the provisions of this Supplementary Bill as recommended by His Excellency. (*Cries of "Shame, shame."*) There is nothing strange in these cries. It is what I expected.

Mr. Bipin Chandra Pal (Calcutta: Non-Muhammadan Urban): I desire, Sir, as representing the capital city of the province which has been smitten by this law, or is going to be smitten by it, to say a few words. In the first place, I thank the representatives of the other provinces for the hearty and unstinted measure of support which they have given to public opinion in Bengal in regard to these repressive measures. In the next place, I hope my Honourable friend opposite, the Leader of the House, will allow me to congratulate him upon the support which he has just received from the Member for Rangoon. (*An Honourable Member: "Burma."*) Burma is in Rangoon. (*Loud Laughter.*) (*An Honourable Member: "Bengal is in Calcutta?"*) In a sense I think Bengal is Calcutta, as Paris is France and England is London. In that sense, I think Rangoon is Burma. In any case, more light has come from Burma upon these Regulations than we have had till now. Now, Sir, I am not a lawyer and I will not dabble in law. But I have all my life been something of a humble politician and I desire this House to approach this question from the politician's point of view, and what is that point of view? We want peace no less than my friend opposite and the Government which he represents. Disorder hurts us more intimately than it hurts them. It hurts us in two ways. It hurts us in the first place by the action of those who bring about the disorder; in the second place, more intimately, more keenly, it hurts us by the action of the Government in trying to meet this disorder. This is no new story in Bengal. This story of political criminalism or revolutionary patriotism is an old story, 20 years' old; and you have tried not once, but repeatedly, to meet the roused brute force in my people by the organised brute force of the Government; and when brute meets brute humanity is lost and you are killing the humanity of my people by the application of the organised brute force of your irresponsible government to put down what originally was and may continue to the end to be only a legitimate movement for working out the problem of political freedom of a dependent nation. That was what you did and I ask you to consider the result of it. Bengal was quieting down. You applied this law in October and from October to March I think it is quite one full half year. Have you had any trouble in Bengal during these six months? It will be said—I know your reply—because of the Ordinance there has not been any trouble in Bengal. But you had these Ordinances, you had these arrests and detention without proper, legal, judicial trial in 1905, 1906, 1907, 1908, 1909, 1910, 1911. Did it frighten Bengal? Bengal was not

frightened. No province will be frightened by repeated repression. When you try it first, people may lose their nerve for a while but the more you try repression the people get more and more reckless, and that is the situation in Bengal to-day. And what will be the result of your present action? Your Act did not provide against the appeal to the High Court for the issue of a writ of *Habeas Corpus*; and, as has been pointed out, you want to deprive the people of Bengal, those who may be taken up by your new lawless law, from appealing to the High Court for this writ of *Habeas Corpus*. You may do it, you will pass it, by certification. I am not, Sir, in favour of a policy which will force the Government to certify anything and everything, but when you come up to us with an outrageous law like this and you say, "Unless you pass it, we will certify," all the answer that we can give is: "Go ahead and certify this law, certify every other law, rule this country not by constitution, but by certification." (At this stage the Honourable Member having raised his voice, Mr. W. S. J. Willson, who was sitting next to him, put his hands to his ears.) (Laughter.) I am sorry, I am very sorry for my Honourable friend. Well, the thing is this, the Government are so deaf,—(Laughter)—and the supporters of the Government are so deaf, that you have to hammer your words into their ears with a view to get a hearing from them. Now, the whole question is this. Are you going to rule this country by certification? You may try it, others tried it before. These measures of repression have never in history successfully controlled sedition or revolution. On the contrary it is the universal verdict of history that wherever Governments have tried to put down legitimate movements of freedom in the people by brute force, the result has been that force met force; the latent force of the people is quickened into activity by the repressive and oppressive laws and measures of the Government. This is the verdict of history. And I want you to take note of it. You may say that Bengal is not France, Bengal is not England either, of the reign of the Stuarts, Bengal is not Russia. You tried that; you fancied that at one time the Bengali was a race of cowards. From Macaulay downwards you always twitted us with our cowardice, and what is the result? Bengal has proved that it is not cowardly. Bengal has proved that even a Bengali youth can command the quality of physical courage and face death without flinching and you are out for more trouble in Bengal. I say it not to frighten you because I know you will not be frightened until you face the consequences, the physical consequences. You lack imagination. If you had imagination, the history of British India might have been written differently. If you had imagination, the history of Bengal might have been written differently. If you have imagination even now, the course of political evolution in India may take a very different line than what you are forcing it to. I am not a revolutionary and I do not believe in physical revolt or revolution, and I say this not out of regard for your susceptibilities or for my own skin, but I say it because I know the freedom that may be won through revolution will not come in the shape of democratic Swaraj but in the shape, at least in the intermediate stage, of a military despotism. I do not want it. Therefore, I am not for revolution. But if you force a revolution upon Bengal, if you force a revolution upon India, not even my Honourable friend—where is the Captain Sahib? (*Sardar Bahadur Captain Hira Singh Brar*: "I am here.") Not you, Sir, but your referee, whom you referred to yesterday as being capable of putting six of us in his pocket. I am always glad to look back to my old friend. Now, Sir, this will not do. This brandishing of the sword will not put down revolt because it is really not a physical but a moral revolt, it is an intellectual revolt and a spiritual revolt. And

[Mr. Bipin Chandra Pal.]

remember this that these conspirators, this handful of young Bengalis, who are charged with using bombs and revolvers, are not the disease themselves, they are the symptoms of a deeper and wider disease. There is a spiritual revolt in India; there is a moral revolt in India; there is a mental revolt in India. This moral rebellion has spread from the classes to the masses and it covers the whole country. And unless you can meet it properly, as happened in the past it will happen here again—from moral and spiritual revolt always grows physical revolt. That is the history of the Puritan movement. That is the history of the freedom movement in America. That is the history of the freedom movement in France. Therefore take care of this moral, intellectual and spiritual revolt which is already out in the country and try to meet it half-way and conquer it by moral and intellectual instead of by physical force. Do not bring out your organised brute forces to crush this moral revolt.

One word more, Sir. Many years ago I met an English friend. He was a member of the Christian Church and we were talking about British justice under which we were brought up. The generation to which I have the honour to belong was brought up—not the younger people who have come behind us but the generation to which I have the honour to belong—in the traditions of British justice. It was the tradition of British justice as we were taught by your books and by your history. It was the tradition of that British justice that made us loyal to the British connection. We were talking about that British justice and I told my friend that people were losing their faith in British justice. This English Christian gentleman replied: "When the people of India lose their faith in British justice, then after that the deluge." And that is what I want to tell the Honourable the Home Member and all his colleagues.

Several Honourable Members: I move that the question be now put.

Pandit Madan Mohan Malaviya (Allahabad and Jhansi Divisions: Non-Muhammadan Rural): Sir, I think that the occasion requires that we should give expression to the feelings which are surging in our hearts on the motion that has been brought before the House by the Honourable the Home Member. I wish, Sir, to say briefly that, while many of us feel disappointed that the Government should have taken the course which they have taken, to some of us at least it seems that there is the hand of Providence in the course which the Government are pursuing. I feel that probably the result will show that it is good for India that the Government have adopted the course which they seem to have decided upon. Before the Reforms were introduced, in this very House, the Rowlatt Bill was introduced. It was debated for weeks and the Government passed it by the majority which they commanded at the time. All the Indian Members, the most senior as well as the most junior, united in their protest against the Rowlatt Bill. Almost all the amendments which were moved were rejected. The appeal of all the Indians in the Council was disregarded. The Rowlatt Bill was passed into an Act. But it remained a dead letter. The Government decided not to put it into force. I do not reveal a secret when I say that the then Viceroy, Lord Chelmsford, shortly after the Bill was passed, said: "They have killed the Bill. I am not going to put it into force." That was the result of the united opposition shown to the Rowlatt Bill. Things have changed. The Reforms have now been introduced. The Great War has passed away. The people of India had expected great constitutional changes and much

more freedom than they enjoyed before. The Government of India Act of 1919 governs us now. The provision which it makes to meet a situation when the Legislative Assembly might not pass a Bill which the Government desire to pass is to be found in section 67 B. It says :

"Where either chamber of the Indian legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the Governor General may certify that the passage of the Bill is essential for the safety, tranquillity, or interests of British India or any part thereof."

and then it lays down what will happen. Now, Sir, the Government do not command a majority in this House under the new constitution. The majority rejected the Bill yesterday and His Excellency the Viceroy has been advised to recommend to this House that this Bill should be passed. The recommendation of His Excellency is contained in the following words :

"In pursuance of the provisions of sub-section (1) of section 67B of the Government of India Act, I, Rufus Daniel, Earl of Reading, do recommend to the Legislative Assembly that it do pass the Bill to supplement the Bengal Criminal Law Amendment Act, 1925, in the form hereto annexed."

The essential part of the certification is wanting in this declaration. The essential part of the certification required under the law is that the passage of the Bill is essential for the safety, tranquillity or interests of British India or any part thereof. I submit, Sir, that omission is significant.

The Honourable Sir Alexander Muddiman: I am loth to interrupt the Honourable Member but may I point out to him that he was reading the words which are required for certification. No such words are required for recommendation.

Diwan Bahadur T. Rangachariar: He may not certify it yet.

Pandit Madan Mohan Malaviya: I am sure my Honourable friend will agree that I have correctly read sub-section (1) of section 67 B of the Government of India Act. It says the Governor General may certify—

An Honourable Member: Not certify; it is a recommendation.

Pandit Madan Mohan Malaviya: Yes, I thank you. He recommends that we do pass the Bill in the form hereto annexed. Now, Sir, His Excellency the Governor General has been persuaded to recommend to this House that this Bill should be passed in the form recommended. This is the prelude to certification. Why has this course been adopted? Because the Government have not a majority of votes at their command in this House. What then is the result? Before the Reforms took place the Government had to depend upon the majority of the votes which they commanded. Now the Government rely upon a recommendation by His Excellency the Viceroy and wish by following that course to ride rough shod over the votes of this Assembly. That is what it comes to. And what will be the consequence, Sir? What will be the result? The large section of the public who were sceptical in the matter of the Reforms, who urged from the beginning that the Reforms were inadequate and unsatisfactory will have the seal of the action of His Excellency the Governor General placed upon their contention that the present constitution is unsatisfactory and inadequate. It should have been expected that, in a matter of this description affecting law and order and security and public peace, when the elected representatives of the people in this Assembly unitedly or nearly unitedly opposed a measure of the character that is now in question, the Government would abstain from taking any action in regard to that matter. But the Government are going to ignore the voice

[Pandit Madan Mohan Malaviya.]

and the votes of this Assembly, and what was yesterday rejected by the Assembly it is sought to enact under the powers which are conferred upon His Excellency the Viceroy. The result is that the whole country will know the exact way in which India is governed. Parliament will know, the whole civilized world will know that the constitution really places absolute power in the hands of the Viceroy, subject of course to the provisions of the section which come later on, for this Bill being placed before the House of Parliament, but that it places absolute power in the hands of the Viceroy if after he has recommended that a Bill should be passed, if the other House also does not pass it, certify, even in a time of peace, that the Bill is required in the interests of public safety and tranquillity, and the Bill will become law. I submit this is very unsatisfactory, but there is one ray of hope and that ray of hope is that the constitutional position being disclosed in its naked form, those English gentlemen who used to recommend to Indians to go on working the reforms for some time in the hope that further reforms would come in due time, will feel that the constitution stands exposed and that it stands exposed by the action of the Governor General himself. In that view, Sir, I hope that this evil may prove to be good in another form. I hope that it will lead to such an agitation in the country that the reform of the constitution will not be delayed very much longer. In that hope I must content myself to rest to-day. I raise my voice against the course which the Government have pursued because I consider it is an unconstitutional course, though it is within the constitution, because I consider, Sir, that it is an outrage upon public opinion in India, that while the elected representatives of the people in this House have opposed a measure like the one before us, the Government should seek to pass it in the manner in which they are doing in times of peace.

A few facts relating to this Bill will show clearly the position of Indians. The Ordinance was introduced in Bengal nearly six months ago. The Ordinance was introduced, not because there was any crime rampant at the time. It was introduced at a time when the need for it was not obvious. It was introduced at a time when the action of the Swaraj Party in the Bengal Legislative Council had irritated the Government, when the Government could not deny that it had been irritated by the action of the Swarajists. The 96 odd members who are arrested, who have been kept under detention for these six months contain a very large number of Swarajists. They contain among them men of distinction, men of education, men of light and leading in the community. The Ordinance was passed. Some months after that, the Government of Bengal tried to pass an Act in the Bengal Legislative Council to replace the Ordinance. The elected representatives of Bengal rejected the Bill. His Majesty's support was asked for it under the constitution and it has been obtained. The Bill has thus become law. And now the present legislation intended to supplement that law is placed before this Council. Now, Sir, the whole situation is such that there is reason to urge that the Government have not shown a clear necessity for the legislation. Government have not brought one of these 96 men to trial during these six months so far as I understand. A question was asked yesterday regarding it and no answer was given to it by the Honourable the Home Member. I therefore assume that not a single one of the men who have been kept under detention under the Ordinance for the last six months has been brought to trial. They are not men of inconspicuous positions. If the Government had any case against them, the Government ought to have tried at least some of them by this

time. Instead of doing that, the Government are endeavouring by the process of certification to perpetuate this law for the longer period of five years. I cannot imagine, Sir, a more regrettable course being adopted by any Government, but I hope that this course will lead to a real reform of the constitution so that it will become impossible for any Government to adopt such a course in future in the circumstances in which it is being adopted at present.

Maung Tok Kyi (Burma: Non-European): Sir, I rise with great diffidence to take part in this debate, a debate in which leaders of both parties, the Swaraja Party and the Independent Party, and such stalwarts as Pandit Madan Mohan Malaviya, Mr. Bipin Chandra Pal and Diwan Bahadur Rangachariar have taken part. The only excuse I have for taking part in this debate is the manuscript eloquence which the Honourable Mr. Naidu has inflicted upon this House. (Laughter.) Sir, at the very outset I would inform the Honourable Members of this House that he does not represent the people of Burma. You can know it from the fact that he is not a Burman. He was returned to this House by a mere fluke. (Hear, hear).

Mr. M. C. Naidu: How did you come?

Maung Tok Kyi: I was elected by nearly 8,000 electors.

Mr. M. C. Naidu: I know what you are; you are nobody. (Uproar).

Mr. President: Order, order.

Maung Tok Kyi: Sir, he stood for the election in opposition to a friend of mine, a real Burman, and that friend of mine was technically disqualified.

Mr. M. C. Naidu: What has this to do with the present debate? Don't be foolish.

Maung Tok Kyi: After what has happened during this session I am very sorry that my Burman friend was not elected. Sir, I have done with Mr. Naidu, but I want to say something about the Bill now before the House. Unlike Mr. Naidu I would oppose the motion moved by the Honourable the Home Member. I oppose it on behalf of the people of Burma. Of course we have got here other representatives from Burma. My Honourable friend Mr. McCallum is one; he represents the Government of Burma. My Honourable friend Mr. Fleming is another; he represents Europeans in Burma. But Mr. Naidu represents nobody. One of the two gentlemen who nominated him, that is Mr. Rahman, barrister-at-law, has already expressed sorrow to me. (Uproar; Mr. Naidu shouting "Are you mad?") Sir, I am not ashamed of Mr. Naidu because he is not a Burman. But my Honourable friends sitting near me, my Honourable friends from Madras, should be ashamed of him. (Continued uproar). (Mr. A. H. Lloyd: "You said you had done with Mr. Naidu.")

Now coming to the Bill before the House, Sir, this abominable Bill is one for which no true and good son of India that I know has a good word to say. The Bengal Ordinance of which this Bill is the outcome and under which Mr. Subash Chandra Bose and other Swarajists have been detained, has been universally condemned. It has done great injustice to Subash Chandra Bose and others, and the injustice done to them I take it has been done to the whole nation of India. Sir, the other day my Honourable friend Mr. Ranga Iyer pointed out, in a very eloquent speech, the injustice done under that piece of legislation to Subash Chandra Bose. I then felt that an injustice had been done personally to me; and?

[Maung Tok Kyi.]

I now feel that the injustice done to Subash Chandra Bose and others was an injustice done to the whole nation. Sir, I beg to remind Honourable Members opposite of the wise words of Mr. Gladstone: "national injustice is the surest road to national downfall." Sir, with these few words I oppose the Bill now before the House.

***Lala Hans Raj** (Jullunder Division: Non-Muhammadan): Sir, I obey the Chair but I do not think I can add anything to what my friends Mr. Pal and Pandit Motilal Nehru have said, which is enough; but I think it high time for the Government to take note of those speeches and not to send back to us this Bill.

(Cries of: "The question may now be put.")

Mr. President: The question is that the question be now put.

The motion was adopted.

The Honourable Sir Alexander Muddiman: With your permission, Sir, I only desire to say a few words on one point. I do not propose to travel over the debate which has ranged over the whole constitution nor to refer to the interchange of jocularities between two Members from the same province. The only point I wish to refer to is the contention that in the clause of this Bill which deals with *habeas corpus* we are dealing with the matter in quite a novel and terrible way. Now there has long been statutory recognition of the fact that if you have this class of legislation you must have protection from *habeas corpus*. The Code of Criminal Procedure has been on the Statute-book many years and contains such a provision in section 491 (3). Three years ago this very clause was before this Legislature. It was then recognised that if you have this kind of legislation you must make it effective. You cannot make it effective if you have to justify your arrest in the High Court. My Honourable friend Mr. Jinnah, with his customary acumen, pointed that out; he put his finger on the spot at once. This legislation may be good or bad, but if you are to work it at all you must have this clause; and that, Sir, is the sole point that remains to be made by me.

Mr. President: The question is:

"That after clause 3 of the Bill the following clauses be added, namely:

4. The power of the Local Government under sub-section (1) of section 11 of the local Act to direct by order in writing that any person shall be committed to custody in jail shall be deemed to include a power to direct, by order in writing made with the previous sanction of the Governor General in Council, that such person shall be committed to custody in any jail in British India; and, for all or any of the purposes of the local Act, an order so made shall be deemed to be an order made under section 11 of that Act and all the provisions of that Act shall apply accordingly: Provided that the powers exercisable by the Local Government under section 20 of the local Act in respect of any person committed to custody in a jail outside Bengal, and under section 22 of that Act to provide for the manner of custody of any such person, shall be exercised by the Local Government of the province in which the jail is situated, and rules made by such Local Government in exercise of such powers shall be published in the local official Gazette.

5. References to the local Act in sections 24 and 25 of that Act shall be deemed also to be references to the local Act as supplemented by this Act.

6. The powers conferred by section 491 of the Code shall not be exercised in respect of any person arrested, committed to or detained in custody under the local Act or the local Act as supplemented by this Act."

Power to order custody in jail outside Bengal.

Construction.

Bar of certain legal proceedings.

*Speech not corrected by the Honourable Member.

The Assembly divided:

AYES—41.

Abdul Mumin, Khan Bahadur Muhammad.
 Abdul Qaiyum, Nawab Sir Sahibzada.
 Ajab Khan, Captain.
 Akram Hussain, Prince A. M. M.
 Ashworth, Mr. E. H.
 Bhoze, Mr. J. W.
 Blackett, The Honourable Sir Basil.
 Bray, Mr. Denys.
 Burdon, Mr. E.
 Calvert, Mr. H.
 Clow, Mr. A. G.
 Cocke, Mr. H. G.
 Cosgrave, Mr. W. A.
 Crawford, Colonel J. D.
 Fleming, Mr. E. G.
 Graham, Mr. L.
 Hira Singh Brar, Sardar Bahadur Captain.
 Hudson, Mr. W. F.
 Innes, The Honourable Sir Charles
 Lindsay, Mr. Darcy.
 Lloyd, Mr. A. H.
 Marr, Mr. A.

McCallum, Mr. J. L.
 Milne, Mr. R. B.
 Mitra, The Honourable Sir Bhupendra Nath.
 Moir, Mr. T. E.
 Muddiman, The Honourable Sir Alexander.
 Muhammad Ismail, Khan Bahadur Saiyid.
 Naidu, Mr. M. C.
 Raj Narain, Rai Bahadur.
 Rhodes, Sir Campbell.
 Rushbrook-Williams, Prof. L. F.
 Sastri, Diwan Bahadur C. V. Visvanatha.
 Sim, Mr. G. G.
 Singh, Rai Bahadur S. N.
 Singh, Raja Raghunandan Prasad.
 Stanyon, Colonel Sir Henry.
 Sykes, Mr. E. F.
 Tonkinson, Mr. H.
 Willson, Mr. W. S. J.
 Wilson, Mr. R. A.

NOES—72.

Abdul Karim, Khwaja.
 Abhyankar, Mr. M. V.
 Abul Kasem, Maulvi.
 Acharya, Mr. M. K.
 Ahmad Ali Khan, Mr.
 Aiyangar, Mr. C. Duraiswami.
 Aiyangar, Mr. K. Rama.
 Alimuzzaman Chowdhry, Mr.
 Aney, Mr. M. S.
 Ariff, Mr. Yacoob C.
 Bhat, Mr. K. Sadasiva.
 Chaman Lall, Mr.
 Chanda, Mr. Kamini Kumar.
 Chetty, Mr. R. K. Shanmukham.
 Das, Mr. B.
 Das, Pandit Nilakantha.
 Datta, Dr. S. K.
 Duni Chand, Lala.
 Dutt, Mr. Amar Nath.
 Ghazanfar Ali Khan, Raja.
 Ghose, Mr. S. C.
 Ghulam Bari, Khan Bahadur.
 Goswami, Mr. T. C.
 Gour, Sir Hari Singh.
 Gulab Singh, Sardar.
 Hans Raj, Lala.
 Hari Prasad Lal, Rai.
 Hasanally, Khan Bahadur W. M.
 Ismail Khan, Mr.
 Iyengar, Mr. A. Rongaswami.
 Jeelani, Haji S. A. K.
 Jinnah, Mr. M. A.
 Joshi, Mr. N. M.
 Kasturbhai Lalbhai, Mr.
 Kelkar, Mr. N. C.
 Lohokare, Dr. K. G.
 Malaviya, Pandit Krishna Kant.
 Malaviya, Pandit Madan Mohan.

Mehta, Mr. Jamnadas M.
 Misra, Pandit Shambhu Dayal.
 Misra, Pandit Harkaran Nath.
 Murtuza Sahib Bahadur, Maulvi Sayad.
 Mutalik, Sardar V. N.
 Nambiyar, Mr. K. K.
 Narain Dass, Mr.
 Nehru, Dr. Kishenlal.
 Nehru, Pandit Motilal.
 Nehru, Pandit Shamlal.
 Neogy, Mr. K. C.
 Pal, Mr. Bipin Chandra.
 Patel, Mr. V. J.
 Phookun, Mr. Tarun Ram.
 Piyare Lal, Lala.
 Purshotamdas Thakurdas, Sir.
 Ramachandra Rao, Diwan Bahadur M.
 Rangachariar, Diwan Bahadur T.
 Ranga Iyer, Mr. C. S.
 Ray, Mr. Kumar Sankar.
 Reddi, Mr. K. Venkataramana.
 Sadiq Hasan, Mr. S.
 Samiullah Khan, Mr. M.
 Sarda, Rai Sahib M. Harbilas.
 Sarfaraz Hussain Khan, Khan Bahadur.
 Shafee, Maulvi Mohammad.
 Singh, Mr. Gaya Prasad.
 Sinha, Mr. Ambika Prasad.
 Sinha, Mr. Devaki Prasad.
 Svamacharan, Mr.
 Tok Kyi, Maung.
 Venkatanatiraju, Mr. B.
 Yakub, Maulvi Muhammed.
 Yusuf Imam, Mr. M.

The motion was negatived.

The Honourable Sir Alexander Muddiman: Sir, in view of the result of the division which has just been announced by you, I request you to make a certificate in terms of clause (5) of rule 86B that this House has refused to pass the Bill in the form recommended.

Mr. President: I shall so endorse the Bill.

Mr. A. Rangaswami Iyengar: May I say a word, Sir? The section under which this endorsement is sought by the Honourable the Home Member reads thus: "Where either Chamber refuses"

The Honourable Sir Alexander Muddiman: I do not wish to interrupt but I ask for a certificate under Rule 86B (5).

Mr. A. Rangaswami Iyengar: But if the rule is inconsistent with the terms of the section I am entitled to draw attention to it. The section reads thus:

"Where either Chamber of the Indian Legislature refuses leave to introduce or fails to pass in the form recommended by the Governor General any Bill"

Now, Sir, the effect of throwing out these amendments is not that the Bill has failed to pass in the form recommended. Until the Bill is actually passed by some motion or other, would it be right to say that because these clauses are thrown out, therefore this has failed to pass in the form recommended?

Mr. President: I think it must be held that the House has failed to pass it when they refused to accept the motion proposed by the Honourable Home Member. In actual fact, the House cannot now, even if it would, pass the Bill in the recommended form.

Mr. A. Rangaswami Iyengar: Of course it is for the Governor General to consider whether the certificate that you endorse is sufficient for him to enable him to certify; but so far as I can see it cannot be said that we have failed to pass in the form recommended. What we have done is to throw out the clauses which the Honourable Member said should be passed by us on the recommendation of the Governor General.

The Honourable Sir Alexander Muddiman: I merely suggest on that, Sir, that the point is one for the Governor General and not for this House.

Mr. President: So far as my endorsement is concerned, it is for the Governor General to satisfy himself that the procedure adopted is correct. As far as the procedure under the rule is concerned, I am satisfied that we have followed the correct procedure.

As I understand that the Member in charge of the Indian Penal Code (Amendment) Bill cannot be here till some time later, I propose to adjourn a little longer the usual hour, namely, till half past two.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch, at Half Past Two of the Clock.
Mr. President in the Chair.

THE INDIAN PENAL CODE (AMENDMENT) BILL.

(AMENDMENT OF SECTION 375).

Mr. President: The Assembly will now resume consideration of the Bill further to amend the Indian Penal Code (Amendment of section 375) as reported by the Select Committee.

The question is :

"That clause 3 stand part of the Bill."

Mr. Amar Nath Dutt (Burdwan Division: Non-Muhammadian Rural): Sir, the amendment that stands in my name runs as follows :

"After clause 3 of the Bill the following clause be inserted, namely :

'After section 199-A of the Code of Criminal Procedure, 1898, the following section shall be inserted, namely :

'199-B. No court shall take cognizance of an offence under section 376 of the Indian Penal Code except upon a complaint made by a person who would be the legal guardian of the girl if she was unmarried or the woman herself and in case of offenders other than the husband, by the husband also in addition to the persons named before.'

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, my Honourable friend is now moving amendment No. 16. The question is that clause 3 stand part of the Bill, but he is not moving amendment No. 12, which is his amendment to that clause.

Mr. President: Which amendment is the Honourable Member moving?

Mr. Amar Nath Dutt: I am moving amendment No. 16 that stands in my name.

Mr. President: The question is that clause 3 stand part of the Bill, and I called on the Honourable Member to move amendment No. 12 standing in his name.

Mr. Amar Nath Dutt: Sir, my amendment No. 12 reads :

"In clause 3 of the Bill the words 'and is not under twelve years of age' be deleted."

Clause 3 runs as follows :

"... unless the woman raped is his own wife and is not under twelve years of age."

I want to delete those words and my reasons are these, Sir, that there has been a distinction made between the case of a marital relationship and that of a non-marital relationship and they want to minimise the punishment in the case of marital relationship. The clause says that if the rape was committed upon a wife who is older than 12 years of age and less than 13 years of age in that case only a lesser punishment will be awarded. My amendment is to this effect that all cases of rape by a husband upon a wife should be dealt with more leniently.

Sir Hari Singh Gour: Even if she is under twelve? That is your point. Even if a husband rapes a girl of 5 he should be dealt with more leniently than anybody else?

Mr. Amar Nath Dutt: That is a thing I am not aware of and as regards those class of cases I think there are some in this House who have more knowledge of those cases than myself. In my whole career of 22 years as a lawyer I had only a very few cases under this section. Whatever that may be, such a case as interrogated by my Honourable friend Sir Hari Singh, never came to my notice, and whatever Sir Hari Singh Gour might say, Sir, I move my amendment that the words "and is not under twelve years of age" be deleted.

Mr. H. Tonkinson: Sir, I merely wish to draw the attention of the House to the retrograde character of the amendment which has been moved by my Honourable friend. At the present time if the girl is under 12 years of age it is rape punishable with the maximum punishment provided in section 376. My Honourable friend would do away with that punishment in cases even when the girl is under 12 years of age.

Mr. President: The question is:

"That in clause 3 of the Bill the words 'and is not under twelve years of age' be deleted."

The motion was negatived.

Khan Bahadur Sarfaraz Hussain Khan (Patna and Chota Nagpur *cum* Orissa: Muhammadan): Sir, I beg to move the amendment which stands in my name:

"That in clause 3 of the Bill for the word 'twelve' the word 'thirteen' be substituted."

My reasons, Sir, are very simple. I find from the Report of the Select Committee to which the Bill was referred, that almost all the members of the Select Committee are agreed that the age of consent should be raised. But unfortunately in this country social customs in the name of religion stand in the way of social reforms even when most essentially needed. No other country in the world I think takes so much advantage of religion as India in matters entirely social. In the religion of Islam there is no instruction and no time limit fixed for the marital relation. With regard to the Hindu law it will be, I think, impertinent on my part to say anything. But this I may be permitted to state that the Women's Indian Association which has 57 branches and 18 centres have thrown light on the question and I may be permitted to quote:

"The eyes of the world are to-day upon India as she is working out her plans for Home Rule, but India can never be recognised as an equal nation in the civilised world while evil customs, among which child Motherhood looms largely, prevail, and are even encouraged by the Legislatures. No cultured, civilised nation can tolerate the idea of Motherhood being thrust upon a child of 12 whether she will or no."

Sir, it is a matter that should be seriously taken into consideration, and if religion really does not stand in the way and surely the religion of Islam does not—then why not advance with the advance of the times. As far as the Hindu religion is concerned I am no doubt not an authority but here is a further quotation really no other country has taken so much advantage of religion as India in the matter of social advancement. And so since religion does not stand in the way, we may proceed with our work of reform.

specially when humanity demands that the age of the child wife must be raised. Here is another quotation :

"We cannot find that Hinduism in its original purity teaches that the Mothers of the race are to be uneducated children, but rather, thinking, educated, grown women. When this was the custom in the Vedic days of India, her people were great, and this former greatness of India can only be won back when the people return to the pure teaching of the God-given Veda, untainted by comparatively modern additions and interpolations."

Again, Sir, Islam has left the question of age to local conditions. But regarding Hinduism, it is said again :

"The chief reason for continuing the custom of child marriage seems to be based on the statement that any modification of the marriage age will be to interfere with the basis of Hinduism. We have discussed this question with learned Pundits and Shastris and are informed that the ancient Vedic teaching clearly visualised marriage as between a mature young man and woman."

Nothing can be otherwise. Hinduism cannot be otherwise; and if customs have come in and mixed themselves up with the pure religion, that is a different thing altogether. I therefore appeal to all Honourable Members, including Malaviyaji, to see that the pure Hindu religion is divorced of all these vicious customs. Further on, it is said :

"Apart from the religious aspect of the case we would appeal to you on the grounds of the well-being of the Indian people. Nobody can deny that the race is most unduly physically unfit, that there is a terrible amount of disease, suffering and premature death all over the country. This is largely due to the weakness and lack of development of the Mothers of the race, for the standard of the health and mentality of the race is always set by the Mothers and it is only when that standard is raised that India can hope once again to be a glorious and efficient people. Further, Sushruta, the highest Hindu medical authority, clearly points out the evils that occur if a child is born before the mother is sixteen and says that there should take place no consummation of marriage with a very young girl."

Other gentlemen have already raised the point with regard to this matter. Captain Hira Singh, however humorous his speech may have been, has dealt with the point and has proved to the House that early marriage has produced very weak children. As such, we especially Swarajists (*A Voice*: "Why only Swarajists?"), not only Swarajists but also Nationalists, in fact everybody, when we are looking to the welfare of India and when we are thinking of a martial race and when we are thinking of a Swaraj Government, must have our children strong and healthy and our wives strong, mature, and physically developed. I think everybody will agree with me, unless he is led away by custom, that the reform contemplated in the Bill is very necessary. As such, I commend my amendment to the House, and if it is not carried, I would heartily support the motion of my friend Sir Hari Singh Gour.

Mr. President: Amendment moved :

"In clause 3 of the Bill for the word 'twelve' the word 'thirteen' be substituted."

Diwan Bahadur T. Rangachariar (Madras City: Non-Muhammadar Urban): Sir, I have an amendment of which I gave notice yesterday and I ask your permission to move it in this connection. It is in the opposite direction to that in which my Honourable friend wants this House to go. Sir, let us remember that the offender in this case is the lawful husband of the girl. So long as marriage is not prohibited under the law between boys

[Diwan Bahadur T. Rangachariar.]

and girls below a certain age, I think it is certainly unjust on the part of the Legislature to go and impose a punishment of imprisonment in cases where the lawful husband approaches his own wife. Sir, it is against all sense to say that a husband when he approaches his wife commits a criminal offence. Not only a criminal offence, but a felony for which my Honourable friend says he should be transported for life or sentenced to rigorous imprisonment for 10 years. Does my Honourable friend recognise that? If the country is advanced to accept the position taken up by my Honourable friend, the more straightforward course for them will be to bring forward a Bill prohibiting marriages and making marriages unlawful, saying that there should be no marriage between a boy and girl under certain defined ages.

Khan Bahadur Sarfaraz Hussain Khan: Marriage is a different thing from consummation. The two things are different.

Diwan Bahdur T. Rangachariar: I do not understand your position. You make the union lawful. They are husband and wife. Here, in this country, unfortunately the climate is against us. Girls are precocious enough and boys are precocious enough. To enact a law saying that although they may be lawful husband and wife still they are committing a felony is I think a position which cannot be taken up or defended. I dare say people are courageous enough to put forward such a position. My Honourable friend Sir Henry Stanyon has appealed to the House with all his experience, with the years of experience which he has behind him, with his complete knowledge of human nature, and with his knowledge of the people of this country, to take a sober view of this matter. I ask the House earnestly to consider this position. Sir, I have said yesterday what would be the result in certain cases of sending the husband to prison. You are enacting a law to protect the girls, I take it, and their progeny. What will you be doing by sending the husband to prison? Probably the husband becomes an outcast and is never afterwards to be associated with the family. The husband and wife will have to go out of the family altogether if the girl cares to live with the husband. Having been in prison, people put them off. You cannot go and interfere with that. You cannot go and pass a law that no man shall be put out of caste whatever your social usage may be. Are you prepared to do that? Are you prepared to make it an offence if a man is put out of caste because he has been in prison? Is the Assembly going to take its courage in both hands and say that there shall be no such social usage and that it shall be illegal and unlawful? Unless you are prepared to go to that extent it will be most unfortunate if the House compels the magistrate to send a boy to prison simply because he happens to approach his wife. Sir, I said yesterday that we should not make it an offence unless the age is below 18 years. But now, Sir, the Assembly has voted yesterday for the age of 14. Remember the position of girls in our country between 12 and 14. Have we not got our daughters in our house? Have we not got our sisters in our house? Remember that, and remember your own neighbours. Remembering our habits, remembering our usages, remembering the precociousness of our youth, remembering the conditions of the climate, remembering the conditions of the country. I ask you to give your weighty judgment in this matter. Are you prepared to send the husband to jail in such a case? You have already raised the age to 14. I ask the House that having raised the age to 14, to minimise the punishment. Don't place people at the mercy of their neighbours who may invoke the aid of the police.

You know how in villages enmities run through families, run through generations. They will be only waiting for an opportunity in order to throw dust and dirt upon their neighbours. They will say, "Here is a case where the husband and wife have united together." Probably the parents will not bring it out because it is not to their interest to do so. Close relations and friends will not bring it out. But some enemy, who has got a grudge against the man, will do so. Some quarrels might arise and then at once you place the family in the clutches of the police and the clutches of the magistrate. Are you prepared to do that? Is it not a serious consequence that you are trying to impose upon a community not yet advanced, of whom about 92 per cent. are illiterate? Take all these circumstances into consideration. By all means do go on with social reform. I will be one with you, but do not make a crime of this or a felony of this as my Honourable friend proposes to do. This appears to me a very very objectionable thing to do. I therefore move that the words "shall be punished with imprisonment" be omitted and I move that where the girl is above 12 the offence shall be punishable only with fine. For that purpose I move that in clause 8 of the Bill the words "with imprisonment of either description for a term which may extend to two years" and the words "or with both" be omitted so that the offence shall be punishable with fine only. Let us begin with that and see how it works. I do earnestly ask the House to accept this amendment and to reject the amendment of my Honourable friend Khan Bahadur Sarfaraz Hussain Khan.

Mr. President: I will take the amendment of the Honourable Diwan Bahadur after we have disposed of the amendment now under discussion.

The Honourable Sir Alexander Muddiman (Home Member): I oppose the amendment of my Honourable friend. What he does in effect is to raise by a year the limit for the major punishment. That is the substance of the amendment. As the clause stands at present we are discriminating for purposes of punishment between two classes of rape, by an outsider and by a husband. He proposes to raise the age by a year in the last one. I am not satisfied that this is necessary. I do not agree with my Honourable friend opposite who thinks that the enacting of a fine alone will be sufficient. If you want to maintain this as a criminal offence you must maintain some reasonable form of punishment, but I am not prepared, and the country is not prepared, to take the view of my Honourable friend and put up the age for the heavier punishment. I therefore oppose the amendment.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): As my friend the Honourable Diwan Bahadur Rangachariar has a stock argument for not only opposing this particular amendment of Khan Bahadur Sarfaraz Hussain Khan but opposing each and every part of the Bill, let me once for all examine his arguments. Sir, this House is familiar with the old worn-out argument of my Honourable friend that no change should be made in the marriage laws because marriage is a sacrament and to-day we are told by my friend that he has said nothing of the kind in this connection. That is the pity of it. Sir, nobody objects to marriage. As the marriage law at present stands, we the Hindus are entitled to marry at any age. What my little Bill is intended to do is to prevent the causing of hurt, grievous hurt and sometimes death to the married wife before she is able to endure the suffering caused by premature cohabitation. That is all that my Bill is intended to do and

[Sir Hari Singh Gour.]

I ask my Honourable friend what objection he has to that Bill. He has been talking of the lawful husband and of the lawful husband having the right to cohabit with his wife. I wish, Sir, that in some of his generous and perhaps just moments he will also talk of the lawful wife and the rights which the lawful wife possesses of resisting the overtures of the husband because she is not physically fit to receive them. My friend has given me a permission and I am therefore entitled to allude to his own family conclave. He was telling me that he asked his womenfolk, the ladies of his house, what they thought of my Bill and they cried with one voice, "We must raise the age". I asked my Honourable friend, "Why don't you raise the age?" He says, "The ladies of my house are advanced". Well, Sir, it is a pitiable thing that the ladies of my Honourable friend's house are more advanced than my Honourable friend himself. I ask my friend, can any Member in this House point to one single instance of any woman in this country out of the thousands upon thousands who have been consulted

Diwan Bahadur T. Rangachariar: Who are they?

Sir Hari Singh Gour: Dozens have written to me and I shall presently show to the House what representative women of all communities from all parts of India have written to other Members of the House approving of the raising of the age of consent. Against that can my Honourable friend point to one single instance of a woman approving of the existing law and protesting against the raising of the age? That, I submit, is a more eloquent argument than all the arguments which my Honourable friend trots out in season and out of season whenever any reforming measure is placed before this House for acceptance. What has he been talking? He says, "Are you going to send a husband to jail? He will be outcasted and the relations between the husband and the wife will be imperilled for all time." To that I reply, "Why should the husband go to jail at all? Why should he not avoid the law on the ground of humanity, on the ground that a serious injury will be inflicted on his wife and on the ground that she will probably suffer and beget children who are feeble, stunted in growth and who herself may perchance die?" I ask, Sir, if a man brings about this result, if he consciously, and deliberately offends against the majesty of the law, should he not be sent to jail? My friend appeals to this House to sympathise with and extend commiseration to a husband who violates an immature girl and thereby brings himself under the penalty of the law. Then he tells us "We have usages, we have law". Now, these are vague words which anybody can use. I have heard once a thief saying to himself "If I do not steal, how am I going to live?" I submit that if the husband were to use a similar argument, what will be the answer of this House? Honourable Members must remember that in the notes circulated by the Honourable the Home Member, Sir Malcolm Hailey, some statistics were given to which I would ask my Honourable friends to refer. On page 2 of this printed memorandum circulated to the Members, Honourable Members will find figures given of 3,189 cases of girls whose records were kept for the purpose of ascertaining the age at which they attained puberty and in this tabular statement the first column commences from 10-11 and the last one from 18-19 years. It goes on 10 to 11 and 11 to 12 and so on. Now, if Honourable Members will turn to that page, sub-dividing these columns into two just below and above 14, they will find that 21·53 per cent. of girls attain puberty before

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they complete their 14th year, and of these—mark you—of these the vast majority attain puberty between the years of 13 and 14; and no less than 78·47 per cent. of the girls attain puberty after they have passed their 14th year. Now, Sir, my friend on the other side has referred to the tropical climate, precocity, etc. Surely, Sir, he could not have forgotten what is written here in this very minute, in this note itself, and it is an extract from the medical books of the country. Let me read to the Honourable Members what the Honourable the Home Member circularised.

“ The influence of tropical climate in causing early menstruation seems to have been over-estimated.”

Then it says in earlier passages :

“ 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.”

Now, Sir, the inference that I draw from these extracts from the medical books is the inference that if you wish to protect children at all, and if you wish at any rate to protect children till they attain puberty, of which 78·47 per cent. do so on or after the 14th year, the minimum age that you must fix is the age of 14. And I go further and say that the authorities cited by the Honourable the Home Member to the effect that the attainment of puberty is not the same thing as the development of the body, make it clear that, even assuming for the sake of argument that it were demonstrated, and it has not been demonstrated, that girls attain puberty before the age of 14, even then I say, Sir, that it will be wrong of this House to withdraw its protection from girls who are still undergoing physical and mental development with the result that cohabitation would be bad from their standpoint, from the standpoint of the husband and generally from the standpoint of the race. The evidence of medical men and statisticians, evidence furnished by text writers, all shows that this terrible scourge of infant mortality in this country is due to early marriages. I shall not use my own words, but read to you what the editor of the Census Report writes in the Census of India, 1921, Volume I, Part I, paragraph 109, page 181. I have got a copy here and if anybody wishes to read it he is welcome to take it from me.

“ Studies of statistics of countries of the world show that there is a close correlation between the rate of infant mortality and the size of the family owing to two distinct sets of factors, physical and economic. On the one hand, the vitality of the mother and through her the life of the child appear to be affected by the age at which child-bearing begins, the number of births (or pregnancies) and especially the spacing of births; on the other hand, the health of the infant is closely allied with the circumstances frequently associated with large families, viz., poverty, congestion, malnutrition, insanitary surroundings and the improvidence and ignorance of the parents.”

Then I leave an ellipsis and go on to read another passage :

“ Special causes contribute to the high mortality . . . ”

The Honourable Sir Alexander Muddiman: Sir, I do not desire to interrupt the Honourable Member, but this seems to be a speech on the general clauses of the Bill, not on the clause which is before the House, which is really a very short point. The point is the question of punishment.

Sir Hari Singh Gour: It is the question of raising the age from 12 to 13. In the case of girls above the age of 13 and below 14 the offender shall be given a reduced punishment. That is the motion of the Honourable Khan Bahadur Sarfaraz Hussain Khan. I am supporting it.

"Special causes contribute to the high mortality of infants in India. Owing to the custom of early marriage cohabitation and child-birth take place before the woman is physically mature and this combined with the primitive and insanitary methods of midwifery seriously affects the health and vitality of the mother and through her of the child. Available statistics show that over 40"

Mr. President: I must support the point taken by the Honourable the Home Member. Now the Honourable Member is arguing on clause 2 and not on clause 3. Clause 3 is a sanction clause dealing with punishment, and the second line in the proposed addition to section 376 deals with the question of age. The point is limited and the Honourable Member must confine himself to it.

Sir Hari Singh Gour: I only want to point out to this House, Sir, that girls below 13 require as much protection as girls below 12. And I submit that there is really no distinction between a girl of 12 and a girl of 13 so far as puberty and physical development is concerned. I therefore submit that they are both growing children and by raising the age by one year you certainly extend the circle of protection. I therefore submit, Sir, that the amendment of my Honourable friend should receive the acceptance of this House.

Colonel Sir Henry Stanyon (United Provinces: European): I would like to give the Honourable Member a chance of correcting an error into which he fell. He said, if I understood him rightly, that the ages between which the highest percentage of girls attained puberty were 13 and 14. In this table, which we all have,—it is taken from Lytton's Medical Jurisprudence,—the highest percentage is between 12 and 13.

Sir Hari Singh Gour: My Honourable friend is wrong. I said, Sir, that the highest percentage of puberty was in the case of girls of about 14 and over.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, as my Honourable friend Sir Hari Singh Gour has stated that he is supporting the amendment moved by Khan Bahadur Sarfaraz Hussain Khan I think I should read to the House an extract from the report of the Select Committee which was signed by my Honourable and learned friend. There it was stated:

"We are however unanimously of opinion that if the age is raised to 14 years both within and without the marital connection there should be a reduction of the maximum penalty in cases in which sexual intercourse is between man and wife and the wife is between 12 and 14 years of age."

Mr. President: Amendment moved:

"In clause 3, for the word 'twelve' the word 'thirteen' be substituted."

The motion was negatived.

Mr. President: Lala Piyare Lal.

Diwan Bahadur T. Rangachariar: May I take it, Sir, that my amendment is being taken?

Mr. President: Lala Piyare Lal.

Mr. H. Tonkinson (Nominated Official): I should like, Sir, to take a point of order with reference to the amendment No. 14 on the List. It relates to complaints by the wife or her natural guardian. Clause 3 of the Bill, Sir, seeks to amend the Indian Penal Code, and that Code has nothing to do with complaints. I suggest that the present proposal would come in better under the later clauses of the Bill or under a separate clause altogether which should amend the Code of Criminal Procedure.

Mr. President (to Lala Piyare Lal): If the Honourable Member really intends to propose a new clause after clause 3 the amendments standing in the names of Mr. Kamini Kumar Chanda and Mr. Amar Nath Dutt are the right way to effect the purpose. The Honourable Member will have a chance of raising his point on them. Mr. Rangachariar.

Diwan Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I have already said what I have to say on the amendment which I have proposed, that where the girl is above the age of twelve, the offence in the case of the husband should not be punishable with imprisonment. Make it an offence by all means, but make it punishable only with a fine. I have already indicated to the House the serious consequences which would follow from sending the husband to jail. My Honourable friend says that girls require protection. But by this sort of protection you would really be killing the girl, you would be separating the husband from the wife, you would be also putting the husband out of caste, and you have to remember that the girl will also thereby have to go out of caste. That would be the result of making this offence punishable with imprisonment, and therefore, Sir, I move my amendment.

Mr. President: Amendment moved:

"In clause 3, the words 'with imprisonment of either description for a term which may extend to two years or' and the words 'or with both' be omitted."

Mr. M. K. Acharya (South Arcot *cum* Chingleput: Non-Muhammadan Rural): Sir, I fully convict myself of the terrible charge which some Honourable Members would make against those who regard marriage as a sacrament. To me it is the highest of all sacraments; and if I rise in this House to-day to give my full support to the amendment moved by my Honourable friend, Diwan Bahadur Rangachariar, let it not be for a moment understood that I am less desirous than any other so-called social reformer of seeing that our girls are adequately protected, and protected in sane and harmless ways. But I ask, if the father and the mother of a girl, if the girl herself, and if the husband of the girl are all going to do something which they consider right but which you consider as loathsome

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or heinous, what is your right to interfere? Who gave you that right, who indeed—God or man—to separate man and wife and say that the wife shall be subjected to social disgrace and to misery all through her life? You are going by this proposed measure to make her life for all time miserable by sending her husband to jail—let it be for three days, it is enough. Sir, is this House going to interfere with ties that are held most sacred, as indeed they have been held most sacred for generations? By all means, let us try and bring about changes in our social system by means of social reform undertaken privately, in quiet unobtrusive ways; but what justification is there for bringing forward penal legislation to achieve such reform on the part of those who have got no regard for our ancient traditions? Sir, the tradition of womanhood in this country is unapproached by the tradition of womanhood in any other country. Our ideal of womanhood is this. Our women regard their husbands—they have been taught from the moment they were suckling their mothers' milk to regard their husbands as their God on earth. Sir, let me relate to you a small personal incident. I have been a father of daughters; I am now a grandfather of grandchildren. I have a grand-daughter aged twelve. In June last when the girl was over 10 years and some months she was remarried in the religious sense. She is a motherless child. Sir, a few days ago some relations came in, and they referred to her as motherless. I wanted to divert the subject and said that she had now got someone who was father and mother to her. With an angelic smile the child added, "Is he not also my God, grandfather?" That, Sir, is the Indian ideal. The words sent a thrill of joy through my frame. Yes; the reply that this child of eleven years gave was that she regarded her husband as God on earth. What right have you to interfere with that ideal and with that feeling among our girls? And yet that would be exactly the dire result if the husband were to be sent to jail even if only for a few weeks. To the Brahman girl-wife the husband is a greater, truer, dearer benefactor than all the social reformers bundled together! His is the duty and the right to keep her and protect her. But if it so happens that he approaches her too closely, is he to be sent to jail for two years? What right have you to interfere with this ancient, noble tradition of ours regarding the sanctity of wedlock? What right have you to separate man and wife? You may lay your unholy hands on our ancient ideals and traditions, but we will not follow you. There is, Sir, a fine advertisement put up by one of the greatest men of modern India, Swami Ram Tirtha, on the very first page of his great works. He said: "Wanted reformers not of others but of themselves." This reminds me again of what Swami Vivekananda once said; he said that social reformers were all men with good intentions but their method was wrong. Now, Sir, what is your object? What is the object of this legislation? Do you want to make the women of India strong and their children stalwart? But remember that in trying to do that, you may otherwise be doing a lot of evil, far worse than the evil you seek to remove. The Honourable Member may laugh at Mr. Rangachariar and say, "We have made it a crime yesterday—a husband's cohabiting with his wife before 14. You are bound by that vote." Sir, the debate yesterday was so loathsome, some of the speeches were so low in tone, that even at the cost of my not voting and not doing my duty, in sheer disgust I went out. You now say, you have made it a crime, therefore it should go on the Statute-book. But why should you make the punishment

so heavy? What does it matter, if reform is your true objective, whether it is a fine or whether it is only a censure even that you impose? Either is good enough. It is a kind of moral censure intended to push up the course of reform. But by this provision of sending the husband to jail you will in effect be really murdering the girl; the moment her husband is sent to jail she may hang herself or fall into a well—that is the way of the Indian girl! I know it is not so with non-Hindu girls; they think very differently. I have had personal experience for a sufficient number of years as a teacher in a Girls' High School and have thus been intimately connected with girls of sixteen and above (Laughter). Sir, I know what they feel. I have been taken into their confidence, by a good many of them, and I know what they feel. You cannot change nature's laws. All that you can do is to protect those natural laws, and say there should be some kind of restraint. I hold that it is between the ages of eleven and fourteen that a girl ought to be married. The ideal of the highest wifehood should and can only then be instilled into her, not later when the sex-instinct comes into her and dominates her heart, when *Kama* (pleasure) not *Dharma* (self-control) sways the mind. Before that time, train her mind, train her heart. By all means take care of her body; but fail not to train her morals, to train her soul, so as to enable her to look upon her husband as her God, which indeed is the case in India, among Hindus at least. And do not for God's sake interfere with that relationship. I appeal to all my English friends. I do not want to lecture upon various ideals of womanhood; but I cannot sit quiet and listen to my Honourable friend chaffing at anybody who says that marriage is a sacrament. Therefore I strongly support the amendment which is now before us. So far as I understand, it is the intention of the Mover of the Bill to expedite the progress of reform that is gradually coming over our homes. His eloquence has been battering my ears and the ears of the rest in this House these two days. But who is he, this self-appointed protector of all the girl-wives of India? What is his title to speak in their behalf? No social reformer—no, not the staunchest can honestly say that the parents do not care for the good of their daughters. No father, no grandfather wants to murder his children, or grand-children; nor even the husband his girl-wife. "If you protect the husband, why not the wife also" asks the Honourable Mover. Are you really protecting the wife? That is my question. You may physically protect her, but you are morally degrading her, you are socially degrading her, you are spiritually degrading her; and therefore I most earnestly appeal to this House truly, really to protect the girl. You have done enough mischief by your vote yesterday. Take at least the venom from the scorpion's tail by accepting Mr. Rangachariar's amendment, and the other amendment which will come up later, namely, that in such cases the complaint must come from the wife, not from Sir Hari Singh Gour, or must come from her guardian or somebody who is closely related to the girl. I urge that by accepting this amendment and the other amendment which will come up, you will be at least lessening the evil course which this House rightly or wrongly yesterday chose to take. Don't destroy I beg of you—don't ruin our Hindu homes. After all, in India only the Brahmin community, so far as I understand, has got this system of marrying girls before puberty. I am not aware that the system obtains anywhere else. Why should Sir Hari Singh Gour take upon himself the burden of setting our Brahman homes in order and protecting our girls? We can take care of our children. If you merely want to set up a kind of moral standard, you have done it, this House has done it; and I

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have no objection to your doing so. But if you want to penalise, that is a very serious thing. I would once more say and say a hundred times that it will shatter, destroy, hopelessly destroy our Hindu homes; for that man and that girl can never live together, can never live as man and wife. Do not for God's sake embark upon this legislation, this penal legislation; do not in your zeal for reform penalise the husband for a thing which he himself will regret in his calmer moments. Surely sending him to jail will not make him repent more deeply than fining him or censuring him. We have done enough evil. For God's sake do not send the boy—for after all he will be a boy of about 17 or 18 years when the girl is 11 or 12 years old—do not send him to jail. For God's sake do not do that. To the girl it is something more terrible than even death. Shame is more terrible than death; dishonour is more terrible than death; that is what everybody who is a true friend of the girl would say. The very parent of the girl would prefer that the girl should sooner die than be subjected to this dishonour and shame, than to see her dear husband carried away to the prison house. Who is the Hindu that will not say that?

Mr. Bipin Chandra Pal (Calcutta: Non-Muhammadan Urban): I was feeling, Sir, that we have not advanced very far in these matters in any case during the last half a century. Many of the arguments that have been put forward in the course of this debate have been familiar to me. In 1870-71, when the Civil Marriage Act was first introduced in the Indian Legislature, we had all these arguments about early pubescence, about climatic influences, about religious duty and all the rest of it. So far as early pubescence goes, while I was listening to the utterances of some of my friends I was reminded of the statement published in the records connected with the Civil Marriage Act of 1872, the statement of a medical man, an eminent medical man and a scientist of Bengal. (*Mr. K. Ahmed*: "What is the name?") My friend was not born then. His name is Dr. Mahendra Lal Sircar. He said that granting that signs of pubescence appear in girls of 11 or 12 or 13, that is absolutely physiologically and medically, if not morally, no reason that she should be given in marriage at that age; and Dr. Sircar brought out a very happy analogy. He said that when children's teeth first commence to appear, it shows that they are being gradually evolved for eating hard things, but when the teeth appear no doctor, no mother, no grandfather, like my friend Mr. Acharya either, would give that child a piece of cocoanut to chew. When the teeth appear, it only shows that the time is coming—it has not yet come—when the child will be able to chew and digest hard things. And so when the first signs of pubescence appear, to medical men it shows that the time is coming—it has not yet come—when the girl will be able to bear children, and Dr. Sircar laid it down distinctly that although signs of pubescence appear before 13 or even at 12, the girl is not fit for sexual intercourse, fit for bearing children, until she is 16; and he pleaded hard to have the minimum marriageable age for girls in that Act put at 16. But we had to make a compromise; society was not advanced sufficiently to accept 16 or even to think of 16 as a proper, decent, respectable marriageable age for respectable orthodox Hindus. Therefore a compromise was struck and that Act adopted 14 as the minimum marriageable age. We have advanced by half a century from 1872, more than half a century,

to 1925; and during those 50 years by the pressure of economic laws, owing to the general advance of education and culture in the community, owing to the progress even of orthodox Hinduism, practically there are many respectable girls who are now married after they have attained the age of 14. Pre-marital pubescence was considered at one time a social sin, if not a religious sin, by a section of the Hindus in many parts of India. That I hope does not obtain now. (*Mr. S. C. Ghose*: "It does.") I dare say it does. I do not say that the entire country of 350 millions of people has advanced, been illumined, educated, liberalised. No. There are dark spots certainly. There are backward classes, Sir, not only in the matter of caste, but in the matter of morals and culture and intelligence and education, and so far as these backward classes go, they may still try to cling to the idea that pre-marital pubescence is a social sin or a moral sin. But it belongs, Sir, to the primitive culture, it does not belong to the present time.

Mr. President: I must remind the Honourable Member that we are discussing now the nature of the penalty which the culprit should suffer.

Mr. Bipin Chandra Pal: I am coming to that, Sir. Now, this was the old argument and we have heard that argument to-day. At that time, in 1891, the age of consent was raised to 12 and there was a tremendous agitation almost all over Hindustan against that Act. And we were told that religion was in danger, society was in danger, the divine husbandhood of Hindustan stood in danger of being thrown down from its high pedestal. We heard all those arguments then. But the Act of 1891 made it penal even for husbands to have connection with their wives if they were below the age of 12. By making it penal, Sir, I think it helped indirectly the social progress very considerably. I do not know if there has been a single case of prosecution under that law. I do not know if there has been a single case under that law of the prosecution of Nattukkottai Chetties.

Mr. Kamini Kumar Chanda: There have been 8 prosecutions as I was informed by Mr. Tonkinson.

Mr. Bipin Chandra Pal: All over India? May I know for what years this figure was given.

Mr. Kamini Kumar Chanda: They gave me figures for 8 years, namely, 1921 to 1923.

Mr. Bipin Chandra Pal: Will my Honourable friend give me the results?

Mr. Kamini Kumar Chanda: The result was this. I quote from Mr. Tonkinson:

"The only opinion we have upon the question raised by you in regard to prosecutions of husbands for rape upon their wives is as follows. We know that during the 3 years—1921-1923—there were 8 cases in which husbands were convicted for a rape on their wives being under 12 years of age. We have no further information as regards the cases except that, I may add, 3 were in Bombay, 3 in Bengal, one in the United Provinces and one in Assam."

Mr. Bipin Chandra Pal: None in Madras—a glorious province. Whatever that may be, Sir, we heard of that in 1891 but the heavens have not fallen and we are still moving on; and I do not think that the acceptance of this motion or the rejection of the amendment of my Honourable friend Diwan Bahadur Rangachariar will practically make any difference. I am not afraid Sir, of the consequences which they have conjured up before them. I do not believe that the passing of this Act will deprive my friends, the Hindu husbands, of their divinity. (A Voice: "They do not accept the divinity.") I accept the divinity of every man. I accept the divinity of every woman. I accept the divinity of every human being. It is not the husband, Sir, who alone is divine. When my friend was talking of the divinity of husbands, I was reminded, Sir, when he was saying that every Hindu woman looks upon her husband as her God, of a little story that came from England. A little boy was walking the streets of London and he was swearing as street Arabs always do in that happy country. A clergyman who was coming that way happened to hear that street Arab swearing and said: "What are you doing?" He was horrified and he said: "What are you swearing at? You ought not to do so." The boy said: "Why?" The clergyman said: "Because it will offend God." The boy said: "Who is God? I have never heard of Him." And the clergyman said: "You have never heard of God? Why, God is your Father." And the little child cried out: "I hate Him." The clergyman was shocked and he said: "Hate God, why?" Then he calmed down a little and he approached the little boy and he said: "My dear boy, why do you hate God?" He replied: "You said he is my Father." "Yes, he is your Father", the clergyman replied. "Then every night he will come home and beat my mother. I therefore hate him." There are many wives who, if they were told that their husbands were God, would make a similar reply. (A Voice: "Is Mrs. Pal one of them?")

Several Honourable Members: I move that the question be now put.

Mr. C. S. Ranga Iyer (Rohilkund and Kumaon Divisions: Non-Muham-madan Rural): Sir, I am sure neither the Honourable Mover nor my friend Dr. Datta will accuse me of lacking in enthusiasm for social reform. But I feel that social reformers must first preach their propaganda outside this House and then come inside to further their work. As a proof of my faith in social reform if proof were needed, I voted yesterday, however reluctantly, for Dr. Datta's proposition. But, Sir, when my friend Diwan Bahadur Rangachariar comes to this House with a suggestion to minimise the evil that radical social reform—seeking shelter under the law—might engender, I am surprised that a man like Dr. Gour does not rise equal to the occasion and accept it. Sir, it is this impossible, what orthodox people feel, this intolerable, this utterly unsympathetic attitude of the go-ahead social reformers that has made them almost social outcasts in this land. Sir, India is an orthodox country, it is a conservative country; and social reform cannot come from the Legislature; it must come from within. (Mr. K. Ahmed: "How can you ask for reform or Swaraj in the country then?") Yes, that is a very legitimate question that my friend has put. It is very seldom that he puts such intelligent questions. (Laughter.) We ask for political reform because we know the country wants it. The country has agitated for it and it has suffered for it. The country has ventured greatly and sacrificed greatly for political reform. With public

opinion behind us, we come here to echo the feeling of the people. To the social reformer, I say, go to the country, agitate there, create public opinion and then come to the Legislature. I put it to Dr. Gour: Has he addressed one public meeting in Nagpur or elsewhere on this question? He is silent. (*A Voice*: "He will be hooted down.") That may be the spirit of orthodoxy, but if Dr. Gour is a reformer he must be prepared to face the music. (Hear, hear.) I remember, Sir, the time when in Madras my old friend the Right Honourable Srinivasa Sastri, contemplated introducing in Madras Legislative Council his post-puberty marriage Bill, he carried on a raging, tearing campaign throughout the Presidency. Public opinion was against him, but he argued his case so sincerely and so well, that he commanded the patient hearing of even the ultra-orthodox. A good deal of public support, even in that much maligned province of Madras, he managed to secure. But what has Dr. Gour done? He comes here with all the lumber of his legal lore, presents a Bill and asks the Members to applaud it! And when Diwan Bahadur Rangachariar, as good a lawyer as Dr. Gour himself (*An Honourable Member*: "Better."), if not better, comes to this House and says: "Please do not behave like a bureaucrat, even bureaucrats are not in favour of this legalised despotism, take up a conciliatory attitude," when he says that, Dr. Gour fears that the sting is being taken away and how can he get on with his reform propaganda without a sting? Sir, the reformer becomes the enemy of the nation when he carries on a campaign of stinging serpents! That is what the Honourable Member is doing. I am surprised that a man of his intelligence, who ought to be in touch with the public opinion of the country, does not see his way to accept the amendment proposed by the Diwan Bahadur. Do you want to revolutionise your people in social affairs in one day, by a stroke of the pen? If you are asking them to be social revolutionaries, then I am afraid you are crying for the moon. Yours is a conservative country in matters of social reforms. Therefore, the social reformers will do well to bear in mind that in every noble endeavour of theirs, they must have a single eye to conserve and preserve the genius of the race.

Sir Hari Singh Gour: Sir, I just wish to point out to the House what Diwan Bahadur Rangachariar's amendment means. As the clause stands, the punishment of fine is optional with the magistrate. That is to say, the magistrate may fine a man a small fine without imprisonment, and in cases of aggravated crime he may give him a punishment of imprisonment. What Diwan Bahadur Rangachariar's amendment wishes to do is to do away with that optional punishment of imprisonment altogether, and however grievous, however serious may be the crime committed under the most aggravated circumstances, the husband will only be fined. I beg to suggest that the amendment must be thrown out if only on that ground.

Several Honourable Members: I move that the question may now be put.

Mr. President: The question is that the question be now put.

The motion was adopted.

Mr. President: The original question was:

"That clause 3 stand part of the Bill."

[Mr. President.]

Since which an amendment has been moved :

"That in clause 3 of the Bill the words 'with imprisonment of either description for a term which may extend to two years or' and the words 'or with both' be omitted."

The Assembly divided :

AYES—46.

Abdul Karim, Khwaja.
Abdul Mumin, Khan Bahadur Muhammad.
Abhyankar, Mr. M. V.
Abul Kasem, Maulvi.
Acharya, Mr. M. K.
Ahmed, Mr. K.
Aiyangar, Mr. K. Pama.
Alimuzzaman Chowdhry, Mr.
Aney, Mr. M. S.
Bhat, Mr. K. Sadasiva.
Chaman Lall, Mr.
Chetty, Mr. R. K. Shanmukham.
Dutt, Mr. Amar Nath.
Ghazanfar Ali Khan, Raja.
Ghose, Mr. S. O.
Ghulam Bari, Khan Bahadur.
Goswami, Mr. T. C.
Hari Prasad Lal, Rai.
Ismail Khan, Mr.
Kelkar, Mr. N. C.
Lindsay, Mr. Darcy.
Lohokare, Dr. K. G.
Malaviya, Pandit Krishna Kant.

Mutalik, Sardar V. N.
Nambiyar, Mr. K. K.
Narayandas, Mr.
Nehru, Dr. Kishenlal.
Nehru, Pandit Motilal.
Nehru, Pandit Shamlal.
Neogy, Mr. K. C.
Piyare Lal, Lala.
Ramachandra Rao, Diwan Bahadur M.
Rangachariar, Diwan Bahadur T.
Ranga Iyer, Mr. C. S.
Reddi, Mr. K. Venkataramana.
Samiullah Khan, Mr. M.
Sarda, Rai Sahib M. Harbilas.
Shafee, Maulvi Mohammad.
Singh, Mr. Gaya Prasad.
Singh, Raja Raghunandan Prasad.
Sinha, Mr. Ambika Prasad.
Staneyon, Colonel Sir Henry.
Syamacharan, Mr.
Tok Kyi, Maung.
Ujagar Singh Bedi, Baba.
Yusuf Imam, Mr. M.

NOES—50.

Abdul Qaiyum, Nawab Sir Sahibzada.
Ahmad Ali Khan Mr.
Ajab Khan, Captain.
Ashworth, Mr. E. H.
Bhore, Mr. J. W.
Blackett, The Honourable Sir Basil.
Bray, Mr. Denys.
Burdon, Mr. E.
Calvert, Mr. H.
Chanda, Mr. Kamini Kumar.
Clow, Mr. A. G.
Cooke, Mr. H. G.
Cosgrave, Mr. W. A.
Crawford, Colonel J. D.
Das, Mr. B.
Datta, Dr. S. K.
Duni Chand, Lala.
Fleming, Mr. E. G.
Gour, Sir Hari Singh.
Graham, Mr. L.
Gulab Singh, Sardar.
Hira Singh Brar, Sardar Bahadur Captain.
Hudson, Mr. W. F.
Innes, The Honourable Sir Charles.
Jinnah, Mr. M. A.
Joshi, Mr. N. M.
Kasturbhai Lalbhai, Mr.

Lloyd, Mr. A. H.
Mahmood Schamnad Sahib Bahadur, Mr.
Malaviya, Pandit Madan Mohan
Marr, Mr. A.
McCallum, Mr. J. L.
Milne, Mr. R. B.
Mittra, The Honourable Sir Bhupendra Nath.
Moir, Mr. T. E.
Muddiman, The Honourable Sir Alexander.
Pal, Mr. Bipin Chandra.
Phookun, Mr. Tarun Ram.
Purshotamdas Thakurdas, Sir.
Rhodes, Sir Campbell.
Rushbrook-Williams, Prof. L. F.
Sarfaraz Hussain Khan, Khan Bahadur.
Sastri, Diwan Bahadur C. V.
Virvanatha.
Sim, Mr. G. G.
Singh, Rai Bahadur S. N.
Sykes, Mr. E. P.
Tonkinson, Mr. H.
Willson, Mr. W. S. J.
Wilson, Mr. R. A.
Yakub, Maulvi Muhammad.

The motion was negatived.

Clause 8 was added to the Bill.

Mr. Kamini Kumar Ohanda (Surma Valley *cum* Shillong: Non-Muhammadan): Sir, I move the amendment which stands in my name with a very small change. I will explain what the change is presently and the reasons therefor. I move that:

"After clause 3 of the Bill the following new clause be inserted, namely:

'After section 199-A of the Code of Criminal Procedure, 1898, the following

Insertion of a new section 199-B,
in Act V of 1898.

section shall be inserted, namely:

'199-B.—No complaint of rape upon a wife *who is over 12—(that is the change)—*shall be instituted against the husband except on the complaint of a person who would be the natural guardian of the girl if she remained unmarried at the time or of any one duly authorised by him in writing, or where the former is absent from the district, on the complaint of such other person who would be the guardian in the absence of the first named person'."

Sir Hari Singh Gour: I rise to a point of order. Sir, I submit the whole of this amendment is absolutely and entirely out of order. My Bill is intended to amend section 375 of the Indian Penal Code. It is not intended to insert any substantive clause in the Code of Criminal Procedure. What my Honourable friend wants to do is to add a new section to the Code of Criminal Procedure which I submit is foreign to the main purpose of my Bill, and I therefore submit that the addition of this section is inconsistent with the purpose and object I have in view in amending section 375 of the Indian Penal Code. And I further object to it on the ground that my friend has now made another amendment of which I have had no notice. I therefore object to his moving an amended amendment.

Mr. President: I do not think the amendment is out of order. It seems to me to be quite germane to the purpose of the Bill.

Mr. Kamini Kumar Ohanda: Sir, my answer to this is that I am following the procedure which my Honourable friend Dr. Gour has himself followed in his Bill. If you turn to clause 4 you will find there the words:

"In Schedule II to the Code of Criminal Procedure, 1898, for the entries against section 376 the following entries shall be substituted, etc."

If he himself can make changes in one part of the Code we are entitled to do the same in regard to another part. We only follow him. My submission is that this Bill ought to be self-contained and not only refine the law and state the circumstances under which a person would be guilty under it, but also to provide for the special procedure that ought to be adopted in these cases, as the definition now given is different from the definition given in the Indian Penal Code. On these grounds I think I am entitled to move the amendment. As to the fact that I have made a certain change this can easily be avoided by some other Member moving it in the form of another amendment. This amendment is very important and I believe a large number of Honourable Members will support it, and I submit I ought to be permitted to move it.

Sir Hari Singh Gour: Sir, you have more than once ruled that where one section of an Act is under consideration no Honourable Member has a right to take up a different section altogether and ask that it should be either amended or added to or modified. That, Sir, you have ruled several times: and here my Honourable friend would be perfectly in order if he wanted to make any amendment to Schedule II; but he wants to add a new section to the Criminal Procedure Code and not merely to the Schedule—an independent section in the main body of the Criminal Procedure Code. I submit, Sir, it is covered by several rulings which

[Sir Hari Singh Gour.]

you have given, that where one particular section of the Act is under discussion it is not open to a Member to take up a separate section altogether of that Act and say "I want that to be amended."

Mr. President: The Honourable Member is right in saying there have been many rulings on this point. The rulings that I have given hitherto have been rulings placing out of order any attempt to bring extraneous subjects within the scope of an amending Bill. It seems to me that the new clause which Mr. Kamini Kumar Chanda proposes to introduce is strictly germane to the purpose of the Bill.

Mr. Kamini Kumar Chanda: Thank you, Sir. The change I have made is this. In my original notice the words were "No complaint of rape upon a wife, *the wife being under 14*, shall be instituted against the husband, etc." I have changed that into "No complaint of rape upon a wife *who is over 12* shall be instituted against the husband." The reason for this change is that some Honourable Members of this House whose opinion is certainly entitled to very great weight and respect pointed out that the effect of my motion as given notice of would be that every husband in every case of rape upon his wife, no matter what the age might be, even in the case of a child of eight or ten, would get the protection of this special provision which I am proposing; and they suggested that my provision ought to be confined to cases of rape upon wives over twelve. I accepted this suggestion and have therefore made the change and moved my amendment in the changed form. I am certainly of opinion that we ought not to show any consideration to a person who, being the husband, commits rape upon a child. We had a case like this, which led to a change in the law in 1891. That was reported in I. L. R. 17 or 18 Calcutta (*Colonel Sir Henry Stanyon*: "18"). I am glad to be corrected by my Honourable friend. A husband had intercourse with a girl aged 11 years and 2 months and she died as a result of that. He was prosecuted and he was convicted by the Calcutta High Court by a jury under section 383 of the Indian Penal Code for doing an act rashly and negligently so as to endanger human life. After that case there was an agitation, attention being drawn to this flaw in the law; and that was amended in 1891. I did not like that the provision which I am now making should extend to persons who being husbands cohabited with children under 12 and therefore I accepted the suggestion that was made to me; and the result would be that my amendment would only cover cases of rape where the wife was over 12 and of course below 14 as it would be no rape at all if the wife was 14. Now this is the amendment I propose and the reasons are these. I shall not elaborate the point. My Honourable friend Mr. Rangachariar has described in graphic language the results which will follow, especially in villages. Persons with private quarrels will start false cases and get hold of the police to persecute their enemies; so, with a view to avoid this, to prevent attempts at blackmail and harassment, to prevent abuse of the processes of law, I wish to limit the class of persons who can institute cases of rape against husbands.

Now, Sir, what is the procedure at present? What are the conditions on which criminal proceedings can be started against any man? Section 190 of the Criminal Procedure Code lays down the conditions. They are (1) upon receiving a complaint, (2) upon receiving a police report and (3) upon information received by the magistrate from any person other than a police officer or upon his own knowledge or suspicion that such offence

has been committed. These are the three conditions in which a magistrate can take cognisance. Now, what is a complaint? That is defined in section 4 (h) of the Criminal Procedure Code as an allegation made orally or in writing to a magistrate with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer. Now, the result of this definition would be that any one would be at liberty to bring in a case against any one; A may complain that B, who is unknown to him, was injured or assaulted or hurt by C. That is a perfectly good complaint. But in the chapter of the Criminal Procedure Code to which I have referred in my amendment, in sections 196 to 199, there are certain classes of cases in which the complainants must be persons aggrieved or concerned. Under section 198 of the Indian Penal Code, prosecution for breach of contract in cases of defamation and offences against marriage, the complaint must be from some person aggrieved. Section 199 says:

"No court shall take cognisance of an offence under section 497 (i.e., adultery) or section 498 (i.e., enticing away a married woman), except upon a complaint made by the husband of the woman, or in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed."

These are the classes of cases in which only specified persons can bring in complaints. But there is no limit to any complainant about cases of rape under this Code. That is one thing to remember. A magistrate can take cognisance of cases of rape on receiving a police report; the police we know very well have got very extensive powers of arrest; they can arrest any man; they arrest men in lots of cases. These are enumerated in section 154 of the Criminal Procedure Code. But in regard to this case of rape by a husband upon his wife, an exception was made in 1891. It was laid down there that the police would have no power of arresting a husband charged with rape upon his wife except on an order of the magistrate. This is laid down in Schedule II to which my Honourable friend Sir Hari Singh Gour referred. In Schedule II against section 376, it is laid down that in cases of rape, if the sexual intercourse was by a man with his own wife, the police shall not arrest without warrant. Therefore there is one safeguard already provided against such cases. The police cannot harass people under this section. There is another safeguard in the same section, namely, that where the charge is against the husband for rape on his own wife, summons will issue, not a warrant. There is thus some safeguard against the police in these cases. The third case is somewhat wide. A magistrate can take cognisance of offence upon any information he receives or upon his own knowledge and suspicion. It has been held that he would be entitled to take action even on receipt of an anonymous letter. So we are concerned

Sir Hari Singh Gour: Is my Honourable friend aware of the fact that this offence is non-cognisable under the Code of Criminal Procedure and my friend is dealing with cognisable cases?

Mr. Kamini Kumar Chanda: I have read out to you that under the law as amended in 1891 cases of rape by husbands on their wives are protected from police harassment. The cases are non-cognisable. I have stated that already. All that the police can do is to report to the magistrate saying that a report had been received from a spy or some reliable source that A is cohabiting with his young wife who is less than fourteen years of age (Sir Hari Singh Gour: "That they may do-

[Mr. K. K. Chanda.]

in any case.") Never mind other cases; they could do it; but in any case the magistrate would be bound to take notice of it; he might dismiss it or he might summon the husband to answer the charge. Therefore we are left with this thing: that anybody can institute a complaint against any man with the object either of attempting blackmail or harassing him, and what will happen? The magistrate would be bound either to summon the man—he cannot issue a warrant because an exception was made in 1891—he must either issue a summons to the husband to come and answer to the charge or order an inquiry so that evidence could be taken as to the truth of the complaint. In either case it would be serious. Just imagine what it means. If evidence is to be taken about the truth of the complaint, it means that the wife will have to be examined by the magistrate as to whether her husband had intercourse with her; it is humiliating in the extreme to the girl, to the family; it might be that the husband would be found not guilty and he would be discharged or acquitted; but that will be enough disgrace done to the family and it will add to the harassment and expenditure. If there is no limitation as regards the complainant, there will be no limit to the harassment of parties, especially in villages. If a man is at enmity with any other man what he usually does at present is that he goes to the police and says, "Look here, this man is Swadeshi; I purchased a *belati* cloth and he has snatched it away from me and burnt it." These are the usual cases with the police and another class of cases will now be added with the result that in the case of young men with young wives any amount of opportunities is created for bringing them into trouble. Therefore my submission is that if you set a limit to the class of persons who can institute cases of rape against a husband then there will be some protection.

4 P.M.

That is all I have to submit in regard to this amendment. I do not see what objection there can possibly be to my amendment. If the person is guilty, by all means institute a prosecution against him, but it should be instituted not by enemies, it ought not to be taken up on private information or on anonymous petitions. Let the matter be brought before the court by persons who are most concerned. If there is occasion to do so, certainly the relations of the girl could easily look into the matter and bring the case before the court. But if you do not put a limit as proposed, I submit there is very great danger and persons will be harassed and prosecuted. Sir, I move my amendment.

Mr. H. Tonkinson: Sir, my Honourable friend Mr. Chanda has explained the motive of the amendment which he has moved, but I do not think that I can explain it better than by quoting from the words of the Marquess of Lansdowne. Speaking in the Legislative Council when the Age of Consent Bill was passed in 1891, he said:

"I will now pass for a moment to the third great objection which has been raised against this measure. It is the objection founded upon the anticipation that it will lead to inquisitorial action by the police, to prosecutions instituted from vindictive motives and to criminal investigations into family matters of the most domestic and private character."

Lord Lansdowne, Sir, then went on to say, and in this respect again I think he indicates what is our present position in regard to this point. He went on to say:

"Of this objection I will say that whatever may be our opinions with regard to some of the arguments which have been brought against the Bill, there can be no doubt about the perfect sincerity with which this argument has been urged upon us."

Sir, the proposed section will only deal with cases in which the husband is charged with committing a rape on his wife, and I think we must all agree that there are objections to inquisitorial investigations into what takes place in the privacy of family life. But I think my Honourable friend has greatly exaggerated the danger in question. It must be remembered that in this matter we have proceeded very cautiously. The Indian Law Commissioners, when it was decided to depart in the Indian Penal Code from the English common law principle, that no man may commit rape upon his wife, went into the question very carefully. The question was again considered in 1891 when at the instance of Government the age was increased from 10 to 12 years. At that time, Sir, provisions were inserted in the Code of Criminal Procedure with which, I am afraid, my Honourable friend Mr. Chanda is unacquainted. He has referred to the Second Schedule and has spoken of the safeguards which are contained in that Schedule. He seems, Sir, to have absolutely neglected to notice the very important provisions in section 561 of the Code of Criminal Procedure which deals with these cases. Those provisions were inserted in 1891 with the object of meeting any substance that there may be in the case which has been presented to us by Mr. Chanda. Section 561 reads:

"Notwithstanding anything contained in this Code, no Magistrate except a Chief Presidency Magistrate or District Magistrate shall take cognisance of the offence of rape where the sexual intercourse was by a man with his wife, or commit the man for trial for the offence."

My Honourable friend Mr. Chanda, Sir, spoke again and again of magistrates taking cognisance of such cases. He apparently imagined that any magistrate could take cognisance of these offences. It is only a District Magistrate or a Chief Presidency Magistrate who can take cognisance; it is only a District Magistrate or a Chief Presidency Magistrate who can commit such cases

Mr. Kamini Kumar Chanda: What I submitted was that any magistrate who could take cognisance could do so on the complaint of any one.

Mr. H. Tonkinson: The Honourable Member clearly does not appreciate the effect of section 561 which prevents any Magistrate taking cognisance. Under sub-section (2) also when the District Magistrate orders a police investigation, and such an investigation cannot take place without the orders of a magistrate, no police officer below the rank of an Inspector may make or take part in the investigation.

Well, Sir, the amendment which has been moved by my Honourable friend is not an original one. The proposal was made in 1891, and I will therefore quote to the House from the statement of the Honourable the Law Member at the time the reason why that proposal was rejected. Sir Andrew Scoble said:

"Another proposal has been made that no complaint shall be allowed except at the instance of the child-wife herself or her natural guardian or some blood relation. The adoption of this suggestion would undoubtedly reduce the law to a dead letter, and all the influence of the family will be used to screen the offender rather than to protect the victim."

Sir, it has been suggested that the present provisions in sections 375 and 376 are a dead letter. I think, Sir, if this proposal were accepted.

[Mr. H. Tonkinson.]

we should certainly kill the clause which was passed yesterday. I object, Sir, to the amendment *in toto*. But I might perhaps also refer to some details as to the drafting of the amendment. For example, the proposed clause sets out to provide that no complaint of rape shall be instituted. How, Sir, can you prevent a complaint being instituted? You might, if you like, provide that no court shall take cognisance, as you have done in other sections of the Code, but you cannot provide in these terms. Then again the amendment refers to "where the former is absent from the district". That is a very vague phrase. What does a district mean in the case of a Presidency town? I hope, Sir, that the House is not going to adopt this amendment. The proposal was rejected in 1891 for very adequate reasons, and I hope that the Assembly will reject it once again.

Several Honourable Members: I move that the question may now be put, Sir.

Diwan Bahadur T. Rangachariar: Sir, my Honourable friend Mr. Chanda having helped in the creation of a monster is himself afraid of the monster, for in the very next breath he wants to undo the law which he wanted to create. That is the only observation that I want to make on his amendment.

Sir Hari Singh Gour: I only wish to add, Sir, that in addition to the objection taken by Mr. Tonkinson there are other objections to the clause, and these objections are that my friend, Mr. Chanda, refers to the natural guardian; but he forgets, as a lawyer, that there may be a testamentary guardian, there may be a certificated guardian. What becomes therefore if a person has no natural guardian but has a testamentary or a certificated guardian? Then, further, Sir, what becomes of a person if she has no guardian at all or having a guardian, wishes to complain herself? To cover some of these cases the phrase used in the Code of Criminal Procedure is "a person who has the care of the child." I therefore submit, Sir, that in addition to the grounds taken by Mr. Tonkinson, the clause is open to these further objections.

Some Honourable Members: I move that the question be now put.

Mr. President: The question is that the question be now put.

The motion was adopted.

Mr. President: The question is that:

"After clause 3 of the Bill the following new clause be inserted, namely:

'After section 199-A of the Code of Criminal Procedure, 1898, the following
Insertion of a new section 199-B shall be inserted, namely:
in Act V of 1898.

'199-B.—No complaint of rape upon a wife who is over 12 shall be instituted against the husband except on the complaint of a person who would be the natural guardian of the girl if she remained unmarried at the time or of any one duly authorised by him in writing, or where the former is absent from the district, on the complaint of such other person who would be the guardian in the absence of the first named person.'

The Assembly divided:

AYES—32.

Abdul Karim, Khwaja.
Abhyankar, Mr. M. V.
Acharya, Mr. M. K.
Ahmed, Mr. K.
Aiyangar, Mr. K. Rama.
Aney, Mr. M. S.
Ariff, Mr. Yacoub C.
Chaman Lall, Mr.
Chanda, Mr. Kamini Kumar.
Duni Chand, Lala.
Dutt, Mr. Amar Nath.
Ghasanfar Ali Khan, Raja.
Ghose, Mr. S. C.
Hari Prasad Lal, Rai.
Ismail Khan, Mr.
Kelkar, Mr. N. C.

Lohokare, Dr. K. G.
Malaviya, Pandit Krishna Kant.
Mehta, Mr. Jamnadas M.
Misra, Pandit Harkaran Nath.
Mutalik, Sardar V. N.
Narsain Dass, Mr.
Nehru, Pandit Shamlal.
Neogy, Mr. K. C.
Piyare Lal, Lala.
Ray, Mr. Kumar Sankar.
Sadiq Hasan, Mr. S.
Samiullah Khan, Mr. M.
Singh, Raja Raghunandan Prasad.
Sinha, Mr. Ambika Prasad.
Syamacharan, Mr.
Yusuf Imam, Mr. M.

NOES—56.

Abul Kasem, Maulvi.
Ajab Khan, Captain.
Ashworth, Mr. E. H.
Bhore, Mr. J. W.
Blackett, The Honourable Sir Basil.
Bray, Mr. Denys.
Burdon, Mr. E.
Calvert, Mr. H.
Chetty, Mr. R. K. Shanmukham
Clow, Mr. A. G.
Cocke, Mr. H. G.
Cosgrave, Mr. W. A.
Crawford, Colonel J. D.
Das, Mr. B.
Datta, Dr. S. K.
Fleming, Mr. E. G.
Ghulam Bari, Khan Bahadur.
Goswami, Mr. T. C.
Gour, Sir Hari Singh.
Graham, Mr. L.
Gulab Singh, Sardar.
Hans Raj, Lala.
Hira Singh Brar, Sardar Bahadur Captain.
Hudson, Mr. W. F.
Innes, The Honourable Sir Charles.
Jinnah, Mr. M. A.
Joshi, Mr. N. M.
Kasturbhai Lalbhai, Mr.
Lloyd, Mr. A. H.
Mahmood Schammad Sahib Bahadur, Mr.

Marr, Mr. A.
McCallum, Mr. J. L.
Milne, Mr. R. B.
Mitra, The Honourable Sir Bhupendra Nath.
Moir, Mr. T. E.
Muddiman, The Honourable Sir Alexander.
Muhammad Ismail, Khan Bahadur Saiyid.
Pal, Mr. Bipin Chandra.
Purshotamdas Thakurdas, Sir.
Ramachandra Rao, Diwan Bahadur M.
Rangachariar, Diwan Bahadur T. Reddi, Mr. K. Venkataramana.
Rhodes, Sir Campbell.
Rushbrook-Williams, Prof. L. F.
Sarda, Rai Sahib M. Harbilas.
Sarfaraz Hussain Khan, Khan Bahadur.
Sastri, Diwan Bahadur C. V. Visvanatha.
Sim, Mr. G. G.
Singh, Rai Bahadur S. N.
Sinha, Mr. Devaki Prasad.
Stanyon, Colonel Sir Henry.
Sykes, Mr. E. F.
Tonkinson, Mr. H.
Willson, Mr. W. S. J.
Wilson, Mr. R. A.
Yakub, Maulvi Muhammad.

The motion was negatived.

Mr. President: The decision just taken by the Assembly covers the principle of the next amendment standing in Mr. Amar Nath Dutt's name. I cannot allow debate to arise on it; but if the Honourable Member wishes the decision of the House, he can take a division. The principle of it has already been decided.

Mr. Amar Nath Dutt: Sir, (*Cries of "Withdraw, withdraw."*)—there is no need of withdrawing. If Honourable Members will look carefully into my amendment and the amendment of my Honourable friend Mr Chanda they will find that there is some difference.

Whether you will be able to appreciate it or not is for you to decide. I will only read to you the amendment that stands in my name and then offer only one or two observations in support of it for your acceptance. Sir, I move this amendment:

"After clause 3 of the Bill the following clause be inserted, namely:

'After section 199A of the Code of Criminal Procedure, 1898, the following section shall be inserted, namely:

'199-B. No Court shall take cognisance of an offence under section 376 of the Indian Penal Code except upon a complaint made by a person who would be the legal guardian of the girl if she was unmarried"

—not the natural guardian, and I draw Sir Hari Singh Gour's attention to it,—

" . . . who would be the legal guardian of the girl if she was unmarried or the woman herself and in case of offenders other than the husband, by the husband also in addition to the persons named before."

Now, Sir, the reason for my moving this amendment is this. We know the character of the Indian police. We know the situation. (*Khan Bahadur Muhammad Abdul Mumin: "And the Executive."*) A member of the subordinate magistracy comes in with the addition of "and the Executive" and I quite endorse it, and the 4-anna barrister also endorses it. Now, Sir, I do not want to take up the time of the House with wrangling with my friends here who are out to disturb. (*Mr. K. Ahmed: "Withdraw."*) Certainly not; for if I do so because my friend Mr. Kabeerud-Din Ahmed wants it, I think I would not be able to show my face before decent people. If the suggestion had come from any other Member of the House I might have considered it. We know the character of the police, the character of the Indian police. We also know that there are village feuds everywhere and people will take this opportunity, whenever a girl of 12 or 18 has been married, to harass and tyrannise their enemies. So it will be better that men who are really interested in the welfare of the girl, namely, her parents or her legal guardians, should only be allowed to make a complaint in the case of an offence of this nature. With these few words, Sir, I move my amendment and request the House to accept it.

Mr. President: Amendment moved:

"After clause 3 of the Bill the following clause be inserted, namely:

'After section 199A of the Code of Criminal Procedure, 1898, the following section shall be inserted, namely:

'199-B. No Court shall take cognisance of an offence under section 376 of the Indian Penal Code except upon a complaint made by a person who would be the legal guardian of the girl if she was unmarried or the woman herself, and in case of offenders other than the husband, by the husband also in addition to the persons named before."

The question is that that amendment be made.

The Assembly divided:

AYES—24.

Abdul Karim, Khwaja.
Abhyankar, Mr. M. V.
Acharya, Mr. M. K.
Aiyangar, Mr. K. Rama.
Aney, Mr. M. S.
Bhat, Mr. K. Sadasiva.
Chanda, Mr. Kamini Kumar.
Duni Chand, Lala.
Dutt, Mr. Amar Nath.
Hari Prasad Lal, Rai.
Kelkar, Mr. N. C.
Lohokare, Dr. K. G.

Malaviya, Pandit Krishna Kant.
Misra, Pandit Harkaran Nath.
Mutalik, Sardar V. N.
Narsain Dass, Mr.
Neogy, Mr. K. C.
Piyare Lal, Lala.
Ray, Mr. Kumar Sankar.
Samiullah Khan, Mr. M.
Singh, Raja Raghunandan Prasad.
Sinha, Mr. Ambika Prasad.
Syamacharan, Mr.
Yusuf Imam, Mr. M.

NOES—53.

Abdul Mumin, Khan Bahadur
Muhammad.
Abdul Qaiyum, Nawab Sir Sahibzada.
Abul Kasem, Maulvi.
Ahmed, Mr. K.
Ajab Khan, Captain.
Ashworth, Mr. E. H.
Bhore, Mr. J. W.
Blackett, The Honourable Sir Basil.
Bray, Mr. Denys.
Burdon, Mr. E.
Calvert, Mr. H.
Chetty, Mr. R. K. Sharmukham.
Clow, Mr. A. G.
Cocke, Mr. H. G.
Cosgrave, Mr. W. A.
Crawford, Colonel J. D.
Das, Mr. B.
Datta, Dr. S. K.
Fleming, Mr. E. G.
Ghulam Bari, Khan Bahadur.
Gour, Sir Hari Singh.
Graham, Mr. L.
Gulab Singh, Sardar.
Hans Raj, Lala.
Hira Singh Brar, Sardar Bahadur
Captain.
Hudson, Mr. W. F.
Innes, The Honourable Sir Charles.
Joshi, Mr. N. M.
Kasturbhai Lalbhai, Mr.

Lindsay, Mr. Darcy.
Lloyd, Mr. A. H.
Mahmood Schammad Sahib Bahadur,
Mr.
McCallum, Mr. J. L.
Milne, Mr. R. B.
Mittra, The Honourable Sir Bhupendra
Nath.
Moir, Mr. T. E.
Muddiman, The Honourable Sir
Alexander.
Muhammad Ismail, Khan Bahadur
Saiyid.
Pal, Mr. Bipin Chandra.
Ramachandra Rao, Diwan Bahadur M.
Reddi, Mr. K. Venkataramana.
Rhodes, Sir Campbell.
Rushbrook-Williams, Prof. J. F.
Sadiq Hasan, Mr. S.
Sarfaraz Hussain Khan, Khan
Bahadur
Sastri, Diwan Bahadur C. V.
Visvanatha.
Sim, Mr. G. G.
Singh, Rai Bahadur S. N.
Sinha, Mr. Devaki Prasad.
Shanyon, Colonel Sir Henry.
Sykes, Mr. E. F.
Tonkinson, Mr. H.
Yakub, Maulvi Muhammad.

The motion was negatived.

Mr. President: The remaining amendments to clause 4 (17 to 21) fall to the ground, and the only amendment now outstanding is Mr. Tonkinson's

Mr. H. Tonkinson: Sir, I move:

"That in clause 4 of the Bill in the first entry in the last column of the Schedule, for the words 'Court of Session, Presidency Magistrate or Magistrate of the first class' the words 'Court of Session, Chief Presidency Magistrate or District Magistrate' be substituted."

At the present time, Sir, under the Schedule as it stands in the Bill it is provided that the case of a man who is charged with the offence of committing rape on his girl-wife between the ages of 12 and 14 years shall be triable by a Court of Session, a Presidency Magistrate or a Magistrate of the first class. While speaking on one of the earlier amendments, I read out to the House the provisions of sub-section (1) of section

[Mr. H. Tonkinson.]

561 of the Code. Honourable Members will remember that under that subsection it is already provided that no Magistrate other than a Chief Presidency Magistrate or a District Magistrate may commit a man for trial. I submit, therefore, that if only a Chief Presidency Magistrate or a District Magistrate may commit for trial, it is quite obvious that no Magistrate of a lower class should be able to try this offence. Further, Sir, I would only remark that this provision was intended as a safeguard in 1891 for the cases in which the girl-wife was under 12 years of age. I think the safeguard is required even to a greater extent when we are increasing the age for the offence of sexual intercourse amounting to rape within the marital relationship. I move my amendment.

Mr. President: Amendment moved:

"That in clause 4 of the Bill, in the first entry in the last column of the Schedule, for the words 'Court of Session, Presidency Magistrate or Magistrate of the first class' the words 'Court of Session, Chief Presidency Magistrate, or District Magistrate' be substituted."

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

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

Sir Hari Singh Gour: Sir, I move that the Bill be passed.

Mr. President: The question is:

"That the Bill further to amend the Indian Penal Code (Amendment of section 375), as reported by the Select Committee, and as amended, be passed."

The Honourable Sir Alexander Muddiman: Sir, this is a Bill which has been before the Legislature in one form or another for a great many years. The Bill, as my Honourable friend originally introduced it, sought to raise the age of consent in the rape section from 12 to 14 years, for cases falling both within and without the marital relations. The matter was referred to a Select Committee which recognised the subject to be of considerable importance and difficulty, and the Bill, as amended by them, was circulated for the opinions of Local Governments and public bodies. Those opinions were received and I made a short statement setting out their effect when I was discussing this Bill in an earlier stage to-day. Now, Sir, the Bill which has emerged from the consideration stage of this House is a very different Bill from the one that was first taken into consideration. The House has decided that the age of consent in cases outside the marital relationship be raised to 16 years and it has raised the age within that relationship to 14 years. Now, Sir, in a matter of this kind the question of age is the only question in the Bill. Age is not a mere incident as it is in so many other Bills. The whole thing is the age which has to be determined. Now, the first point that I wish to make is that this House has decided by its amendment to raise the age outside marital relations by 4 years at one stroke. That, Sir, is a very remarkable thing to do as it may affect the social life of this country very considerably. The House has increased the age to an extent regarding which the Local Governments

have not been consulted. When the Bill proposed to go up to 14, it was thought by all parties in the House that the matter was so important that a consultation with the Local Governments was essential. Moreover, the House has taken a further step, and a very big step, by raising the age to 14 within the marriage tie. Now, the last Select Committee, of which I was a member, reported in favour of raising the age outside the marriage tie to 14 years and within the marriage tie to 13 years. These recommendations which were made after long deliberation have been swept aside entirely by the amendments which have been made to the Bill at the consideration stage. I would point out to the House that in fixing the age of 16 they have selected the age for the English offence under the Criminal Law Amendment Act. There the age is 16. In England below 13 the offence is rape and a felony and from 13 to 16 it is a misdemeanour under the Statute. Now, by raising the age to 16 in this country, it appears to me that the House has decided on an age the same as that in England without taking into consideration the difference in physical and climatic conditions. These differences admittedly exist. That, Sir, is a very serious step to take. I feel myself confronted with great difficulty in dealing with the Bill as it now stands. On the one hand, I have already expressed the view that we are not opposed to moderate changes. I told the House that Government would support the raising of the age to 13 and would not oppose the raising of the age to 14 outside the marriage tie. I further said we would leave it to the House to decide whether the age of consent should be raised to 13 within the marriage tie. There are two courses open to me which I can possibly indicate to the House as a possible solution of the difficulty in which I find myself. I doubt very much if the House really is satisfied that in raising the age to 16 and 14, it has acted altogether with due circumspection. I have had doubts expressed to me by Honourable Members in that connection, and I think they are doubts which are extremely well justified by the facts.

Therefore one course that I might adopt would be to oppose, on behalf of Government, the passage of this Bill altogether. Now that would in a way be a step I should be loth to take, because I am in favour of some movement forward. I am not in favour of this great jump suggested by the Bill as it now stands, but I am in favour of some movement forward. Another possible course for me to take is to move the adjournment of the present discussion to the Simla Session, when I may be in a position possibly to make some statement on behalf of Government as to what I might be empowered to do in the matter of bringing in a Bill myself. The Assembly will easily understand it is not open to any single Member of the Government to pledge the Government in any way in that connection. I should have to take the usual procedure before I could make that statement to the House. I propose therefore, in the first place, to move that the further consideration of this measure be adjourned till the Simla Session. If that is objected to by the House, I am afraid I shall be left with no alternative but to oppose the measure. I move:

"That the further consideration of the motion now before the House be adjourned till the Simla Session."

***Mr. M. A. Jinnah** (Bombay City: Muhammadan Urban): Sir, I have not taken any part in the discussion of the various amendments which have been moved in this House. I had the honour to be on the Select Committee

* Speech not corrected by the Honourable Member.

[Mr. M. A. Jinnah.]

and I quite see the point of the Honourable the Home Member that this House has taken a somewhat radical view of the position, but I cannot agree that the consideration of this Bill should be adjourned, and for this reason. The House has had a full and careful discussion, and all the points of view have been placed before it. The whole issue is whether the age should be 13 within the marital relation and whether the age outside that relation should be 14 or 14 and 16. The House has, after careful consideration, decided in favour of 14 and 16. With regard to the rest of the Bill, it stands exactly in the same position as it was presented to this House. Every other amendment has been thrown out. Now, Sir, I ask this House, why should the consideration of this Bill be adjourned any more? The Honourable the Home Member says, so that this Bill may be withdrawn and he can bring in a Bill. What Bill? Suggesting 18 and 14 I take it, and this House should accept it. I think, Sir, that would be stultifying the decision of this House and I cannot agree to that course at all, and I hope the House will not agree to that course. But I do suggest this. It is open to the Honourable the Home Member to take this Bill to the other House and let the other House examine this Bill and come to their conclusions on it. In the meantime we shall have the opportunity of knowing whether public opinion resents this so much that we ought to reconsider our decision, and I believe that this Bill can only be placed before the other House probably in August. It cannot be placed earlier than that. Therefore between March and August there will be plenty of time for us to understand what the public opinion is and what the press of the country says, and we shall also have the advantage of our elder statesmen's judgment on this Bill. And I can assure the Home Member that if we find the public opinion is really strong against what he characterises as a radical change, then we shall certainly reconsider it. But I certainly oppose the adjournment of the consideration of this Bill. After all I do want the House to understand what we have done. By raising the age outside the marital relation we have done this. We have protected the girls of tender age. There may be differences of opinion amongst us; the opinion may be that a girl of 14 only should be protected. It may be that another opinion may be that a girl requires protection till she is 16. But after all that is not against any sentiment of any community or the religion of any community. Then who will be the person or persons who will be injured by this? Which section of public opinion will resent this?

Pandit Shamlal Nehru: The rogues, the blackguards.

Mr. M. A. Jinnah: Therefore I cannot see why the Honourable the Home Member is so much disturbed or perturbed so far as regards the age being raised from 14 to 16 outside the marital relation.

The Honourable Sir Alexander Muddiman: What about raising it inside it?

Mr. M. A. Jinnah: That is a point which gave us a lot of trouble and in Select Committee we gave our best and most anxious consideration to the question of raising the age within the marital relation. That is the point. That I can see is a very important point, but there again, as I said before, one school of thought may say 13, another school of thought says 14. Well, I say take this Bill if you like to the other House, and it must go to the

other House, and let us consider what they say. In the meantime we shall have opportunities of understanding and knowing the opinion of the press and the public in the country, and if we find with regard to that part of the Bill there is really a strong public opinion, then I am sure that this House, which after all wishes to give effect to public opinion, will be only too glad to consider and meet that public opinion.

The Honourable Sir Alexander Muddiman: Sir, after what has fallen from Mr. Jinnah, I would ask your leave to withdraw the motion I made for the adjournment of the debate.

The motion was, by leave of the Assembly, withdrawn.

Mr. M. K. Acharya (South Arcot *cum* Chingleput: Non-Muhammadan Rural): Sir, is it open to anybody else to propose an adjournment of this debate? No! It then remains for me only to oppose the motion that the Bill be passed; and I do it as a duty I owe to myself and to my country. I desire on three main grounds, Sir, to oppose the passing into law of this very pernicious Bill. Firstly, on the ground of the very many evil and pernicious consequences which this Bill, if passed into law, is sure to breed, as sure to breed as it is sure I am living and talking here to-day. There can be no question of it. Statistics and reports of officers who are not acquainted with the lives of the Hindus and particularly of the Brahmin Hindu, statistics and opinions even of doctors cannot affect the main question whether or not the Hindu home, and especially the Brahmin home, will be adversely affected whenever the husband of a girl of less than 14 happens to be prosecuted and to be sentenced for the so-called offence of having cohabited with the girl. I should have thought that the chivalry of the Members would have induced them not to take upon themselves the responsibility of pronouncing upon matters by which they are not themselves affected. Social reformers, Brahmos, Christians, I have respect for them in many ways; but these are not the persons who will be primarily and in the first instance affected by such a legislation. They are already accustomed to post-puberty marriages. It is only one community, the Brahmin community in India, and specially in South India, which is mainly concerned. I am not ashamed of them, whatever my Honourable friend from Bengal (Mr. Pal) might say and however much he might sneer at them. I wish he would find for his eloquence a better theme than he has found this evening. Whatever he might say and however funnily he might try to turn the tables on me by referring to the divinity in woman no less than in man, all that is entirely beside the mark. I repeat, Sir, that the ordinary chivalry of Honourable Members of this House must induce them not to pronounce judgment on a subject which does not primarily concern them, but which vitally concerns a large number of their countrymen to whose fold they do not happen to belong. After all, there have been only eight or ten cases of rape brought to the courts during the last 7 years under the old law, it has been said. That is because the age limit was 12. I think there can be no doubt, and not even my most ardent social reformer friends from Madras can deny the fact that we are making rapid progress and that the marriageable age of the girl is rising. It is between 11 and 12 nowadays; and the nuptials take place between 12 and 13 or 13 and 14. Yesterday the age limit of 14 was passed by a snap division, by two or three votes only, simply because some of us were away. That is what happened yesterday. You have raised the age from 12 to 14 in the case of rape within marital relations. That

[Mr. M. K. Acharya.]

is a very serious matter; for the vast bulk of young husbands in Southern India who belong to my community will perhaps come under this section. In the vast majority of cases we send our girls between the ages of 13 and 14 to their husbands. We would like to keep them longer with us; but not under a penal law. I do not see how you can compel us by this piece of legislation to keep our girls away from their husbands until after 14 years of age.

The House passed this measure yesterday by a very small majority. The result of the division did not show that any overwhelming measure of public opinion in the country or in this House is in favour of raising the age from 12 to 14 as against the husband. That is my contention. The evil consequences which may follow from this legislation are many and of a most glaring character. I shall not again refer to the higher standards of Indian womanhood which many of my Hindu friends even fail to see. The evil consequences even from a lower, worldly point of view are many. Whatever you may want, the effect of this legislation so far as marriage relations are concerned is not to protect but to do the utmost evil to girls who between the ages of 13 and 14 go to live with their husbands. You will be dishonouring and ruining those girls of my community. Your intentions make no difference. You remember the old adage which says that the way to a certain unenviable place is paved with good intentions. What do the good intentions of these social reformers matter? As a matter of fact these girls whose husbands get convicted of rape are going to be dishonoured, ruined; and that is a very serious matter. I wish somebody who possesses greater eloquence and commands greater influence in this House than my humble self would plead for the honour and protection of these innocent voiceless girls of my community whom you are doing worse than murdering. Sir, my blood boils when I think of the dreadful consequences of these attempted innovations. (*Pandit Shāmlal Nehru*: "Does not your blood boil at Devadasis?") *Diwan Bahadur T. Rangachariar*: "What has that got to do with it?") Sir, my blood boils against Devadasis and many other things also. Because my blood boils at one evil, it does not mean that my blood does not boil at another and a worse evil. Devadasis are bad enough; but that is a different matter. And I repeat the proposal before us now is even worse, because of the evil consequences which we feel will surely follow, as has been shown by public opinion in this House and outside this House beyond any possibility of doubt. Therefore, Sir, I wish to oppose the motion that this Bill should be passed into law.

Lastly, I do not know why the Mover says it must be passed into law at once. The heavens have not tumbled down all these years during which the old law has been in existence. Will the heavens tumble down during the next 3 or 4 months if we postpone the further consideration of this measure till September? And yet the House did not agree to the reasonable proposal which emanated for once from the official side, namely, that this Bill might be taken up again in September. However, Sir, as the House is now determined to pass the Bill or reject it, I desire every Honourable Member kindly to take to heart what I say. I am not opposed, none of my orthodox friends is opposed, to seeing that this reform is put into effect, to seeing that as far as possible our girls are protected from the evils of premature wifehood. It is simply absurd to say that we do not care for our girls. We are doing our best to remove social abuses.

Meantime this legislation specially with regard to the husband is something which appears to us to be awful; and I for one sitting in this House cannot allow this motion to pass without going down on my knees if need be to every single Member of this House and saying "For God's sake do not ruin those helpless children who are now quite well off." That is my plea. You have in the course of these two days admittedly made very radical changes, changes which go far beyond the scope of the Bill as it first stood. Having made those changes I say, "Leave the Bill where it is; do not proceed further with it now. Bring it up, if necessary, some time later". (*Loud and continuous cries of "Division, division."*) In the alternative I beg of you to reject this Bill.

Pandit Madan Mohan Malaviya (Allahabad and Jhansi Divisions: Non-Muhammadsan Rural): I beg to move, Sir, if I am within my right in doing so, that the further consideration of this Bill be adjourned till September.

Mr. M. A. Jinnah: I rise to a point of order, Sir. That motion has already been made and negatived.

Mr. President: The motion was made and withdrawn, and cannot be made again.

Pandit Madan Mohan Malaviya: I wish, Sir, to point out to the House the injustice and the unwisdom of passing the Bill as it stands at present in this House. The rules of the Legislature provide certain procedure which has to be gone through when matters of legislation are laid before the House. Those rules provide that proposals for legislation should be published for public information, that opinions should be asked for and that those opinions should be circulated to members of the Select Committee, that the matter should be considered by the Select Committee, and when the Select Committee has reported, the proposals should come before this Assembly. The Bill which was introduced by Sir Hari Singh Gour was circulated for opinion. The opinions solicited opposed his proposals. The Honourable the Home Member has made it very clear that there was a large body of opinion in opposition to the proposals which the Bill contained. Those opinions were considered by the Select Committee. The Select Committee made some modifications. It rejected one of Dr. Gour's proposals, the proposal that the age of consent should be raised to 14 in the case of husbands. The Select Committee did not think that the Bill had been so materially altered that it should be circulated again for opinion. But now, Sir, in this House the Bill has been materially altered. The age proposed in cases within the marriage tie, has been changed from 12 to 14. The change proposed in the case of strangers has been from 12 to 16. Now, I submit, Sir, that the changes are of such importance that the Bill should be circulated again for opinion and an opportunity should be given to those who are vitally interested in this question to express their opinions. I think the proposals are of such far-reaching importance from every point of view that it would be only fair that the Bill in its present form should be circulated again for opinion; and I submit that that should be done so that the country may have an opportunity to express its opinion on it. If on recirculation of the Bill it is found that there is a large body of

[Pandit Madan Mohan Malaviya.]

opinion in favour of the age of consent being raised to 16 in the case of strangers as there undoubtedly is in this House, that provision should become law. If it is found also that there is a large body of opinion favourable to the age of consent being raised to 14 in the case of husbands, that should be incorporated into law. But at the present stage I submit that it will be wrong to pass the Bill before the Council into law, and I hope that the House will consider this matter calmly. It is not right for us Members who sit here to disregard the opinions of the people who are interested in this matter. I am not less keen about the social welfare of my young people than any other Member is. I only want that legislation should be passed with due regard to all the safeguards which the rules of the legislature provide. I fear that the public have not had an opportunity of considering these proposals in a fair manner. For these reasons, I submit, that the passing of the Bill to-day will be wrong, and that it should be adjourned till September. If this course is adopted, no great injury will be done to any interest. The matter will come up for discussion under much better conditions when everybody who may so desire will have had an opportunity to express his opinion on a matter which vitally concerns a large section of the people.

Sir Campbell Rhodes (Bengal: European): Sir, I have not taken part in the discussion of this Bill but I have followed it with very great interest and in the disputes between the various legal Members of the House I have rather come to the conclusion that this Bill should go back again to the drafters for reconsideration of the phrasing of the clauses and of all the implications involved in those clauses. I should therefore have very strongly welcomed and personally would have supported the proposition of the Honourable Home Member had he not withdrawn it. In withdrawing it, he has put me and perhaps some other Members of the House in a somewhat awkward position. I welcomed his suggestion that he himself might be prepared to bring in a Bill carefully drafted during the leisure of the next few months. But I take it that offer has now lapsed. In any case, Sir, if this Bill is thrown out on a division now, I do not see how he can consistently bring in a Bill when a similar Bill has been turned down by this Legislature. I shall therefore now transfer my vote in favour of the Bill, but only because during the ensuing months the fact that this Bill has been passed by this House will give the country an opportunity and the country will see the urgent necessity of making up its mind before this matter is introduced in another place. It is in that sense that I shall support this Bill. I suggest, Sir, that the Honourable the Home Member has put us in a difficult position and if he does not withdraw his Party Whips, I submit most respectfully to him that he is not giving this Assembly quite a fair chance to decide on a matter which is surely within the competence of this House, representing as it does all classes of the community, all races and creeds, in close touch with their constituents; and I may say personally for my constituents that I have had more representations on this Bill than probably on all other matters that have come before this House put together. I therefore urgently appeal to the House to pass this Bill in the sense that it will give the country an opportunity to reconsider the matter and that when we meet again in Simla—I use the word “we” with some regret—we shall have the opinions of the country before us and can then proceed with the Bill in accordance with those opinions.

Mr. President: The question is:

"That the Bill further to amend the Indian Penal Code, as amended, be passed."

5 P.M. The Assembly divided:

AYES—36.

Ahmad Ali Khan, Mr.
Chanda, Mr. Kamini Kumar.
Chetty, Mr. R. K. Shanmukham.
Cocke, Mr. H. G.
Crawford, Colonel J. D.
Das, Mr. B.
Datta, Dr. S. K.
Fleming, Mr. E. G.
Ghulam Bari, Khan Bahadur.
Goswami, Mr. T. C.
Gour, Sir Hari Singh.
Gulab Singh, Sardar.
Hans Raj, Lala.
Hira Singh Brar, Sardar Bahadur
Captain.
Jinnah, Mr. M. A.
Joshi, Mr. N. M.
Kasturbhai Lalbhai, Mr.
Lindsay, Mr. Darcy.

Mehta, Mr. Jamnadas M.
Misra, Pandit Harkaran Nath.
Nehru, Dr. Kishenlal.
Nehru, Pandit Shamlal.
Pal, Mr. Bipin Chandra.
Patel, Mr. V. J.
Purshotamdas Thakurdas, Sir.
Ramachandra Rao, Diwan Bahadur M.
Ray, Mr. Kumar Sankar.
Reddi, Mr. K. Venkataramana.
Rhodes, Sir Campbell.
Sadiq Hasan, Mr. S.
Sarda, Rai Sahib M. Harbilas.
Sarfaraz Hussain Khan, Khan
Bahadur.
Sinha, Mr. Devaki Prasad.
Sykes, Mr. E. F.
Willson, Mr. W. S. J.
Yakub, Maulvi Muhammad.

NOES—54.

Abdul Karim, Khwaja.
Abdul Mumin, Khan Bahadur
Muhammad.
Abdul Qaiyum, Nawab Sir Salibzada
Abhyankar, Mr. M. V.
Abul Kasem, Maulvi.
Acharya, Mr. M. K.
Ahmed, Mr. K.
Aiyangar, Mr. K. Rama.
Ajab Khan, Captain.
Alimuzzaman Chowdhry, Mr.
Aney, Mr. M. S.
Ashworth, Mr. E. H.
Bhat, Mr. K. Sadasiva.
Bhore, Mr. J. W.
Blackett, The Honourable Sir
Basil.
Bray, Mr. Denys.
Burdon, Mr. E.
Calvert, Mr. H.
Clow, Mr. A. G.
Cosgrave, Mr. W. A.
Duni Chand, Lala.
Dutt, Mr. Amar Nath.
Ghose, Mr. S. C.
Hari Prasad Lal, Rai.
Hudson, Mr. W. F.
Innes, The Honourable Sir Charles.
Kelkar, Mr. N. C.
Lloyd, Mr. A. H.
Lohokare, Dr. K. G.

Mahmood Sohamnad Sahib Bahadur,
Mr.
Malaviya, Pandit Madan Mohan.
Marr, Mr. A.
McCallum, Mr. J. L.
Milne, Mr. R. B.
Mitra, The Honourable Sir
Bhupendra Nath.
Moir, Mr. T. E.
Muddiman, The Honourable Sir
Alexander.
Muhammad Ismail, Khan Bahadur
Syed.
Mutalik, Sardar V. N.
Narain Dass, Mr.
Neogy, Mr. K. C.
Piyare Lal, Lala.
Rangachariar, Diwan Bahadur T.
Ranga Iyer, Mr. C. S.
Rushbrook-Williams, Prof. L. F.
Sastri, Diwan Bahadur C. V.
Visvanatha.
Sim, Mr. G. G.
Singh, Mr. Gava Prasad.
Singh, Rai Bahadur S. N.
Singh, Raja Raghunandan Prasad.
Stanyon, Colonel Sir Henry.
Syamacharan, Mr.
Tonkinson, Mr. H.
Wilson, Mr. R. A.

The motion was negatived.

Mr. President: I have been asked to acquaint the Members of the Central Advisory Council for Railways that the meeting summoned for this afternoon has been postponed and will be held to-morrow at 2-30 in the afternoon in Committee Room A.

The Assembly then adjourned *sine die*.

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