

23rd March, 1925

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

SECOND SESSION

OF THE

SECOND LEGISLATIVE ASSEMBLY, 1925



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LEGISLATIVE ASSEMBLY.

Monday, 23rd March, 1925.

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

QUESTIONS AND ANSWERS.

PROVISION OF DRINKING WATER ON THE GREAT INDIAN PENINSULA RAILWAY.

1214. ***Mr. Narain Dass:** (a) Are the Government aware that on the Great Indian Peninsula Railway no water is served in buckets and that drinking water is available only on those stations on which engines are watered?

(b) Is it not the fact that on such stations only those passengers can get water who can run up to the taps?

(c) Do the railway authorities not realise that under this system it is very difficult for the passengers to get water at all?

The Honourable Sir Charles Innes: The Honourable Member will find information on the subject he has raised in the answer given to question No. 312, dated the 3rd September, 1924.

PROVISION OF DRINKING WATER AT NIZAM-UDDIN STATION ON THE GREAT INDIAN PENINSULA RAILWAY.

1215. ***Mr. Narain Dass:** (a) Would the Government be pleased to state what the expenditure of removing the Nizam-uddin station to the new site amounts to?

(b) Has it been marked that on the said new station the sheds for keeping water for Hindus and Muslims are so ill-made that dogs freely lick from the stored water?

(c) Is the waterman on the said station under instructions to keep to his seat and dole out water only to those passengers who can run up to the water shed at the risk of losing the train?

(d) Are the Government prepared to take early steps to have water served out by two men to each passenger train at least during the day time, and that water be made available on each station and not on the watering stations only?

The Honourable Sir Charles Innes: (a) Rs. 3,83,206.

(b), (c) and (d). The Government have no information on the points raised, but a copy of the question and answer will be sent to the Agent.

Mr. K. Ahmed: Do Government propose to take sufficient steps to enable both the Hindus and Muhammadans to drink water from the same sheds stopping dogs freely licking from the stored water in India?

The Honourable Sir Charles Innes: I think the Honourable Member had better give notice of that question.

Mr. K. Ahmed: Do Government propose to take sufficient steps to do away with the distinction of supplying water by two water carriers and having the same one for Hindus and Muhammadans, in view of the fact that in the city of Delhi last year and the year before last there was a lot of trouble and people were hurt on account of the disorders which took place on the question of drinking water from wells?

The Honourable Sir Charles Innes: As I have stated, the Honourable Member had better give notice of that question.

RAILWAY CONNECTION BETWEEN MUTTRA AND ALIGARH VIA BRINDABAN.

1216. ***Mr. Narain Dass:** (a) Would the Government be pleased to state whether the project to connect Muttra and Aligarh via Brindaban has been given up?

(b) Are the Government aware that in view of the considerable possibility of traffic, in passengers, and the opening up of a fertile part of the country, the survey and estimates were made some years ago?

(c) Do the Government propose to take up the project as early as practicable?

The Honourable Sir Charles Innes: I propose to reply to (a), (b) and (c) together. The Muttra-Aligarh project has not been given up. The old estimate of cost prepared in 1904 is under revision, and Government will consider the question of the construction of the line as soon as the revised estimates are received.

DISMISSAL OF MR. SHARIF AHMAD KHAN, LATE A CLERK OF THE POST OFFICE AT KARNAL.

†1217. ***Mr. Abdul Haya:** (a) Is it a fact that M. Sharif Ahmad Khan, Clerk, Post Office, Karnal, was dismissed from service by the Postmaster General, Punjab and N.-W. F. Circle, on the 17th October, 1923, after he had put in 15 years' service in the Department?

(b) Is it a fact that he was dismissed from service for alleged realisation from certain residents of Panipat to pay Rs. 12 as the price of a Huqa which belonged to a certain postman and which was lost in November 1922?

(c) Is it a fact that before the dismissal no charge sheet was framed against M. Sharif Ahmad Khan and no inquiry was held in his presence and he has had no opportunity to cross-examine witnesses? Nor was his defence taken as required by Rule 539 of the Post Office Manual, Volume II?

(d) Were any written complaints from the public or persons concerned received against M. Sharif Ahmad or else how were proceedings instituted against him?

† For answer to this question, see answer below question No. 1219.

APPEAL OF M. SHARIF AHMAD KHAN, LATE A CLERK OF THE POST OFFICE AT KARNAL.

†1218. *Mr. Abdul Hays: (a) Is it a fact that M. Sharif Ahmad Khan, Clerk, Post Office, Karnal, preferred an appeal from the order of dismissal to the Director General of Posts and Telegraphs through the Postmaster General, Punjab and N.-W. F. Circle, but the same was withheld by him and not forwarded to the Director-General?

(b) Subsequently on the 7th February 1924, did M. Sharif Ahmad Khan receive an order of the Postmaster General saying that his appeal to the Director General was premature and that he should submit his defence to the charge sheet which was to be framed against him by the Superintendent, Post Offices, Delhi Division?

(c) Is it a fact that a charge sheet was framed against him on the 25th February 1924, i.e., nine months after his dismissal?

(d) Is it a fact that in reply to the above orders on the 4th March 1924, M. Sharif Ahmad Khan pointed out that no charge sheet could be framed against a man who was already dismissed and that if his defence was to be taken he should first be reinstated?

(e) Is it a fact that in reply to the above the Superintendent on 14th March 1924, insisted on having his defence within a week failing which he said the decision would be made *ex parte*?

(f) Is it a fact that in reply to the above M. Sharif Ahmad Khan again insisted on pointing out the grave irregularity involved in the orders communicated to him?

(g) Was the order of dismissal ever set aside by the Postmaster General? If so, on what date and under what rule and law, and was M. Sharif Ahmad Khan paid any arrears of his salary for the period intervening between the two orders?

CASE OF M. SHARIF AHMAD KHAN, LATE A CLERK OF THE POST OFFICE AT KARNAL.

1219. *Mr. Abdul Hays: (a) Was M. Sharif Ahmad Khan in the service of the Department on 7th February 1924 or 25th February 1924? If not, in what capacity was the order framing a charge communicated to him and he was called upon to put in his defence?

(b) Is it a fact that later on M. Sharif Ahmad Khan was told that he was placed under suspension and the previous orders which emanated from Postmaster General were modified by Superintendent, Post Offices?

(c) Is it a fact that the charge sheet which was framed against M. Sharif Ahmad Khan was not confined to the extortion of Rs. 12, as mentioned in the order of dismissal, but certain other charges, such as divulging secrecy of certain telegrams, misdelivery of a telegram and allowing a signaller who was not on duty to enter the Post Office, etc.?

(d) Was any inquiry made into these charges in the presence of M. Sharif Ahmad Khan? Was he given an opportunity to cross-examine witnesses and was his defence recorded?

(e) Is it a fact that on a previous occasion on an inquiry made by Lala Salig Ram, Superintendent, Post Offices, it was found that there was a clique working against M. Sharif Ahmad Khan and that the Postmaster and the Inspectors were the members of that clique?

† For answer to this question, see answer below question No. 1219.

(f) Is it a fact that M. Sharif Ahmad Khan was ultimately dismissed from service again by the Postmaster General on the 9th June 1924?

(g) Has the said M. Sharif Ahmad Khan preferred any appeal to the Director-General? If so, what has been the result of that appeal?

The Honourable Sir Bhupendra Nath Mitra: I propose with your permission, Sir, to answer this and the two preceding questions together as they apparently relate to the same case.

Government have no information about the case, but they understand that an appeal from the official concerned has just been received by the Director-General, and is under his consideration.

INSTALLATION OF MECHANICAL APPARATUS FOR RECORDING VOTES AT DIVISIONS IN THE NEW LEGISLATIVE BUILDINGS, RAISINA.

1220. ***Mr. E. F. Sykes:** (a) Have the Government contemplated the installation of mechanical apparatus for recording votes at divisions in the new Legislative Buildings, Raisina?

(b) If not, will they do so?

Mr. L. Graham: (a) The reply is in the negative.

(b) Government will be glad to receive from the Honourable Member any information which he has on the subject and will then consider the desirability of making further inquiries.

CLERICAL ESTABLISHMENT OF THE GOVERNMENT OF INDIA SECRETARIAT.

1221. ***Haji S. A. K. Jeelani:** With reference to the answer given to my starred question No. 972 of 23rd February 1925, will the Government be pleased to state whether they have considered the desirability of having equal representation from the provinces? If not, do they propose to consider the desirability of equalising the proportion of communities as far as possible?

The Honourable Sir Alexander Muddiman: The great majority of those from whom our Secretariat staff is drawn have a natural preference for service near their own homes, and the initial rates of pay do not attract candidates in any numbers from distant parts of India. I am sure that the Honourable Member realises this and does not desire to contend that all provinces should be given equal representation in the Government of India offices. Representation of communities is another matter and our present policy is to prevent the predominance of any one community. The Government of India are at present considering whether the policy which has been adopted to secure a measure of communal representation in the All-India Services can suitably be applied to the Government of India Secretariat offices.

CLERICAL ESTABLISHMENT OF THE GOVERNMENT OF INDIA SECRETARIAT.

1222. ***Haji S. A. K. Jeelani:** Will the Government be pleased to say whether or not one of the objects of constituting the Staff Selection Board was the equalisation of provincial representation in the cadre of superintendents and assistants? If so, will the Government place on the table a statement showing how far this object has been achieved by effecting recruitment through the agency of the Staff Selection Board since its inception?

The Honourable Sir Alexander Muddiman: The reply to the first part of the question is in the negative; the second part does not therefore arise.

RECRUITMENT OF INDIANS TO THE SUPERIOR CADRE OF THE GEOLOGICAL AND METEOROLOGICAL DEPARTMENTS.

1223. ***Haji S. A. K. Jeelani:** Will the Government be pleased to state, how many Indians have been recruited to the superior cadre of the Geological and Meteorological Departments during the last four years and how many of these are Bengalis?

The Honourable Sir Bhupendra Nath Mitra: Three Indians, of whom one is a Bengali, and four Indians, of whom three are Bengalis, were recruited to the superior grades of the Geological and Meteorological Departments, respectively, during the last four years.

HOLIDAYS IN THE GOVERNMENT OF INDIA SECRETARIAT.

1224. ***Lala Duni Ohand:** (a) When and how were the following festivals fixed as public or general holidays by the Government:

(1) Sabibrat, (2) Holi, (3) Solono, (4) Easter, (5) Guru Nanak's Birthday, and (6) Baisakhi.

(b) Will the Government please place the orders on the table?

(c) Is it a fact that all the above-named holidays have been stopped in the Imperial Secretariat while the Local Governments observe them?

(d) Is it a fact that the stopping of these holidays has caused a great discontentment amongst the clerks of the Government of India Secretariat?

(e) Is it a fact that this order was only provisionally passed for the year 1924 and that the matter was to be re-examined before final orders were passed re holidays?

The Honourable Sir Alexander Muddiman: (a) and (b). The Honourable Member is referred to the *Explanation* contained in section 25 of the Negotiable Instruments Act, 1881, which states that certain days are public holidays. Other holidays are declared by Local Governments by notification to be public holidays within the meaning of the Act, or are announced as local or special holidays. The particular days mentioned by the Honourable Member fall within one or other of these categories.

(c) It will be observed from the orders contained in the Home Department Office Memorandum No. D.-4562-Public, dated the 20th October, 1923, a copy of which is in the Library of the House, that the ten days therein specified are observed as closed holidays in the Government of India Secretariat. Six more days are permissible as sectional holidays to individuals belonging to the various communities concerned.

(d) Government are not aware of such discontentment?

(e) The reply is in the negative.

Diwan Bahadur T. Rangachariar: May I ask the Honourable the Home Member whether there is any other country in the world where the public servants enjoy so many holidays?

The Honourable Sir Alexander Muddiman: I am not aware of the position as to holidays in all the various countries of the world.

**TOTAL MINISTERIAL STRENGTH OF THE OFFICES OF THE AUDIT OFFICER
OF THE INDIAN STORES DEPARTMENT.**

1225. ***Lala Duni Chand:** (a) What is the total ministerial strength of the offices of the Audit Officer of the Indian Stores Department showing in provincial and sectional order?

(b) In what proportion are the various provinces of India represented in this office?

(c) How many vacancies have occurred in this office since its transfer to Delhi, and by men from which provinces have they been filled?

The Honourable Sir Alexander Muddiman: Sir, with your permission, I will answer this question on behalf of my Honourable Colleague who is engaged in another place.

The information required by the Honourable Member has been called for from the Auditor General and will be furnished to him as soon as possible.

Mr. K. Ahmed: Was there any Muhammadan, Sir, taken? Do Government propose to fill the vacancies in future by taking in Muhammadans?

The Honourable Sir Alexander Muddiman: That information will probably also be obtained at the same time as the information that has been called for.

RATIO OF HINDU TO MUHAMMADAN CLERKS IN THE INDIAN METEOROLOGICAL DEPARTMENT.

1226. ***Lala Duni Chand:** (a) Is it a fact that there exists an order in the Indian Meteorological Department to the effect that the ratio of the Hindus to Muhammadans should not be more than 45 to 55 per cent. or so?

(b) If so, on what principle was this order passed and is adhered to?

The Honourable Sir Bhupendra Nath Mitra: (a) It is understood that an order to this effect was passed by the late Director General of Observatories concerning the clerks in his Simla Office.

(b) The order was apparently based on the population of the different communities in the Punjab from which province most of the Director General's clerks were recruited, and the reason was to avoid difficulties in the arrangement in force for producing the daily weather report during holidays.

Mr. K. Ahmed: Do Government propose to follow the principle enunciated in the statement made by His Excellency the Viceroy last December, and by the Honourable Sir Alexander Muddiman, the Home Member, on the 2nd of March?

The Honourable Sir Bhupendra Nath Mitra: The principle will no doubt be followed in future, but I daresay the Honourable Member recognises that that will mean a reduction in the recruitment of Muhammadans for this particular office.

Diwan Bahadur M. Ramachandra Rao: May I ask the Honourable Member whether the Director General has the power to fix the ratios as he pleases?

The Honourable Sir Bhupendra Nath Mitra: The head of an office has got full discretion to regulate the recruitment in his office. I may, however, inform the Honourable Member that the recruitment for this office has now come within the purview of the Staff Selection Board and that in future the declared policy of Government will be followed by that Board.

Diwan Bahadur M. Ramachandra Rao: May I ask, Sir, whether the Director General has the power to fix the ratio of communities?

The Honourable Sir Bhupendra Nath Mitra: The Director General, like any other head of an office, has full power to regulate the recruitment of the staff in his office.

Diwan Bahadur M. Ramachandra Rao: That is not my question. My question is whether the head of a department has the power to fix the ratio of communities in regard to recruitment. That is the question to which I should like to have an answer.

The Honourable Sir Bhupendra Nath Mitra: Until a limitation is imposed by Government in pursuance of a definite policy on the discretionary power of a head of an office, he exercises full powers.

Diwan Bahadur M. Ramachandra Rao: May I ask, Sir, whether the head of every department under the Government of India can fix a ratio or proportion in regard to recruitment between the various communities as he likes without any reference to the Standing Orders of the Government of India?

Mr. K. Ahmed: Inasmuch as we are crowded already by one class of people, is it not the duty of the Government to see that some principle is followed in bringing the rules into operation?

RUNNING OF TRAINS ON THE MULTAN LINE.

†1227. ***Mr. Ohaman Lall:** (a) Are the Government aware that there were orders issued by the Traffic Department on the Multan line to the effect that passenger trains should in some cases start before scheduled time and that such trains did actually run before scheduled time for some months?

(b) Are the Government aware that orders were also issued in some cases on the same line asking the station staff to shew certain passenger trains as having stopped at certain stations in official papers while as a matter of fact they never stopped at those stations?

(c) Are the Government aware that similarly other trains which were shewn in time tables as having run through particular stations were actually detained at those stations and passengers left behind by trains mentioned in question 2 were asked by orders of the Traffic Department to be conveyed by these trains on the Multan line?

(d) Are the Government aware that these false entries were ordered to be made by the Traffic Department on the Multan line relating to the running of trains and will Government lay those orders on the table?

† For answer to this question, see answer below question No. 1228.

(e) Are the Government aware that this practice of making false entries was put an end to in some cases before and in some cases after the Harappa accident?

PRECEDENCE GIVEN TO UP TRAINS OVER DOWN TRAINS ON THE MULTAN LINE.

1228. ***Mr. Chaman Lall:** (a) Is it a fact that the A. T. S. Transport on the Multan line had given orders that up trains should be given precedence over down trains even though the down trains may lose time?

(b) Is it a fact that this practice was mainly the cause of the Harappa accident?

(c) Will Government state if any action has been taken against those responsible in the Traffic Department for the issue of orders mentioned in the above questions?

(d) Is it a fact that if the order giving precedence to up trains (order 33 in the Harappa case) had not been given effect to by the Controller the crossing would have taken place at Harappa as previously arranged?

(e) Is it a fact that the accident would thereby have been avoided?

(f) Is it a fact that if the crossing in the Harappa case had been arranged according to the time table and according to previous orders, i.e., at Harappa the up train would have lost seven minutes in running time?

(g) Was it in order to save the loss of seven minutes that the risk of an accident occurring was incurred?

(h) Are Government aware that the orders relating to the binding effect of a Controller's orders over station masters on the Multan line were never circulated to station masters prior to the Harappa accident?

(i) Is it a fact that station masters on the Multan section prior to the Harappa accident considered themselves to be bound by the Controller's orders?

The Honourable Sir Charles Innes: I propose to answer this and the preceding question together.

The points referred to were amongst those raised by the defence during the prosecution of the assistant station master concerned in the Harappa Road accident. The assistant station master was convicted but it is understood that an appeal is being filed, and in the circumstances Government cannot enter into any discussion of the matter.

Mr. Chaman Lall: With your permission, Sir, I want to put a supplementary question to the Honourable Member. He has entirely misread this question. The question has nothing whatever to do with anything that is *sub judice*. He knows perfectly well that these points were not raised by the defence only but that they are on the records

Mr. K. Ahmed: Is the Honourable Member making a speech or putting a supplementary question?

Mr. Chaman Lall: I am very glad that I have been reminded by the Honourable Member of my duty and therefore I confine myself to the supplementary question.

Is it not a fact that Government records show that the points raised in this question are correct?

The Honourable Sir Charles Innes: It will be much better for the Honourable Member to put these questions on the paper after this case has been fully disposed of, and if he does so, I shall have much pleasure in giving him a full reply to the various points.

Mr. Ohaman Lall: Will the Honourable Member be in a position to answer these questions if I give notice now because his reply has nothing whatever to do with the fact that the case is *sub judice*.

The Honourable Sir Charles Innes: We take a different view.

Mr. Ohaman Lall: May I ask the Honourable Member whether it has come to his knowledge that they are Government records in which very clear instructions are to be found. May I know, whether these have been brought to their notice or not?

The Honourable Sir Charles Innes: I have already told the Honourable Member that if he will put down these questions in the September session I will give him a reply.

Mr. Ohaman Lall: Does the Honourable Member realise that he is trying to evade answering these questions.

The Honourable Sir Charles Innes: I do not admit that I am evading answering any question.

Mr. Ohaman Lall: What is it but evasion if the Honourable Member takes shelter under this, that the case is *sub judice*?

COMPETITION IN CONNECTION WITH THE ERECTION OF A NEW CONFERENCE HALL AT GENEVA.

1229. ***Mr. N. M. Joshi:** (a) Will Government be pleased to state whether they have received from the office of the League of Nations at Geneva a copy or copies of the programme of the competition for the selection of a plan for a Conference Hall forwarded for the architects who are nationals of States members of the League of Nations?

(b) If the answer to (a) be in the negative, will they, when and if they receive the copies, place them on the table for the information of the House and also publish them for the information of the public? If not, why not?

(c) Will Government be pleased to state whether the International Jury, consisting of architects, that will judge the designs submitted for competition, is adequately representative in regard to the interests of architects in India?

Mr. L. Graham: The Honourable Member is referred to the reply given to question No. 1207 on the 17th March 1925.

ALLEGED SEDUCTION OF WOMEN TRAVELLING ALONE AT NIGHT BY PORTERS AT DELHI STATION.

1230. ***Mr. N. M. Joshi:** (a) Will Government be pleased to state whether the attention of the Agent of the East Indian Railway and the District Traffic Superintendent, Delhi, has been drawn to the alleged cases of seduction of women travelling alone at night on the part of the coolies and porters on the Delhi station for immoral purposes?

(b) If so, will they be pleased to state what steps have so far been taken by the railway authorities to stop this scandal?

(c) If the answer to (a) be in the negative, will they undertake to inquire into the matter? If not, why not?

The Honourable Sir Charles Innes: (a), (b) and (c). Government are aware that an employee of the East Indian Railway recently made certain allegations of immorality against the coolies and porters at Delhi station. These allegations have been fully inquired into and found to be entirely baseless.

SHORTAGE OF CUSTOMS APPRAISERS AT KARACHI.

1231. ***Mr. Harchandrai Vishindas:** Will Government be pleased to state (a) if it is a fact that the customs appraisers and examiners in Karachi are made to work up to 7 P.M. daily, being required to attend the head office after their work at the jetties is finished at 5-30 P.M.?

(b) Whether the mercantile community of Karachi has complained of the inconvenience and delay caused to them by the shortage of appraisers?

(c) Whether the Karachi custom authorities have recommended an increase in the number of appraisers?

(d) If so, whether Government intend to sanction the increase and when?

The Honourable Sir Alexander Muddiman: (a) The Government have no information as to the exact hours of attendance of the officers in question.

(b) and (c). The answer is in the affirmative.

(d) Proposals submitted by the Collector are being examined by the Central Board of Revenue; and the results of the examination cannot be anticipated.

ADMINISTRATION OF THE SALT DEPARTMENT IN SIND.

1232. ***Mr. Harchandrai Vishindas:** (a) Will Government be pleased to state whether the administration of salt in the Province of Sind is being carried on by the Assistant Commissioner of Salt and Excise in Sind working under the Bombay Government?

• (b) Salt being a central subject, do Government propose to appoint their own Salt Officer for the Province of Sind?

The Honourable Sir Alexander Muddiman: (a) and (b). The Government are considering the best way of administering the Salt Department in Sind.

ALLOWANCES FOR ARMY OFFICERS.

1233. ***Mr. Ohaman Lall:** (a) Will Government state the actual financial effect of the allowances, etc., recently gazetted for army officers with details under each head?

(b) Will Government state whether any countervailing increases have been granted in the pay and emoluments of Indian soldiers also?

(c) Will Government state why in such far-reaching changes, before their announcement, the Legislative Assembly was not given an opportunity to express its opinion?

Mr. E. Burdon: (a) The details are as follows:—

	Lakhs.
Net cost of introducing marriage allowances and of other minor improvements in pay	18½
Cost of increased messing allowance	5½
Separation allowance	2
Cost of free passages	14
Total	40

As was made clear in my speech of the 4th March made in this House, these figures do not include the concessions given to officers of the I.M.S. in military employment which will cost another Rs. 5 lakhs per annum. I should however like to explain to my Honourable friend and to the House that when we revised the remuneration of the Army officer in 1919 and made it subject to a further revision in 1924, we dealt with every item of remuneration together, pay, pension, and sterling and rupee leave allowances. We have done the same on this occasion also and consequent on the fall in the cost of living in the United Kingdom sterling pensions and sterling leave allowances have been reduced by approximately 5 per cent. I cannot at present state exactly the total saving secured by these reductions. The calculation would have to be made by the Secretary of State and it cannot be made at present because final conclusion has not yet been reached on certain points of detail. The amount will however be in the neighbourhood of Rs. 17 lakhs.

(b) No. I do not know if my Honourable friend is aware that since 1920-21 the remuneration of the Indian soldier has been very largely increased by the grant of higher pay, good conduct and good service pay, better service, disability and family pensions and the grant of miscellaneous concessions, such as free *charpoyas* and kit boxes and an allowance for *mufti* clothing. These benefits were not made subject to revision or reduction at a later date and no occasion for increasing or reducing any item in the scale has since arisen. I may add, since the Honourable Member has sought to raise a comparison, that in 1923 the remuneration of the British soldier in India was diminished by the reduction of messing allowance, a measure which produced a saving of some Rs. 41 lakhs per annum.

(c) I refer the Honourable Member to the statement which I made on the 4th March, in the course of the general budget discussion, on the subject of the army pay revision. He will see that on 6 separate occasions between June 1924 and January 1925 information was given to the House and to the public that proposals of a certain character were under consideration. With this knowledge in its possession, the Assembly did not employ the means which it commands to secure an opportunity of expressing its opinion on the matter and Government did not themselves consult the Assembly in regard to the details of the scheme because in all the circumstances they considered that no practical purpose would be served by doing so.

Mr. Ohaman Lall: Is the Honourable Member aware that no opportunity was given to the House to offer its opinion on this particular matter?

Mr. E. Burdon: I have already dealt with that point in my reply.

Mr. Ohaman Lall: Is the Honourable Member aware that it was essential that the Army Department should have consulted this House?

Mr. E. Burdon: No, Sir.

Mr. Ohaman Lall: Do I understand the Honourable Member to say "No"?

Mr. E. Burdon: I said "No". I have already dealt with that point in the latter part of my somewhat long reply.

Mr. Ohaman Lall: Is the Honourable Member aware that the Indian tax-payer whom we represent in this House is vitally interested in the question of spending the monies that are raised and spent without his consent?

INDIANISATION OF THE ARMY.

1284. ***Mr. Ohaman Lall:** (a) Will Government state if within the last few years the Government of India have submitted any memorandum to the Secretary of State for India on the question of the Indianisation of the Army?

(b) Will Government inform the House about the reply of the Secretary of State on this question?

(c) Will Government be pleased to lay on the table a copy of the memorandum referred to above and copies of all correspondence with the Secretary of State in connection with the same?

Mr. E. Burdon: (a), (b) and (c). I would invite the attention of the Honourable Member to the replies given on the 17th January 1923 to starred question No. 184, and on the 3rd July 1923 to starred question No. 78.

Mr. Ohaman Lall: May I ask the Honourable Member whether it is a fact that His Excellency the Commander-in-Chief has actually put his signature to a memorandum to the effect that the Indian army should be Indianised within a period of 80 years?

Mr. E. Burdon: If my Honourable friend will refer to the previous questions and answers which I have quoted he will find there the answer.

Mr. Ohaman Lall: Will the Honourable Member kindly inform the House as to what that answer was?

Mr. E. Burdon: No.

Mr. Ohaman Lall: Does he deny that statement?

Mr. E. Burdon: I would ask my Honourable friend to refer to the questions and answers which I have already quoted.

Mr. Ohaman Lall: Granting that statement to be correct, how does it tally with the Commander-in-Chief's statement made the other day that the Indian army cannot be Indianised for many and many a year?

THE REFORMS INQUIRY COMMITTEE REPORT.

1295. ***Mr. Ohaman Lall:** (a) What action do the Government intend to take on the Reforms Inquiry Committee's Report?

(b) Have Government made their recommendations on the Report to the Secretary of State for India?

(c) Will Government be pleased to make an announcement whether they have allotted a day, and if so, what day, for a discussion of the Reforms Inquiry Committee's Report?

The Honourable Sir Alexander Muddiman: I have nothing to add to the statements I have already made on the subject.

Diwan Bahadur M. Ramachandra Rao: May I ask whether it is the intention of Government to bring forward in this House a Resolution on the subject of this Report as they did in the case of the Lee Commission Report to ascertain the sense of the House?

The Honourable Sir Alexander Muddiman: I have already told the House that an opportunity will be given to discuss the matter. Whether it will be on a Resolution or otherwise must depend upon the exigencies of the case and I cannot give an answer on that point at this stage.

DISMISSAL OF HANS RAJ, LATE A SIGNALLER, SARDAR SHAH, WESTERN RAJPUTANA DIVISION, AJMER.

1236. ***Lala Duni Ohand:** (a) Is it a fact that one Hans Raj, late a signaller, Sardar Shah, Western Rajputana Division (Ajmer), has been dismissed after approved service of about seven years?

(b) Will the Government be pleased to state the reasons for his dismissal? Was he found guilty of any serious breach of rules of conduct?

(c) Do Government propose to take any action in the matter?

The Honourable Sir Bhupendra Nath Mitra: Government have no information and I have no doubt that if the individual referred to has any grievance he will address the Government of India in the usual manner.

TRADE OF INDIA WITH THE CROWN COLONIES AND DOMINIONS IN THE BRITISH EMPIRE.

1237. ***Sir Purshotamdas Thakurdas:** Will Government be pleased to place on the table a comprehensive statement showing the trade of India with the various Crown Colonies and Dominions in the British Empire, giving:

- (1) The trade between India and each of these parts of the British Empire each year commencing with the year 1920-21.
- (2) The interest of, and share played by, Indians in trade in each of the Colonies and Dominions as may be ascertained from the figures of contributions made by Indians in each Colony or Dominion either by payment of income-tax, or any other tax that may be ascertainable, and
- (3) The total population of Indians in each Colony or Dominion at the end of each year for which trade figures are given?

The Honourable Sir Charles Innes: (1) The trade statistics asked for by the Honourable Member cover some 90 folio pages in Volume II of the Annual Statement of the Sea-Borne Trade of British India to which publication the Honourable Member is referred.

(2) The information is not available.

(3) The figures of population according to the last available Census will be found in the statement which was laid by Sir Montagu Butler on the table of the House in reply to starred question No. 194 on the 5th February 1924. The Government have no further information on the subject.

Sir Purshotamdas Thakurdas: Will Government make the information required in part (2) available to the House?

The Honourable Sir Charles Innes: The information is not available, and how are we to make it available?

Sir Purshotamdas Thakurdas: By collecting the information, Sir. The answer is simple. What is the objection to Government collecting the information and making it available to the House?

The Honourable Sir Charles Innes: They do not know whether the information can be obtained.

Sir Purshotamdas Thakurdas: Do Government maintain that the information cannot be obtained?

The Honourable Sir Charles Innes: I imagine, Sir, that that is the reply.

Mr. K. Ahmed: Will the Honourable Member who is putting these questions enlighten the House and the Government Benches how to get that information and where to get it from?

Sir Purshotamdas Thakurdas: Yes, Sir, I think that is easily done. It is a question of writing to the various Dominions and Colonies concerned and asking them for information, and I am rather surprised at the Honourable the Commerce Member saying that the information cannot be made available. Do I understand that Government refuse to collect the information? Surely it will not entail any such cost as to be prohibitive.

The Honourable Sir Charles Innes: I imagine, Sir, that in these Dominions they do not have all the statistics in the exact form the Honourable Member requires. I do not suppose they could show statistics of income-tax, for instance, for each class of the community; and that being so, we cannot supply the Honourable Member with the information he requires.

Sir Purshotamdas Thakurdas: Do I understand the Government have made inquiries of the Dominions and Colonies and have not been able to get the statistics?

The Honourable Sir Charles Innes: The statistics which the Honourable Member requires are not available.

Sir Purshotamdas Thakurdas: Do the Government of India claim that they have copies of all statistics issued by these various Governments? I thought the Government of India Library in this connection was peculiarly deficient.

Mr. K. Ahmed: In view of the fact that the Government Benches say to the Honourable Member that the statistics are not available, will the Honourable Member from Bombay himself enlighten the House and the head of the department he is asking to answer the questions? They have tried their level best to supply the information he required.

Sir Purshotamdas Thakurdas: The Honourable Member Mr. Kabecrud-Din Ahmed appears to have mistaken his position in this House. I was putting the question here to the Benches opposite and not to the Member over there.

Mr. K. Ahmed: But is it not a waste of time to put the same questions again and again?

Sir Purshotamdas Thakurdas: The Honourable Member should at least have patience till he has taken his chance in the election for a non-official President.

Mr. K. Ahmed: But what is the use of continuing to put questions when the answers cannot be supplied by the Government Benches?

Sir Purshotamdas Thakurdas: I suggest to the Honourable Member that he might now leave it at that and allow me to get the information I want from the Honourable the Commerce Member.

IMPOSITION BY THE AUSTRALIAN GOVERNMENT OF SPECIAL DUTIES ON INDIAN EXPORTS.

1288. ***Mr. Jamnadas M. Mehta:** (i) Are Government aware that in some countries outside India, *e.g.*, in Australia, the statutory ratio of 2s. gold to the rupee is regarded as real and effective?

(ii) Are Government aware that the Australian Government have imposed special duties on Indian exports to that country in addition to the duties previously imposed to cover the depreciation of the rupee from the statutory 2s. gold to the current ratio of 1s. 6d. sterling?

(iii) Do Government propose to request that Government to remove the additional duties?

(iv) Is there any other country besides Australia which has imposed similar special duties?

The Honourable Sir Charles Innes: (i) to (iv). The Government of Australia imposed in July and August of last year additional duties on pig-iron and on leather cricket balls originated in or exported from India, on the formal ground that the exchange value of the rupee in sterling varied by more than 20 per cent. from the mint par rate of exchange. The Government of India have already pointed out to the Government of Australia that the facts did not justify the assumption on which this action had been taken. The matter is still under correspondence and nothing further can be said at this stage.

Mr. Jamnadas M. Mehta: What about the second question, whether any similar special duties have been levied on Indian imports in other foreign countries on the supposition that the 2 shilling ratio is in force?

The Honourable Sir Charles Innes: The answer to that question, as far as I am aware, is in the negative.

APPOINTMENT OF OUTSIDERS AS PERMANENT CLERKS BY THE SUPERINTENDENT OF POST OFFICES, MIDNAPORE DIVISION.

1289. ***Mr. Amar Nath Dutt:** (a) Is it a fact that the Superintendent of Post Offices, Midnapore Division, is appointing outsider graduates and undergraduates direct as permanent clerks superseding the claims of senior-most reserve clerks of his Division?

(b) Will the Government please state the reasons why this irregular practice is being followed by the Superintendent in filling up vacancies?

(c) Do the Government propose to issue instructions to stop this irregular practice in future?

The Honourable Sir Bhupendra Nath Mitra: Government have no information. If any individual has a grievance, he is at liberty to appeal in the usual manner.

RECRUITMENT OF INDIANS AS OFFICERS ON SEA-GOING VESSELS.

†1240. ***Mr. Amar Nath Dutt:** With reference to the reply of the Government to my question No. 944 asked on the 20th February, this year, will the Government be pleased to state why they have not put themselves into correspondence or negotiated with the shipping companies in India regarding the recruitment of Indians as officers?

TRAINING OF INDIANS AS OFFICERS OF THE INDIAN MERCANTILE MARINE.

†1241. ***Mr. Amar Nath Dutt:** Is it a fact that in paragraph 22 of their report, the Indian Mercantile Marine Committee recommended that it would be necessary by negotiations with steamship companies to make specific provision for the further training of Indian apprentices to enable them to put in the qualifying sea services required under the Board of Trade Regulations? If so, will the Government be pleased to state whether there was any negotiation with any steamship companies for taking Indian apprentices? If the answer be in the affirmative, will the Government be pleased to state the result of such negotiations? If the answer be in the negative, will the Government be pleased to state whether they propose to negotiate with steamship companies for taking up the training of Indians as apprentices?

TRAINING OF INDIANS AS OFFICERS OF THE INDIAN MERCANTILE MARINE.

†1242. ***Mr. Amar Nath Dutt:** Is it a fact that no facility is given by the principal shipping companies in India to take Indian apprentices? If so, are the Government prepared to take steps so that Indian apprentices may be taken?

COMPULSORY EMPLOYMENT OF INDIANS AS OFFICERS ON SHIPS ENGAGED IN THE INDIAN COASTAL TRADE.

†1243. ***Mr. Amar Nath Dutt:** Will the Government be pleased to state when the recommendations of the Mercantile Marine Committee will be given effect to as regards compulsory employment of Indians as officers in ships carrying coastal trade? Will the Government be pleased to state whether they propose to take steps, so that all shipping companies whose ships touch Indian waters may be compelled to take some Indian officers?

OPENING OF NAUTICAL CLASSES IN THE LARGE GOVERNMENT COLLEGES AT FIRST CLASS PORTS.

†1244. ***Mr. Amar Nath Dutt:** Will the Government be pleased to state when they propose to open nautical classes in the large Government colleges at first class ports as recommended in paragraph 24 of the Indian Mercantile Marine Committee's report?

† For answer to this question, see the answer below question No. 1246.

CONVERSION OF CERTAIN VESSELS INTO TRAINING SHIPS.

†1245. ***Mr. Amar Nath Dutt:** Will the Government be pleased to state whether they propose to acquire the R. I. M. troopship "Dufferin" or the teak-built motor vessel "Howard" which the Indian Mercantile Marine Committee recommended to be eminently suitable for conversion into training ships?

TRAINING OF INDIANS AS OFFICERS AND ENGINEERS OF THE INDIAN MERCANTILE MARINE.

1246. ***Mr. Amar Nath Dutt:** Has the attention of the Government been drawn to paragraph 85 of the Indian Mercantile Marine Committee's report in which they say that the facilities for the adequate training of Indians as officers and engineers should form the first step towards the development of the Indian Mercantile Marine? What action do the Government propose to take in this direction? Will the Government be pleased to make a definite announcement on this subject?

The Honourable Sir Charles Innes: I will answer questions Nos. 1240 to 1246 together. I would refer the Honourable Member to the answer given by me on this subject on 23rd January, 1925.

PURCHASE OF PAPER FROM FOREIGN MANUFACTURERS.

1247. ***Mr. K. C. Neogy:** (a) Is it a fact that the Controller of Printing and Stationery, Calcutta, has recently placed an order for about 550 tons of paper with foreign manufacturers, and 450 tons with Indian paper mills, out of a preliminary order for 1,000 tons of paper required for the Government of India?

(b) Will Government be pleased to state what was the estimated net saving in placing such a large proportion of the order with foreign manufacturers?

(c) What policy do Government propose to follow as regards future orders for paper? Are they prepared to support the Indian paper-making industry by the purchase of Indian paper, provided it is offered at reasonable rates?

The Honourable Sir Bhupendra Nath Mitra: (a) Yes, with the sanction of the Government of India.

(b) Of the 565½ tons ordered from abroad, 24½ tons represent paper of which suitable qualities are not manufactured in India. On the remaining quantity the net saving was Rs. 25,427 or 9½ per cent. of the price. Apart from this, the quality of the imported paper in some cases is considerably superior to that of the Indian made paper which was tendered.

(c) It is the policy of the Government of India to purchase Indian made paper whenever a satisfactory quality is procurable provided it is offered at reasonable rates. The Government of India do not propose to alter this policy.

Mr. K. Ahmed: Is not that principle always adopted by sensible persons like my Honourable friend from Bengal when he makes purchases of his cloth, stationery and other things without considering the quality of the goods? It would be better if he follows the example of others instead of preaching one thing and doing the other himself?

DISCHARGE OF SULTAN AHMAD BEG, LATE ASSISTANT PARCEL
CLERK, RURKI.

1248 ***Maulvi Muhammad Yakub:** (a) Are the Government aware that one Sultan Ahmad Beg, assistant parcel clerk, Rurki, a young man of 27 years of age, after putting in a service of two years was discharged on a month's pay, on the 16th January 1922, although the Magistrate before whom he appeared as a witness in criminal case No. 209 of 1921, of Saharanpur did not say anything about his statement?

(b) Do the Government propose to reconsider his case and either order his reinstatement or give him a certificate of good character?

The Honourable Sir Charles Innes: (a) Yes. Sultan Ahmad Beg was discharged from service in accordance with the terms of his agreement on account of unsatisfactory working.

(b) No.

REVISION SETTLEMENT IN THE TWO TALUQS OF MALKAPUR AND
KHAMGAON IN BERAR.

1249. ***Mr. M. S. Aney:** (a) Has the attention of the Government of India been drawn to the proposals for revision settlement in the two *taluqs* in Berar (Malkapur and Khamgaon) published by the Central Provinces Government in its Provincial Gazette, dated the 18th November 1924?

(b) Are the Government of India aware that these proposals have been very severely criticised by all the leading public men and public institutions in Berar principally on the ground that the Local Government has been departing from the principles and policy of settlement in Berar laid down since 1860 and reaffirmed repeatedly by the Government of India from time to time, particularly in its letter, Government of India Agricultural and Revenue Department, No. 985-345, dated the 16th April 1894, to the Resident of Hyderabad in regard to percentage of enhancement of assessment and period of settlement?

(c) Will the Government of India be pleased to state whether it had received from the Secretary of the Yeotmal District Association a copy of the representation submitted by that body to the Government of the Central Provinces on the 19th December 1924 expressing their views on the settlement policy in Berar in general and on the proposals for revision settlement in the two aforesaid *taluqs* in particular?

(d) Are the Government of India aware that the Honourable Sir Frank Sly, the late Governor of the Central Provinces and Berar, gave an assurance to the public of Berar in the speech delivered at the last Divisional Durbar held at Amraoti prior to his departure that the Berar Land Revenue Code Amendment Bill embodying provisions for settlement in Berar would be placed before the meeting of the Berar Legislative Committee at an early date for its consideration?

(e) Are the Government of India aware that the Local Government has now definitely declared its intention to proceed with the revision settlement operations in Khamgaon and Malkapur on the basis of the published proposals and not to postpone the operations till the Berar Land Revenue Code Amendment Bill is duly considered by the Berar Legislative Committee and duly passed into law by the Government of India by a notification in the Foreign Department in accordance with the usual procedure?

Mr. J. W. Bhore: (a) and (c). The reply is in the affirmative.

(b) The Government of India have not seen any criticism beyond what is contained in the representation referred to in (c).

(d) and (e). The Government of India have no information.

Mr. K. Ahmed: In view of the fact that the treaty was accepted by His Exalted Highness the Nizam of Hyderabad in the beginning of the century when Lord Curzon left this country, and the fact that there is a lot of agitation going on here and in England, would it not be advisable for the Government not to start the scheme or appoint the committee contemplated in the question by the Honourable Member from Berar?

BERAR LEGISLATIVE COMMITTEE.

1250. ***Mr. M. S. Aney:** (a) Will the Government of India be pleased to state whether the Local Government of the Central Provinces has submitted for their consideration and sanction any proposals to constitute the Berar Legislative Committee and to convene its meetings and regulate its procedure in doing legislative business.

(b) If so, will the Government be pleased to publish the correspondence or place the same on the table for information of this House and further state what steps they have taken or propose to take in this matter?

(c) Are the Government of India prepared to issue immediately instructions or orders to the Local Government of the Central Provinces to constitute the Berar Legislative Committee and convene its meeting for the consideration of the Berar Land Revenue Code Amendment Bill?

The Honourable Sir Alexander Muddiman: (a) The Government of the Central Provinces submitted its proposals for the constitution of a Berar Legislative Committee for the information of the Government of India.

(b) The Government of India do not propose to publish the correspondence on the subject but a copy of the Berar Legislation Rules as approved by them will be supplied to the Honourable Member by the Home Department if he wishes to receive a copy.

(c) A copy of the Honourable Member's question and my reply will be forwarded to the Local Government.

Mr. K. Ahmed: Is there any chance of considering the same matter in connection with the memorial placed before the Home Department as well as the Secretary of State for India by Sir Ali Imam, the colleague of the Honourable Member's predecessor, on behalf of His Exalted Highness the Nizam of Hyderabad? Do Government propose to consider the question whether they can restore the province of Berar?

The Honourable Sir Alexander Muddiman: Sir, this is rather a different question to the one I replied to.

PROVISION OF RESERVED ACCOMMODATION ON THE GREAT INDIAN PENINSULA AND ROHILKHAND AND KUMAON RAILWAYS FOR COOLIES SENT FROM CENTRAL INDIA TO BANBASSA.

1251. ***Kumar Ganganand Sinha:** (a) Is it a fact that in the year 1923 a great deal of difficulty was experienced in sending labour from Central India to Banbassa for want of reserved accommodation on the Great Indian Peninsula and Rohilkhand and Kumaon Railways.

(b) Are the Government aware of the fact that the reserved accommodation for coolies who were to be sent to Banbassa from Harpalpur by the end of the last year could not be provided by the Railways although timely notice was given? If so, will it be pleased to state reasons for the same?

(c) Are the Government aware of the fact that the failure to provide reserved accommodation for coolies who were sent to Banbassa caused them immense difficulty on account of insufficient space in the carriages? If so, do the Government propose to write to the railway authorities concerned to attend to such requests in future?

The Honourable Sir Charles Innes: Government have no information. The matter will be brought to the notice of the railways concerned.

FREIGHT CHARGED ON STONE BOOKED TO BANBASSA BY THE OUDH AND ROHILKHAND RAILWAY.

1252. ***Kumar Ganganand Sinha:** (a) Is it a fact that the Oudh and Rohilkhand Railway has entered into an agreement with the Rohilkhand and Kumaon Railway by which stones booked to Banbassa have to go via Bareilly?

(b) Is it again a fact that the freight of stone to be carried by the Bengal and North-Western Railway, with which the Rohilkhand and Kumaon Railway is now amalgamated, is much less than that of the Oudh and Rohilkhand Railway and consequently the agreement compels people to pay more than what would have been otherwise possible?

(c) If so, what steps are the Government taking to remove the difficulty?

The Honourable Sir Charles Innes: If the Honourable Member will specify the station from which the stone is booked I will have inquiries made. I understand that there is a routing agreement between the Oudh and Rohilkhand and Rohilkhand and Kumaon Railways, but I am not aware that it causes any difficulty.

GRIEVANCES OF THE SUBORDINATE STAFF OF THE OFFICE OF THE ACCOUNTANT GENERAL, UNITED PROVINCES.

†1253. ***Kumar Ganganand Sinha:** Will the Government be pleased to state whether they are aware of the fact that there is a good deal of discontentment on account of the actions of the Accountant General of the United Provinces in regard to annual increment, leave, holidays and other matters affecting directly the interests of the subordinate staff in the office of the Accountant General? If the reply be in the affirmative will the Government be pleased to state what steps they propose to take for its removal? If the reply be in the negative, will the Government be pleased to make inquiries and let the House know the real state of affairs there?

GRANT OF LEAVE TO SUBORDINATES.

1254. ***Kumar Ganganand Sinha:** Will the Government be pleased to state whether the head of an office is at liberty to grant leave on half average pay to his subordinates when leave on full average pay is due and the absence is supported by a medical certificate? If the reply be in the

† For answer to this question, see answer below question No. 1254.

affirmative, will the Government be pleased to state the rules justifying such action? If the reply be in the negative, what action do they propose to take against an officer who is not amenable to any rules?

The Honourable Sir Alexander Muddiman: With your permission I will answer question Nos. 1253 and 1254 together. I would refer the Honourable Member to the replies given on the 27th January, 1925, to the similar questions put by Mr. M. Yusuf Imam—pages 282 and 283, Volume V—No. 5, of Debates.

CLOSING OF GOVERNMENT OFFICES ON HOLIDAYS UNDER THE NEGOTIABLE INSTRUMENTS ACT.

1255. ***Kumar Ganganand Sinha:** Will the Government be pleased to state whether the head of an office is free to keep an office open during holidays under the Negotiable Instruments Act in view of the Government of India, Home Department order? Will the Government be pleased to state clearly the meaning of the said order?

The Honourable Sir Alexander Muddiman: The Honourable Member is referred to the reply which was given on the 26th January, 1925 to Mr. Yusuf Imam's question No. 337 on the same subject.

THE CIVIL LINES POST OFFICE AT AGRA.

1256. ***Kumar Ganganand Sinha:** (a) Are the Government aware that the Civil Lines Post Office, which was situated on the Drummond Road in Bag Muzaffar Khan has been removed from January, 1923?

(b) Is it a fact that the previous localities of the Post Office was in the vicinity of Agra and St. John's Colleges and their hostels?

(c) Is it a fact that the residents of Bag Muzaffar Khan number three thousand approximately consisting mostly of educated classes, such as doctors, students, professors and public servants.

(d) Is it a fact that Bag Muzaffar Khan has got a publishing house and a publishing company?

(e) Is it a fact that the present locality of the Post Office is in an out of the way place which is far from the inhabited area?

(f) Is it a fact that the Secretary of the Agra Trades Association pointed out to the Postmaster General of the United Provinces that the old house was far better and more spacious than the one now occupied and that the portion of the old house occupied by the Postmaster for his personal use was not shown to him on the occasion of his last visit?

(g) Is it a fact that a joint petition signed by a large number of the inhabitants as well as by the Principals of the Agra and St. John's Colleges protesting against the removal of the Post Office was submitted to the Postmaster-General of the United Provinces with no effect?

(h) Is it a fact that the Secretary of the Agra Trades Association pointed out to the Postmaster General of the United Provinces that the proprietor of the old building was willing to provide a shed to remove the objection of the Postmaster?

(i) Is it a fact that the Postmaster's statement that the Principals of the Colleges have no further complaint has been contradicted by the Principals themselves and this fact has been brought to the notice of the Postmaster General?

(j) Is it a fact that the Secretary of the Agra Trades Association has pointed out to the Postmaster General of the United Provinces that the residents of Wazirpura have nothing to do with Civil Lines Post Office, as they transact their business at the Civil Courts Post Office, which is close and more convenient to them?

(k) Why are the Government not pleased to order that the Civil Lines Post Office be shifted to the old house or to some other place in Bag Muzaffar Khan, convenient to the residents of that locality and to the staff and students of the two colleges?

The Honourable Sir Bhupendra Nath Mitra: The Honourable Member's attention is invited to the replies given to Pandit Harkaran Nath Misra's starred questions Nos. 582-585 on the 2nd February, 1925.

PRACTICE OF HUMAN SACRIFICES IN THE HUKONG VALLEY.

†1257. ***Mr. N. M. Joshi:** (a) Will Government be pleased to state whether it is a fact that in the Hukong Valley, Kachins, Nagas and other tracts lying on the borderland of Burma the practice of offering human sacrifices is still going on?

(b) If the answer to (a) be in the affirmative, will they be pleased to state what steps, if any, have so far been taken by either the Government of Burma or the Government of India to stop this practice?

PREVALENCE OF SLAVERY AND PRACTICE OF HUMAN SACRIFICES IN THE HUKONG VALLEY.

†1258. ***Mr. N. M. Joshi:** (a) Will Government be pleased to state whether it is a fact that in the Hukong Valley, Kachins, Nagas and other tracts lying on the borderland of Burma slavery is still existing for the purpose of offering human sacrifices from among those who are enslaved?

(b) If so, will Government be pleased to state whether they have taken any steps to stop this practice? If so, what are they and what are their results? If not, why not?

BRINGING OF THE QUESTION OF HUMAN SACRIFICES AND SLAVERY BEFORE THE LEAGUE OF NATIONS.

1259. ***Mr. N. M. Joshi:** (a) Will Government be pleased to state whether they have ever considered the possibility and the feasibility of bringing this question of human sacrifices and slavery before the League of Nations?

(b) If the answer to (a) be in the affirmative, will they be pleased to state whether they have taken any steps to bring this matter before the League of Nations? If not, why not?

(c) If the answer to (a) be in the negative, will they consider the matter now and communicate their decision to the House in due course? If not, why not?

Mr. Denys Bray: With your permission, Sir, I will answer the Honourable Member's three questions Nos. 1257 to 1259 together. The practice of human sacrifice still exists among the Nagas, a primitive tribe, who inhabit the unadministered hilly country to the North West of the Hukong Valley, slaves being the usual victims.

† For answer to this question, see answer below question No. 1259.

Recently His Excellency the Governor of Burma paid a visit to the Hukong Valley to investigate this and the kindred question of slavery. His proposals are now receiving the earnest consideration of Government. It will be realised that the immediate eradication of the evil could only be secured by a forward policy on this wild and inaccessible frontier and would be very costly in money and lives.

At the request of the Council of the League of Nations full particulars as to slavery in these unadministered tracts have been put before it.

Lala Duni Chand: Are those responsible for human sacrifices in these tracts punished in any way?

Mr. Denys Bray: The tract of country to which I have been referring is wholly unadministered. It has very rarely been traversed by any official at all.

Mr. E. G. Fleming: May I ask the Honourable Member where the Kachin and Naga tracts are?

Mr. Denys Bray: I beg to refer the Honourable Member to any book of geography.

Mr. Chaman Lall: Is it a fact that recently the Government of India permitted the Government of His Excellency Lord Lytton to offer human sacrifices?

Mr. Denys Bray: I did not catch the Honourable Member's question.

PRODUCTION OF MARRIAGE CERTIFICATES FOR THE PURPOSE OF THE PASSAGE CONCESSIONS DUE UNDER THE LEE COMMISSION'S RECOMMENDATIONS.

1260. ***Mr. E. G. Fleming:** Will the Government be pleased to state whether it is necessary for a Government official who has been married for several years and whose wife has been in residence with him in India to produce his marriage certificate when applying for passage concessions due under the Lee Commission's recommendations?

The Honourable Sir Alexander Muddiman: There is no rule requiring production of such certificates, nor are Government aware that their production has been demanded in any cases. It is obvious, however, that Audit Officers must be placed in possession of accurate particulars of the family circumstances of the officers entitled to the concession, though no orders have as yet been issued as to how these particulars should be obtained or verified.

LIST OF SUCCESSFUL HINDU, MUHAMMADAN AND ANGLO-INDIAN CANDIDATES AT THE SUBORDINATE ACCOUNTS SERVICE EXAMINATION HELD IN NOVEMBER, 1924.

†1261. ***Mr. Mahmood Schamnad Sahib Bahadur:** Will Government be pleased to lay on the table a statement showing the number of Hindu, Muhammadan and Anglo-Indian candidates who appeared in the Subordinate Accounts Service examination held in November, 1924, under the orders of the Auditor General and the number of successful candidates of each community in the aforesaid examination?

† For answer to this question, see answer below question No. 1265.

**EUROPEAN AND HINDU AND MUHAMMADAN EXAMINERS APPOINTED FOR
THE LAST SUBORDINATE ACCOUNTS SERVICE EXAMINATION.**

†1262. ***Mr. Mahmood Schamnad Sahib Bahadur:** Will the Government be pleased to lay on the table a statement showing the number of European, Hindu and Muhammadan examiners appointed by the Auditor General for examining all papers including local papers of the candidates of the last Subordinate Accounts Service examination?

PAUCITY OF MUHAMMADANS IN THE SUBORDINATE ACCOUNTS SERVICE.

†1263. ***Mr. Mahmood Schamnad Sahib Bahadur:** (a) Is it a fact that the representation of the Muhammadan community in the Subordinate Accounts Service throughout all the account offices in India is very insignificant and the number of unsuccessful candidates is very high?

(b) If the reply is in the affirmative, will the Finance Member be pleased to state whether he is prepared to make an inquiry into the causes of the above fact?

**CONCESSION OF GRACE MARKS TO MUHAMMADAN CANDIDATES FOR THE
SUBORDINATE ACCOUNTS SERVICE.**

†1264. ***Mr. Mahmood Schamnad Sahib Bahadur:** (a) Is it a fact that during the preceding year's examination for the Accounts Department, the non-Muhammadan candidates have been allowed grace marks in more than one subject and thus declared successful?

(b) If the answer is in the affirmative, will the Finance Member be pleased to state whether such concession has been allowed in the cases of Muhammadan candidates for the Subordinate Accounts Service examination?

ADMISSION OF MUHAMMADANS INTO THE SUBORDINATE ACCOUNTS SERVICE.

1265. ***Mr. Mahmood Schamnad Sahib Bahadur:** Is it a fact that a large number of Non-Muhammadan clerks have already passed the Subordinate Accounts Service examination and are on the waiting list of approved candidates, and if some of the Muhammadan candidates are not declared successful and others are not exempted from the Subordinate Accounts Service examination, as has been done in the cases of many non-Muhammadan candidates there will be no chance for Muhammadan candidates to enter into the Subordinate Accounts Service for years to come, even if some of them successfully pass the examination in the coming years?

The Honourable Sir Alexander Muddiman: Sir, with your permission I would reply to questions Nos. 1261 to 1265 together.

The information required by the Honourable Member has been called for from the Auditor General and will be furnished to him as soon as possible.

**REORGANISATION OF THE MINISTERIAL ESTABLISHMENT OF THE RAILWAY
BOARD.**

1266. ***Mr. Mahmood Schamnad Sahib Bahadur:** (a) Will the Government be pleased to state from which date the reorganisation of the ministerial establishment of the Railway Board has been given effect to?

† For answer to this question, see answer below question No. 1265.

(b) Is it a fact that the establishment of the Budget and Finance Branches of the Railway Board has been confirmed from the 1st October while that of the other Branches from 1st November. If so, why?

(c) Is it a fact that some of the clerks and assistants have been given the maximum pay of their grade? If so, why?

The Honourable Sir Charles Innes: (a) From 1st November 1924.

(b) Yes; the Branches were constituted with effect from 1st October 1924.

(c) No.

BUDGET AND FINANCE BRANCHES OF THE RAILWAY BOARD.

1267. ***Mr. Mahmood Schamnad Sahib Bahadur:** Will the Government be pleased to state:

(a) How many men for the constitution of the Budget and Finance Branches of the Railway Board were taken over from the Accountant General's office?

(b) Number of years of service of each.

(c) Their pay in the Accountant General's Branch.

(d) Their pay given in Railway Board.

(e) How many of them are Muhammadans.

(f) What are their qualifications?

The Honourable Sir Charles Innes: The information in the form asked for will be sent to the Honourable Member.

NON-EMPLOYMENT OF MR. HABIB ALI IN THE OFFICE OF THE RAILWAY BOARD.

1268. ***Mr. Mahmood Schamnad Sahib Bahadur:** Will the Government be pleased to state if it is a fact that a certain clerk, Mr. Habib Ali, B.Sc., was thrown out of employment from the Accountant General's office while men of less or no qualifications were retained in that office, and that at the same time he was promised that he would be provided for in the Railway Board in connection with the reorganisation, but that the said clerk in spite of his qualifications and experience has not been taken into the Railway Board? Will the Government please give the reasons if any?

The Honourable Sir Charles Innes: Mr. Habib Ali was holding a temporary post in the office of the Accountant General, Railways, and on the post being brought under reduction his services were dispensed with.

He was not promised any appointment in the Railway Board's office.

REORGANISATION OF THE MINISTERIAL ESTABLISHMENT OF THE RAILWAY BOARD.

1269. ***Mr. Mahmood Schamnad Sahib Bahadur:** Will the Government be pleased to state the number of posts of 1st, 2nd and 3rd divisions, that have been filled up in connection with the reorganisation of the Railway Board?

(a) What were the qualifications of the persons taken in?

(b) How many were Muhammadans and how many non-Muhammadans?

- (c) Did they appear for the Staff Selection Board's test and with what result?
- (d) Were they exempted from passing the Staff Selection Board's examination? If so, under what rules?
- (e) Have these posts been filled up in consultation with the Staff Selection Board; if not, why not?

The Honourable Sir Charles Innes: I Division 7, II Division 9, III Division 31; Total 47.

(a) Of the total number, 6 were taken over from the office of the Accountant General, Railways; 2 with technical qualifications were recruited from railways and the rest already working in the office in temporary posts.

(b) 6 Muhammadans and 41 non-Muhammadans.

(c) and (d). Those who were already in the office had either passed the Staff Selection Examination or were exempted.

(e) The Staff Selection Board have been consulted whenever necessary; the Railway Department being a commercial one is permitted to recruit qualified men from any available source.

EXEMPTION FROM THE EXAMINATION OF THE STAFF SELECTION BOARD OF CLERKS APPOINTED TO POSTS IN THE GOVERNMENT OF INDIA SECRETARIAT.

1270. ***Mr. Mahmood Schamnad Sahib Bahadur:** (a) Will the Government please state if there is any Department of the Government of India which has confirmed clerks or assistants or allowed men to officiate in higher grades without their passing the Staff Selection Board Examination; if so, on what grounds?

(b) Is the Registrar or any other higher officer in a Department of the Government of India empowered to exempt men from passing the Board's test without the consent of the Home Department? Are there any such cases in the Government of India where such exemptions are made, if so, do the Government propose to take any action in the matter?

The Honourable Sir Alexander Muddiman: (a) There have been cases in which clerks who held permanent appointments in the Lower Division prior to the constitution of the Staff Selection Board were allowed promotion to the Upper Division without passing the Board's test. This was in accordance with the provision made in paragraph 44 of the Secretariat Procedure Committee's Report.

Departments have also been authorized, in pursuance of recommendation (10) of the recommendations of the Committee appointed to inquire into the working of the Staff Selection Board, to appoint unpassed men, as a special exception, to posts requiring technical or special qualifications, subject to the previous approval of the Home Department.

(b) The power of exemption is vested in the Home Department alone. Government are not aware of any cases in which officers of other Departments have granted exemptions.

REORGANISATION OF THE MINISTERIAL ESTABLISHMENT OF THE RAILWAY BOARD.

1271. ***Mr. Mahmood Schamnad Sahib Bahadur:** Will the Government be pleased to state what was the criterion in determining and fixing up the individual clerks and assistants in their grades of pay in connection with the reorganisation of the Railway Board; was it total period of service of the individual, or the educational qualification? If the former, why not the latter?

The Honourable Sir Charles Innes: All qualifications including educational qualifications and length of service were taken into consideration in fixing the initial pay of each individual.

CONCESSIONS ALLOWED TO MEN EMPLOYED IN THE RAILWAY BOARD OFFICE WHO HAD PASSED THE STAFF SELECTION BOARD EXAMINATION.

1272. ***Mr. Mahmood Schamnad Sahib Bahadur:** Will the Government be pleased to state what concession was allowed to those men in the Railway Board who had passed the following Staff Selection Board's examinations?

1. Upper Division for Secretariat.
2. 2nd Division for Secretariat.
3. Typists for Secretariat?

The Honourable Sir Charles Innes: In the case of those who passed the Staff Selection Board examinations, if not appointed to the particular grades, their claim to promotion will be considered when officiating and permanent vacancies occur in the grade for which they have qualified.

PREFERENTIAL TREATMENT OF SOME MEN IN THE RAILWAY BOARD'S OFFICE WHO HAVE NOT PASSED STAFF SELECTION BOARD'S EXAMINATIONS.

1273. ***Mr. Mahmood Schamnad Sahib Bahadur:** Is it a fact that some men who have not passed the Staff Selection Board's examination and some who have not even passed the Matriculation examination have been given preference to those who were really qualified; if so, why?

The Honourable Sir Charles Innes: The Honourable Member is referred to the reply given in (c) of question No. 1269.

PETITION OF HAR PRASAD BHARGAVA, LATE SUBORDINATE JUDGE OF AKOLA.

1274. ***Pandit Shambhu Dayal Misra:** (a) Will the Government be pleased to place on the table the petition under section 401 of the Code of Criminal Procedure (Act 5 of 1898) of Har Prasad Bhargava late Subordinate Judge of Akola, who was convicted under section 161 of the Indian Penal Code by the High Court of Judicature at Allahabad, submitted to the Governor General in Council on the 18th November 1924, from the District Jail, Saugor, in the Central Provinces, on which orders were communicated to him in the Government of India, Home Department, letter No. 1007/24-Judicial, dated the 6th January 1925, to the Central Provinces Government?

(b) Were the questions of law submitted in the said petition considered by the Law Officers of the Government as prayed therein, if not, do the Government propose to get those questions considered?

The Honourable Sir Alexander Muddiman: (a) Government do not consider that any useful purpose will be served by laying the petition on the table.

(b) The answer to both queries in this part is in the negative.

HINDU-MUHAMMADAN RIOTS IN DELHI.

Maulvi Muhammad Yakub: Sir, with your permission I would like to put a question of which I have given private notice to the Honourable the Home Member on the 17th instant.

(a) Are the Government aware that there was a free fight between the Hindus and the Mussalmans of Delhi on the 16th instant?

(b) Will the Government be pleased to state:

(i) What was the cause of the fighting? and

(ii) which party was the aggressor?

(c) Will the Government be also pleased to state how many Mussalmans and how many Hindus were killed and injured?

The Honourable Sir Alexander Muddiman: (a) A free fight occurred on the 16th instant between the supporters of two rival Hindu candidates for election to the Delhi Municipal Committee. The supporters of one of the candidates included Mussalmans.

(b) (i) The immediate cause of the fighting was the keenness of the rivalry between the contesting Hindu candidates.

(ii) This will be the subject of judicial inquiry.

(c) 18 Mussalmans and 3 Hindus were admitted to hospital. One Mussalman has died and one Hindu is in a dangerous condition.

Mr. K. Ahmed: Is it a fact, Sir, that the sad death of the Muhammadan whose life was taken by non-Muhammadan people, who are not fit persons to live in India, enraged the feelings of Muhammadans, by their pelting stones at them next day, the 17th, while the dead body was being carried by the latter for burial who had to fight with them and that in consequence thereof, some people suffered severe injuries which made them go to hospital?

The Honourable Sir Alexander Muddiman: As regards events on the 17th I have called for a report on the matter.

Mr. K. Ahmed: What steps do Government propose to take to put a stop to these riots? Do they propose to take the course of helping a certain community, the members of which are illegally killing people and hurting Muhammadans, and is it a fact that no steps have hitherto been taken even by the so-called leaders of the Unity Conference amongst the non-Muhammadans?

The Honourable Sir Alexander Muddiman: Government do everything in their power to keep the public peace by a strictly impartial administration of the law.

Mr. K. Ahmed: Is it not a fact that the leaders of the Unity Conference, some of whom are present here in Delhi and some of whom were in the gallery here on the day of occurrence, have been exciting the mob and the people of Delhi after their conference fell through? Do Government propose to inquire if particularly the leader from the Punjab and the leaders from other places were mixing with people who took part in the riot?

Mr. President: The Honourable Member seems to be quite well informed himself on the subject.

Mr. K. Ahmed: Is it not for the benefit of the public, Sir, that the full facts should be inquired into and stated by Government *seriatim*?

UNSTARRED QUESTIONS AND ANSWERS.

EMPLOYMENT OF INVALIDED MILITARY PENSIONERS IN CIVIL DEPARTMENTS.

261. **Khan Bahadur W. M. Hussanally:** (a) Is it a fact that some military men invalided by the Board of Health or other medical authority and thus retired on pension, have been re-employed in the Civil Departments such as Customs, Telegraphs, Railway, Police, Excise, etc.?

(b) If so, will Government place on the table a list of such men stating also on what grounds they were invalided?

(c) Were these men medically re-examined before re-employment and found fit for such employment?

(d) Do these men get their military pension besides their civil pay? If so, is this permissible under the rules?

(e) Were there any special circumstances for re-employing them? If so, what?

(f) Can retired civil officers on invalid pension be re-employed? If so, can they also draw their pension in addition to their pay?

The Honourable Sir Alexander Muddiman: The information is not readily available but inquiry will be made.

LOCAL ALLOWANCE OF GATE-KEEPERS IN THE KARACHI CUSTOMS.

262. **Khan Bahadur W. M. Hussanally:** Is it a fact that gate-keepers in the Karachi Customs get no local allowance? If so, why?

The Honourable Sir Basil Blackett: The gate-keepers at Karachi do not get any local allowance, because their pay has been fixed with reference to local conditions.

WITHHOLDING OF FEES PAID TO STATISTICAL CLERKS IN THE KARACHI CUSTOMS FOR SUPPLYING STATISTICS TO MERCHANTS.

263. **Khan Bahadur W. M. Hussanally:** (a) Is it a fact that statistical clerks in the Karachi Customs used to get fees for supplying statistics to the merchants for 20 years past?

(b) Is it a fact that recently these fees have been withheld from them and the same are now credited to Government? If so, why?

(c) Are these fees similarly credited to Government at other Custom Houses as well?

The Honourable Sir Basil Blackett: The information is being collected and will be supplied to the Honourable Member as soon as it is available.

PRIVILEGE LEAVE TO CLERKS AND OTHERS IN THE KARACHI CUSTOMS.

264. **Khan Bahadur W. M. Hussanally:** Is it a fact that in the Karachi Customs clerks and others applying for privilege leave are obliged to produce a medical certificate before such leave is granted? If so, is the practice in consonance with the rules for the grant of such leave? If not, will the Government order such demand being stopped?

The Honourable Sir Basil Blackett: The Government of India are making an inquiry and the information will be supplied to the Honourable Member as soon as it becomes available.

COST OF WIDENING MASJID STATION ON THE GREAT INDIAN PENINSULA RAILWAY.

265. **Mr. Jamnadas M. Mehta:** Will Government be pleased to state:

- (a) What the original scheme for widening the Masjid station of the Great Indian Peninsula Railway in Bombay was and the total amount that was proposed to be spent thereon?
- (b) The total number of houses and buildings acquired for that purpose and the sum paid for the acquisition?
- (c) Whether the whole of the acquired land was used for the purpose of widening the station; if not what happened to the land not so used?
- (d) What the total cost of widening the station has been and how far it falls short of the amount originally estimated and the reasons for spending less than the estimated amount?

The Honourable Sir Charles Innes: (a), (b), (c), (d). The information required is being obtained from the Great Indian Peninsula Railway Administration and will be supplied to the Honourable Member on receipt.

APPRECIATION OF THE MEMBERS OF THE LEGISLATIVE ASSEMBLY OF THE ARRANGEMENTS MADE FOR AEROPLANE FLIGHTS, ETC.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan): Sir, I take this opportunity of expressing our gratitude to His Excellency the Commander-in-Chief for the opportunity we had of taking part in the aerial flights—which cured the indigestion of some Members and which gave some of us a good appetite and which gave an opportunity to our friend over there, who I think will follow me, in exhibiting his intrepidity in looping the loop. We also had the privilege of having an explanation of the processes of the machines by the air officials for which also we should like to express our thanks. Then in the afternoon we were given demonstrations of the armoured motor cars and had explained to us the process of using those motor cars and howitzers and 12 lb. guns. Sir, we have always seen a desire on the part of His Excellency the Commander-in-Chief to make the Members of this House as well as the other House acquainted with military matters as far as possible. At his invitation most of us have been to Dehra Dun and were pleased with the examinations that we were given the opportunity of holding there. Then we had the military manœuvres that were held in the beginning of this session, for which already thanks were expressed in this House. I conclude by

expressing our regret and sympathy for His Excellency during his illness.

Mr. Gaya Prasad Singh (Tirhut Division: Non-Muhammadan): Sir, I am very glad to be able to endorse all that has been said by my Honourable friend Mr. Harchandrai Vishindas, and I think I am expressing the unanimous opinion of those who participated in the demonstrations when I express on my behalf as well as theirs our sense of gratitude to His Excellency the Commander-in-Chief and the military authorities for the opportunity which they have given us. The arrangements came about in this way. Last year, I spoke to my esteemed friend Mr. Burdon to give me an opportunity of going up in an aeroplane. But the arrangements could not be made then. This year I again renewed my request to him, and I took the opportunity of speaking personally to His Excellency the Commander-in-Chief in the lobby of the House. His Excellency was graciously pleased to accede to my request, and referred the matter to Mr. Burdon. Mr. Burdon, with his usual alacrity, took the arrangements in hand, and the result was the fine display of aeroplanes, armoured cars, and howitzer guns we have had. Speaking for myself, I had the opportunity of going up twice in the aeroplane, once on the 21st, and again this very morning. I was the last person to go up to-day; and I enjoyed immensely the exciting and delightful experience of aerial flight.

I have heard, Sir, with very great regret that His Excellency the Commander-in-Chief is suffering from an attack of appendicitis, and I think I am expressing the sympathy of this House when I express our sincere desire to see His Excellency restored to health very speedily.

Maulvi Muhammad Yakub (Rohilkund and Kumaon Division: Muhammadan Rural): Sir, my only regret is that my friend Mr. Kabeer-ud-Din Ahmed did not avail himself of the opportunity of flying.

Mr. President: I shall convey to His Excellency the Commander-in-Chief the appreciation of the Members of the arrangements made for aeroplane flights and the inspection of armoured motor cars; and also I think I shall be expressing the unanimous feeling of the House if I convey to him their hope that he may soon be restored to his usual health.

THE BENGAL CRIMINAL LAW AMENDMENT (SUPPLEMENTARY) BILL.

The Honourable Sir Alexander Muddiman (Home Member): Sir, I beg to move for leave to introduce:

"A Bill to supplement the Bengal Criminal Law Amendment Act, 1925."

As the House is aware, legislation was undertaken in Bengal to continue most of the provisions of the Bengal Criminal Law Amendment Ordinance, I of 1924, which was made by the Governor General in circumstances which are well known, as they have been frequently discussed in this House. On that matter I do not propose to say anything at the present stage. When His Excellency addressed the Indian Legislature at the commencement of this session, he indicated that in certain circumstances supplementary legislation might have to be undertaken to supplement the provisions of

[Sir Alexander Muddiman.]

the legislation in Bengal to which I have referred. It was impossible at that time to make any more definite statement, as the procedure which is laid down in section 72E of the Government of India Act had to be followed in respect of the legislation in Bengal. That section provides :

" Every such Act shall be expressed to be made by the Governor, and the Governor shall forthwith send an authentic copy thereof to the Governor General, who shall reserve the Act for the signification of His Majesty's pleasure."

The Bengal Act being therefore reserved, it was impossible to take any further action in connection with it till His Majesty's pleasure was signified. An Act, Sir, under another clause of the section I have quoted has to be laid before each House of Parliament for not less than eight days on which the House has sat before it can be presented for His Majesty's assent. The procedure required by this provision of the law requires some time and information of the assent of His Majesty in Council was only received in India on the 8th March, 1925. I mention this, Sir, to explain why I am bringing a Bill of this character before the House at so late a date in the Session. It was not possible in view of the procedure required by the law to bring in a Bill earlier.

I may at once explain the general purposes of the Bill which I seek leave to introduce. Certain provisions of the Bengal Ordinance were beyond the scope of the legislative power of the local Legislature, and it has therefore been necessary to bring them before this House. Speaking generally, there were two classes of provisions beyond the scope of the local Legislature; the first because they affected the jurisdiction of the High Court, and the second because they were beyond the territorial jurisdiction of the local Legislature. I will now very briefly draw the attention of the House to the actual provisions of the Bill. The operative clauses are not numerous. Clause 3 of the Bill provides that persons convicted on trials held before Commissioners under the Bengal Act shall have a right of appeal to the High Court at Fort William in Bengal. Similarly, the same clause in the next sub-clause provides that sentences of death passed by the same authority shall be submitted to the High Court and the sentence will not be executed unless it is confirmed by the Court which is to exercise both in respect of appeals and confirmations the powers provided by the Criminal Procedure Code. I do not think I need dilate further in regard to this clause, as it is a clause in favour of the subject. The second clause puts before this House powers which were contained in the original Ordinance made by the Governor General. It enables the Local Government with the sanction of the Governor General in Council to direct detention in jails outside the province of Bengal. That is a matter which, as I have said before, is outside the territorial jurisdiction of the local Legislature. Clause 5 I need hardly refer to; it is merely a construction clause and provides for the application to the supplementary Act of provisions of the local Act. Clause 6 is an important clause which on the analogy of section 491 (3) takes away from the High Court the power of interference by way of a *habeas corpus*. Provision of a similar nature has always been inserted in measures which confer special powers of internment on the Executive. The clause is an essential part of the procedure which has been deliberately set up by the Government and is an integral part of the scheme which was embodied in the original Ordinance. I do not think, Sir, I need at this stage detain the House further. I move for leave to introduce the Bill.

Mr. President: The question is:

"That leave be given to introduce a Bill to supplement the Bengal Criminal Law Amendment Act, 1925."

The motion was adopted.

The Honourable Sir Alexander Muddiman: Sir, I introduce the Bill.

Mr. C. Duraiswami Aiyangar (Madras ceded districts and Chittoor: Non-Muhammadan Rural): May I know, Sir, from the Honourable the Home Member under which provision of the Government of India Act the Governor General's sanction has been obtained for this enactment?

The Honourable Sir Alexander Muddiman: Sir, I move:

"That the Bill be taken into consideration."

Mr. C. Duraiswami Aiyangar: May I also submit to the House, Sir, that the endorsement says that the Governor General has been pleased to accord the sanction required by section 67 (2) (a) of the Government of India Act. That relates to public debt or public revenues, and that is why I wanted to draw attention to this.

The Honourable Sir Alexander Muddiman: I am informed, Sir, that the Governor General has accorded his sanction as it is a Bill which may impose charges on provincial revenues.

Mr. President: The question is:

"That the Bill to supplement the Bengal Criminal Law Amendment Act, 1925, be taken into consideration."

Pandit Motilal Nehru (Cities of the United Provinces: Non-Muhammadan Urban): Sir, I take this early opportunity to explain the attitude of the Swaraj Party in regard to this Bill. Sir, we look upon it as a vicious measure designed to achieve in an underhand manner what the Government know they cannot achieve by adopting a straightforward course. Sir, it is a trap, a well-prepared trap, with a very tempting bait laid on which no lover of justice and fair play can find it easy to resist. It is an iniquitous Bill which, while pretending to concede a right, a most valued right, really strikes at the very foundation upon which that right rests. It is a sordid attempt to deceive this House into the belief that it is securing some small measure of justice for the innocent victims of the bureaucracy while in truth and in reality the House would only be helping the bureaucracy to tighten its hold upon those unfortunate men and to deprive them of what little protection they still enjoy. Sir, these are obviously very grave and serious charges. But the Government stand convicted out of their own mouth. Let us recall to our minds the leading features of the dirty history of this the dirtiest piece of work that any Government has ever engaged itself upon. The House and the public know under what circumstances the Ordinance was promulgated and I do not propose to detain the House at any length on that part of the history. Suffice it to say that opportunity was taken to promulgate this Ordinance at a time when this House had just risen and when it was not to re-assemble for some months. When the House did re-assemble, it was gagged. Honourable Members will remember that I gave notice of a Bill which it was the statutory right of this House to consider, a Bill to supersede the Ordinance. Under section 72 this House and this House alone had any right to deal with the Ordinance in any manner.

[Pandit Motilal Nehru.]

That right, Sir, was tried to be availed of, that right was denied to this House. I say, and I say after due consideration, that this House has been cheated out of its statutory right to interfere with that Ordinance. Section 67 (2) (iii) is the only provision in the Government of India Act which allows an Ordinance either to be repealed or to be controlled or amended in any way, and that power is confined to this House to be exercised with the previous assent of His Excellency the Governor General. That assent was refused to me and the Bill therefore could never come up before this House. But what happened was that about the beginning of January or February—the date does not matter—the Bengal Council was called upon to pass an Act embodying almost word for word the provisions of the Ordinance. The Bengal Council refused to pass that Act. Now, Sir, it would be a very debatable question of constitutional law whether the Bengal Council had any right on a matter of this kind to legislate at all. To my mind even if the Bengal Council had passed that Act, it would have been a nullity as it would in my opinion have been *ultra vires* of the Bengal Council to pass a sort of parallel legislation to the Ordinance which was then and which is still in force. However that may be, I simply say that it is a debatable point and I do not go further into the matter for the obvious reason that this is neither the place nor the occasion when such a question should be discussed. I leave it to the members of the Calcutta Bar and to the Honourable Judges of the Calcutta High Court to consider the question when it arises. Now, Sir, instead of this House being allowed to go direct to the Ordinance and pronounce its decision upon it, what has been done is to adopt a circuitous course by taking advantage of section 80A(3) which no doubt gives Provincial Councils the power to legislate for the purpose of amending the criminal law so far as it relates to their Provinces after the assent of the Governor General has been obtained. As I have said, the Council refused to pass the Act. Then it became by certification the Act of the Governor alone, not even of the Governor in Council, because the power under section 72E is vested in the Governor. Now, Sir, that Act was laid before the Houses of Parliament and in due course it received the assent of His Majesty in Council. His Majesty in Council could not help giving his assent. Being a constitutional monarch His Majesty of course acted according to the advice of his Ministers. That Act now comes before us, not as an Act with which we can deal but it comes before us in another way in a more insidious way. We are now to consider a supplementary Bill, a Bill to supplement the provisions of that Act. What is it that we are asked to supplement? A thing to which we were no parties, a thing which we have denounced in unmeasured terms but we cannot say a word about the main Bill. This, I say, Sir, is an insidious attempt to get us indirectly to accord some sort of approval to a measure to which we were no parties, a measure which, as is well known, was against the Resolution of this House and the opinions expressed in the course of the discussions which took place on the Ordinance. (Mr. K. Ahmed: "Why did not you object to its introduction?")

Now, Sir, let us take a few of the clauses of the Bill. Clause 3 is what I would describe as the bait. It is a clause which gives a most
 12 Noon. valued right. The right of appeal from convictions and from the findings and sentences passed by the courts of first instance is in all countries of the world deemed to be a very valued right. But what is the right that this clause confers? It is a shadowy right. In fact, it is no

right at all. The right of appeal and the value to be attached to it depend upon the right to claim a trial according to law. What are the facts here? The main Act consists of two parts. Part I lays down the constitution of special courts of Commissioners to try offenders,—but what offenders?—not all the offenders, not every one that is taken under the Act, but only such as the high and mighty bureaucracy choose to put before the Commissioners. The Government have a discretionary power. Not one of nearly 100 men who are now suffering durance vile can claim a right of trial before even this specially constituted tribunal, this very much crippled tribunal. It depends on the sweet will and pleasure of the bureaucracy to select any one they like, if they are minded to select anyone at all, to go through the farce of a trial and then they are gracious enough to say, “Thou shalt have a right of appeal”. I can very well understand, Sir, what is going to happen. There is no question that in a case like this, when hundreds are taken, there will undoubtedly be some who have committed some crime—and what country in the world is free from crime? It must be in the very nature of things that one or two would be really guilty persons. It is in the nature of things that there would be evidence forthcoming against them. It is in the very nature of things that that evidence would be found sufficient not only by this special tribunal but also by the High Court to convict the man. Now, this unfortunate man will be placed before the Commissioners. He would probably have no real defence. He will be tried in the manner indicated by the Act and will be convicted. Then he will have the right of appeal. The High Court most probably will come to the conclusion that the evidence is sufficient and uphold the conviction. What will follow? What will follow will be that the case of that unfortunate man will be used to justify the arrest of the one hundred innocent men whom the bureaucracy have not the courage to try even under the limitations which they have imposed upon the special tribunal. Sir, Lord Lytton has said, and Earl Winterton has said in the House of Commons, that there is no intention of trying any of those taken on the 25th October, 1924, when the Ordinance was promulgated. I challenge my friend now to say whether they have the heart, the courage to try those who have been arrested under this Ordinance. What is the value of a right of appeal when there is no right to claim a trial? Sir, if a trial takes place under the ordinary law, with the due safeguards imposed by law, I can understand that the right of appeal is a very valuable right. But you take hold of a man and you keep him in detention, in prison, for any length of time you like. All that is needed by the Act, is that every year the Governor will revise the case, and if he is so minded, he will either set the man free or keep him for another year, and this will happen from year to year. The Star Chamber, Sir, ensured a fairer trial to the persons whom it tried.

Then we come to the other clauses. You have given us this bait and if we swallow it, what are we asked to do? We are asked to give more powers to the bureaucracy. We are asked to give by clause 4 extra-territorial jurisdiction. By clause 5 we are asked to help the bureaucracy in suspending all courts of civil and criminal justice under section 24 of the main Act. It is described by my Honourable friend merely as an interpretation clause. Yes, so it is; but how far does that interpretation go? It goes to the full length of depriving civil and criminal courts of their jurisdiction to deal with the misdeeds of the bureaucracy under the Ordinance and under the Act.

Then we come, Sir, to clause 6, which it is stated, is the natural consequence of the Ordinance. The Ordinance had a provision of this kind and

[Pandit Motilal Nehru.]

this clause, it is said, is inserted simply because the Bengal Legislature as a Provincial Legislature could not provide for the matter. I ask, is that consequence which follows as a matter of course? Does the provision not involve the refusal of a right, the denial of which cost England the head of one of its Kings? You say clause 5 is an interpretation clause, and you say clause 6 follows as a matter of course from the Ordinance. The result is, as I have said, that while you give a sham right of appeal, a right of appeal which in one case out of 20 might perhaps have some little value, you deprive hundreds of persons—may be thousands of persons,—who knows when you are going to desist from this mad career of indiscriminate arrests—of the right which they enjoy under section 491, of the jurisdiction which the High Court possesses under that section. And what is the price? The price is, you give the right of appeal in such cases as you deem fit to try. This is the whole of the Bill which we are now asked to pass. We realise, and let there be no doubt about it, we fully realise that the right of appeal, however limited, has always some value. If there is one unfortunate man who has a chance of having his case placed before the highest tribunal in the land, that is a chance, Sir, which no reasonable man will deny him. We cannot therefore oppose the whole Bill which contains clause 3. It is a cruel almost a fiendish dilemma in which we are placed. We must recognise that there is some value, however little, in the right of appeal given by the Bill. There may be cases where there is some chance, however slender, of the poor man getting justice from the High Court. On the other hand, we are asked to barter away all the rights of the others for this little chance. Well, we are not prepared to fall into the trap. It was only the other day that much pious horror was shown in this House when my Honourable friend Mr. Goswami described the present system of Government as the devil's government. Are these provisions, I ask, Sir, anything short of installing the devil on the high and holy seat of justice. I say it is nothing short of that. We have heard of Jedwood justice—hang in haste and try at leisure. To this the Government have graciously added the right of appeal, the nature of which I have described. Sir, we are not going to be deceived by this. Not even the man in the street will be deceived by anything like this. Therefore, Sir, to sum up the position of my party, I say that this is an iniquitous measure, the iniquity of which is only enhanced by the right which it pretends to give with one hand and the rights which it takes away with the other. So far as that goes, as I have already said, we must recognise the little good that there is in this stingy grant of the right of appeal. Our position will be that we shall say nothing about it. We shall leave you to stew in your own juice. We shall not cast our vote either for or against but when you try to ask us for more powers we shall oppose you and we shall refuse you those powers with all the strength that we can command. That, Sir, is the position of my party.

Mr. M. A. Jinnah (Bombay City: Muhammadan Urban): It is certainly a matter for regret that it should be the hand of Sir Alexander Muddiman that should offer this Bill to this House. I wish it had been somebody else. Now, this Bill which is offered to us is in my opinion an insult added to injury. Sir, when the Governor General promulgated the Ordinance, from one end of the country to the other there was a unanimous protest against the promulgation of the Ordinance.

Mr. H. Calvert: That is absolutely wrong.

Mr. M. A. Jinnah: Except from some degenerated members of bureaucracy. Have you lost all sense of (*A Voice*: "Shame") what Englishmen are proud of?

Mr. H. Calvert: We have not lost sight of the truth.

Mr. M. A. Jinnah: It is nothing else but a disgrace to any civilised government to resort to a measure of this character. I cannot understand Mr. Calvert. Sir, I suppose he has been absent from Great Britain too long. I will quote to him, I have already quoted more than once and I propose to quote to him the words of a great man of whom every Englishman is proud, Lord Morley, and I shall point out what he thought of it. I do not care a straw for his opinion which is absurd and which is absolutely demoralised, degenerated and not worthy of an Englishman. Sir, I have done with that. Now let me get back to my subject. I repeat without fear of contradiction that when the Ordinance was promulgated by the Governor General it was condemned universally by the people of India. That Ordinance has not expired yet. It could be in force for six months only. In the face of public opinion the obstinacy of the Government has gone to this length, that instead of coming to this Legislature they take shelter under the local Legislature. (*A Voice*: "Shame.") They go to the Bengal Council. What did they find there? The Legislature of Bengal rejected that Bill and how was it enacted? It was enacted by a process of certification, a certification which required the assent of His Majesty. And here I may say that I am shocked that such an abhorrent measure that this abomination, should have been placed on the table of the British Parliament and should have been allowed to pass the scrutiny and the resentment which ought to have been shown against this measure. I am one of the greatest admirers of the British Parliament but when the British Parliament has come to this I think I am entitled to say that certainly it has lost the title of Mother of Parliaments which it claims. Now, His Majesty has given his assent to the Bill. The Under Secretary of State, Lord Winterton, had the boldness, the temerity to stand up on the floor of that British Parliament, the champion of the liberty of people. What did he say? He said when the question was put to him "The Act does not contemplate any trial. The détenus can be detained for an indefinite period". Quite correct and when Mr. Lansbury asked him the question, "Is there any limit" he said that the Statute does not provide for any limit. That means that you can lock up as many men as you like according to the advice of your Executive and your police indefinitely or as long as you like and the man has no right to claim a trial or to have a trial. It is not, as I have said before, that I am pleading for or advocating the cause of the guilty. What is the reasoning? Why is it that we show this resentment? Why is it that we are opposed to it so much? Why is it that it goes against our grain? The reason is a very simple one and it is this—that by this measure you are not giving any protection to the innocent, that the innocent are likely to be persecuted, that this is an engine of oppression and of repression of legitimate movements in this country and it has been abused in the past and there is every likelihood of its being abused in the future.

Now, Sir, what is the justification for this measure? Is there a state of war in this country? Is there a national peril in this country? Is the public safety of Bengal endangered? I challenge you to show that. What

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is your ground? Your ground is a petty ground that a few lives are in danger of being shot at; that spectacular murder is contemplated by a gang of men, 100 or 200, a gang of men—a few lives of officials are endangered; they may be shot at or shot down. Now, I ask a simple question, Sir, of myself and my answer is that if I were an official and if I felt that my life was in danger and I was going to be shot down, even like a dog, I should never be a party to a measure which will endanger the life and liberty of the innocent population as this measure undoubtedly does. (Applause.) (Mr. W. S. J. Willson: "He jests at scars who never felt a wound.") But rather I would stand and be shot down by that wicked gang, than give power to the Executive and the police which can be abused and has been abused in the past. I appeal to Englishmen. I appeal to the bureaucrats who are sitting on that Bench to rise higher and not be nervous and lose sight of those great, noble, fine, magnificent principles of justice. Sir, it is not a small matter. You followed this policy in 1909. You have not benefited by it. You tried to follow that policy in 1919 when you were tempted to enact the Rowlatt Act. That Act was repealed without ever being used. What have you gained by this policy? You are now again on the wrong track and I warn you, you are again by pursuing this policy in this ruthless, in this obstinate, obdurate manner, creating a crisis in the country; and I warn you, as I had the opportunity to warn you when you were enacting the Rowlatt Act, instead of this Ordinance which was to be in force for six months, we have got the Bengal Act. It is enacted for five years, and now the Government of India wish that this House should pass this Bill to supplement that horrible measure. I ask the Honourable the Home Member is he serious and does he hope to persuade this House to sanction the measure under the circumstances? I feel inclined, Sir, to say that the Government think that this is a joke, and they have the temerity to bring this Bill before the House and say, pass it.

Now Sir, before I deal with the provisions, I shall quote from Lord Morley. This is what Lord Morley said in 1909. He wrote to Lord Minto and this is what he said:

"Deportation is an ugly dose for radicals to swallow."

He also wrote:

"The question is about the future. It is like the Czar and the Duma. Are we to say, 'You shall have reforms when you are quiet; meanwhile we won't listen to what you say; our reform projects are hung up.' Meanwhile there is plenty of court-martial, *lettres de cachet* and the other paraphernalia of law and order."

In another place this is what he writes to Lord Minto:

"You state your case with remarkable force. . . ."

That is exactly what the Honourable the Home Member has done. (A Voice: "Question?") He has stated his case with remarkable force more than once:

"I admit, but then I comfort myself in my disquiet at differing from you by the reflection that perhaps the Spanish Viceroy in the Netherlands, the Austrian Viceroy in Venice and the Bourbons in the two Sicilies and a Governor or two in the old American Colonies used reasoning not wholly dissimilar and not much less forcible."

That is exactly what the Honourable the Home Member is doing. It has been done in the past. Then what does he say? We proceed further. Again he says:

"We admit that being locked up they, the détenus, can have had no share in the new abominations, but their continued detention will frighten evil-doers generally."

That is the Russian argument:

"By packing off train-loads of suspects to Siberia we will terrify the anarchists out of their wits and all will come out right."

And that is Mr. Calvert.

Mr. H. Calvert (Punjab: Nominated Official): I never said that Sir.

Mr. M. A. Jinnah: But what does Lord Morley say?

He proceeds as follows:

"That policy did not work out brilliantly in Russia and did not save the lives of the Trepoffs nor did it save Russia from a Duma the very 'thing that the Trepoffs and the rest of the offs' deprecated and detested."

Sir, now I want to state our position with regard to this Bill. The first part of this Bill, the clauses which deal with the rights of appeal to and confirmation of death sentences by the High Court, we cannot possibly reject, although we had no hand and no voice, and we had no power in rejecting or enacting the Bengal Criminal Law Amendment Act, in other words, the Ordinance. This House is placed in this position: Are you or are you not going to allow this advantage to the subject who will come under that abominable Statute, the subject who will be tried by a special tribunal, the subject who will be tried by special rules of evidence. However much it may be abominable, however much we may condemn and denounce it, if we are asked a question that even under these circumstances do you wish to refuse the right of appeal, my answer is that I cannot refuse, and I shall be guilty of doing the gravest injustice to that man who may be tried by this special tribunal of yours and by means of special rules of evidence to refuse him the chance to go to the High Court. I cannot deprive him of that opportunity when his life is at stake, and therefore, Sir, that part of the Bill I cannot reject. But I shall not be a party to even that part of the Bill. I leave the Government to carry it if they so desire.

Sir, then I come to the other part of the Bill. The other part of the Bill, clauses 4 and 5, is intended to further facilitate the operation, the enforcement and the carrying out of the working of that abominable Act, and I refuse to be a party to that. I think it is our duty to reject clauses 4 and 5 summarily and we shall vote against them. With regard to clause 6 the Honourable the Home Member was so quiet about it, so gentle, so precise and brief about it, because he knew that if he said a word more he would probably put his foot into it. Now, I ask the Honourable the Home Member what is it that you are asking us to do? You are asking us to allow you, to allow the Bengal police, to allow the Bengal Executive to arrest men, to detain them, to keep them in custody indefinitely without a trial and that man should not have the right to claim the most prized writ of *habeas corpus*: and you want that we should make an exception

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under section 491 of the Criminal Procedure Code—that we should make an exception, so that your abominable Act should work successfully. That is what we are asked to do. (Mr. K. Ahmed made some inaudible remarks.) I cannot hear what the Honourable Member over there is murmuring. (A Voice: “Don’t mind him.”) Therefore, Sir, we cannot be a party to that; and before I sit down, I appeal to every Member of this House. I know the Swaraj Party has decided. I know that we have decided, to follow this course. But there are other Members in this House, and I appeal to every Member, and I say that if you have a grain of self-respect, if you have an iota of the sense of justice and of fairness to your countrymen—vote against these clauses. Mind you, I am not in favour of protecting the guilty, the guilty I have no mercy for, but I do maintain that it is neither a question of national nor public safety, nor are we in a state of war, and I say, whatever the Government may say on the ground of “state necessity”—remember I quoted from Lord Morley; other Governors have argued in the same way before and it is an old, old story—I say if the Government really desire to do the right thing, their proper course is to make their police efficient (Mr. B. C. Pal: “Hear, hear.”) and if you have this gang or gangs of a few hundred men—after all, you have not been able to get more than a hundred or so,—and there is no evidence against them at all, that is why they are locked up—now for nearly 5 months.

Mr. Bipin Chandra Pal: Have they brought any one to trial under the old Regulation?

Mr. M. A. Jinnah: As far as I know—I am not representing the Government—as far as I know from the Press, none of them has been brought to trial. I therefore appeal to all the Members, and I do appeal even to my English friends—of course the officials will vote with the Government, they are bound by the rules to do so—but I appeal to my other English friends who are here, they are not bound to vote with the Government, and I appeal to you not to give your sanction to this. Sir, I will only add this much: we are opposed to this measure on principle. But we are also opposed to it on this ground, that your policy is wrong. I appeal to the Treasury Bench not to persist in this policy. I appeal to the Treasury Bench, I hope not in vain, that if you really wish to get rid of this danger, your only and proper course is reconciliation.

Mr. Bipin Chandra Pal (Calcutta: Non-Muhammadan Urban): Sir, I want to ask the Home Member one question. Will he kindly place before this House the number of persons who have been put up for their trial under the old Ordinance or the new Act in Bengal during the last six months. (Mr. W. S. J. Willson: “This is not question time.”)

The Honourable Sir Alexander Muddiman: Sir, I propose to reply briefly to what has been said. I desire, in the first place, to try and bring this question back to a more reasonable perspective. In the first place, let me say that there is no question of any trick. My Honourable friend Pandit Motilal suggested that the Government were bringing forward an elusive Bill in order to get through certain special powers for the Executive powers of an unusual nature. He suggested that we were

merely conferring a right of appeal, not because we thought it was just, not because we recognize that there should be an appeal but in order to delude this House into voting for a measure containing other clauses. Now this House is not altogether inexperienced in legislative business, and I should have thought that at any rate it would have occurred to any Member of this House that if that was the case, the remedy was a very easy one, namely, to reject the clauses which you do not like and vote for the clauses which you do like. If therefore it is considered that we are putting forward something as a trap or a trick, all I can say is that it is a highly foolish one calculated to deceive no one. (*A Voice*: "It is so.") We have put forward this Bill not as a trap nor have we endeavoured to put forward a bait. We have brought in the appeal clause as we have brought forward the other clauses in the Bill because we regard them as necessary for the purposes for which the whole of this legislation has been devised. So much on the point of the alleged trick.

The next point made was that we ought not to have brought forward legislation in the local Legislative Council. I am not aware what is a more suitable venue for a Bill of restricted application than the Legislative Council of the area concerned. I think honestly you can make nothing on that head. The next point was that it was said that this legislation has been received with loathing, and there was not a single person who has dared to raise a voice in favour of it. Now, I have never concealed from the House my dislike for special legislation and it is to me a matter of great reluctance to recognise its necessity. It has been my lot since I have taken charge of my office to have to defend and bring forward legislation of this kind. To say that there was no voice raised in support of this legislation in Bengal is not a fact. It is not wise, I suggest to the House, not to recognise the facts. This Bill was sought to be introduced in the Bengal Council on the 7th January and on the division which was taken on the motion for leave to introduce there were 57 who voted in favour of the Bill and there were 66 who voted against it. (*Mr. A. Rangaswami Iyengar*: "How many were officials?") My Honourable friend is perfectly right in suggesting, as he apparently does, that a considerable number of the persons who voted for the Bill were officials (*A Voice*: "And nominated Members.") and nominated Members.

Mr. M. A. Jinnah: Sir, I never said that there was not a single person; I said it was universally condemned.

The Honourable Sir Alexander Muddiman: I will not follow the difference between "not a single person" and "universally condemned". I am comparing the number 57 with the number 66 and I will now deal with the point that among those who voted for the Bill there were undoubtedly both nominated members and officials (*Mr. K. Ahmed*: "And elected Members also.") (*A Voice*: "Like you.") and elected members too. But the point I desire to make is this, that under the constitution of these Councils, a constitution that has been fixed by Parliament, one Member's vote is the same as another's. As long as the present constitution continues, it is idle to say that you can discriminate between a vote given by a nominated or by an elected Member. I want to be quite clear on that point.

I pass on to another line of attack that has been taken. The legislation provides, as is well known, for the trial of certain offences by a special tribunal, a special Commission.

Pandit Motilal Nehru: Not offences, but, certain persons whom you choose to try, certain persons who are charged with certain offences and you choose to try them. Only persons whom the Local Government considers should be tried under the special provision not all who have been arrested.

The Honourable Sir Alexander Muddiman: I am glad my Honourable friend has made the point because he has brought me on to the point I intended to make. There is no such power as is suggested by the interruption. It is not in the power of the Local Government to try all or any offences it likes under the special procedure. The offences are specified, and I will read them to the House. I think the House should know what they are.

Pandit Motilal Nehru: Nobody has ever denied that, but the question is whether you give the right of trial to everybody.

The Honourable Sir Alexander Muddiman: I am not to be led away from the point I was going to make. The Local Government has power to put on trial persons who are alleged to have committed certain offences. If the House is aware of the offences which are contained in the Schedule, I will not trouble to read it to the House. I will only mention that in every one of the offences contained in the Schedule, the element of violence is there. That, I think, is admitted. (*Pandit Motilal Nehru:* Quite so.") Another point that has been made is that on trials under this portion of the local legislation, special rules of evidence are in force. It would seem to be suggested that these special rules of evidence are something of a horrible and terrible kind, something so obviously unjust and unfair that the persons likely to be tried will be prejudiced thereby. I will read to the House the only special rule as to evidence which is provided for by the legislation, and it is this:

"Notwithstanding anything contained in the Indian Evidence Act, 1872, when the statement of any person has been recorded by any Magistrate, such statement may be admitted in evidence in any trial before Commissioners appointed under this Act if such person is dead or cannot be found, or is incapable of giving evidence, and the Commissioners are of opinion that such death, disappearance, or incapacity has been caused in the interests of the accused."

Now, the point of that special rule is clear. One of our dangers—and I should have thought that it must be admitted that it was a present danger—is the danger of assassinations of witnesses, and all that the section does is to say that the statement of a man recorded in those circumstances and where his death or disappearance has to the satisfaction of the Court been shown to be caused in the interests of the accused

Pandit Motilal Nehru: May I ask the Honourable Member whether there have been any assassinations of witnesses recently? When was the last witness assassinated?

The Honourable Sir Alexander Muddiman: The last witness assassinated in my memory—I am glad to say they have not been so frequent lately—is the assassination in Chittagong. (*An Honourable Member:* "In what year?") Last year. (*Pandit Motilal Nehru:* "Of a witness?") He was a witness; he was a man who certainly would have been a witness if he had lived.

Now, Sir, let me turn to what is really the graver part of the charge. There have been no real complaints against this trial by Commissioners and

there have been no real complaints against the powers of the High Court in the matter of confirmation of the sentence of death. My Honourable friend has quite frankly admitted it, although he has minimised the bait as he calls it, which I say is no bait. It is the internments that are attacked. We are told we are locking up hundreds of persons—that is, by the Pandit. My Honourable friend Mr. Jinnah was inclined to put the number nearly at something about 100. But I am not prepared even to say that even that is not rather excessive. I have not the latest figures with me. It is suggested that this “abominable” law enables us to take people, anyone, regardless of what they have been doing and lock them up, without any cause. I do not desire to deny or to minimise that it is a very serious thing to confine a man without trial and I should be the last to minimise the seriousness of it. But it is not fair nor does it do any good to repeat the cry that every one can be locked up. There must be reasonable grounds for believing that the person has acted, is acting or is about to act in contravention of the provisions of the Indian Arms Act, 1878, or the Explosives Act, 1909.

Mr. A. Rangaswami Iyengar: In the opinion of the police.

The Honourable Sir Alexander Muddiman: In the opinion of the Local Government. I think there is no one in this House, whatever his political views may be, who desires to encourage offences in connection with arms or explosives.

Mr. Devaki Prasad Sinha: What about section 18?

The Honourable Sir Alexander Muddiman: If the Honourable Member will allow me to proceed, I will tell him something about section 18. The next class of persons who may be dealt with are people in respect of whom the Local Government has reasonable grounds for believing that they have committed, are committing or are about to commit any offence specified in the Second Schedule. The Second Schedule contains offences in all of which there is the element of violence; and the third class of persons who may be dealt with are persons in whose case in the opinion of the Local Government there are reasonable grounds for believing that any person has acted, is acting or is about to act with a view to interfere by violence or by threat of violence with the administration of justice. There again I should have thought there would be no sympathy with the evil, whatever complaint there may be against the method with which we attempt to deal with the matter. I have dealt at some length with this aspect of the case, because it is essential that the House should bear in mind that these powers are not, as is often said, to be exercised without any regard to the antecedents of those who are arrested. And mark you, the power is to be exercised by the Local Government. Now, it has been said that Government is a devil's government. I doubt if my Honourable friend really believes it. To many at any rate the Local Government is a guarantee that these powers will not be exercised indiscriminately or against any persons other than those for whom this legislation was framed.

Mr. A. Rangaswami Iyengar: You can never convince us by what has been done in the past.

The Honourable Sir Alexander Muddiman: Is it to be believed that a Local Government composed as it is to-day is likely to exercise those powers in the devilish way that has been suggested? I should be the

[Sir Alexander Muddiman.]

last to deny that mistakes may be made, but under what system of jurisprudence, under what system of trial is it not possible that mistakes could be made? (*Pandit Motilal Nehru*: "Minimise them.") I agree that the argument in reply to that is, "Yes, mistakes are made in judicial trials, but they are made after a careful judicial investigation. You do not give them judicial investigation and therefore liability to mistake is greater." That is so. It must be admitted. The remedy is a strong one for a disease which is deadly. In closing my remarks I beg the House to approach this Bill, not in the light of prejudice, not with a determination to throw out one clause or two clauses or three clauses or four clauses of the Bill, but to regard our proposals as a whole, put forward with reluctance but essential, and supported as they have been by every executive authority in India, proposals which were laid on the table of both Houses of Parliament for days, which have produced no motions in that House and which have finally been enacted with the sanction of Parliament. I desire to make it quite plain that in making that statement I do not say that the provisions which we are asking you to sanction in this Bill have been so laid. I mean that the local Act, to which these provisions are in effect nothing more than a supplement, was so laid. I ask the House to consider all these matters and think once and think twice before they commit themselves to a vote against the clauses of this Bill.

Mr. President: The question is:

"That the Bill to supplement the Bengal Criminal Law Amendment Act, 1925, be taken into consideration."

The motion was adopted.

Clauses 2 and 3 were added to the Bill

Mr. President: The question is:

"That clause 4 stand part of the Bill."

The Assembly divided:

AYES—37.

Abdul Mumin, Khan Bahadur
Muhammad.
Abdul Qaiyum, Nawab Sir Sahibzada.
Ajab Khan, Captain.
Ashworth, Mr. E. H.
Bhore, Mr. J. W.
Bray, Mr. Denys.
Burdon, Mr. E.
Calvert, Mr. H.
Clow, Mr. A. 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.
Lindsay, Mr. Darcy.
Lloyd, Mr. A. H.
Makan, Mr. M. E.
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.
Rau, Mr. P. R.
Rhodes, Sir Campbell.
Rushbrook-Williams, Prof. L. F.
Sastri, Diwan Bahadur C. V. Visva-
natha.
Singh, Rai Bahadur S. N.
Stanyon, Colonel Sir Henry.
Sykes, Mr. E. F.
Tonkinson, Mr. H.
Willson, Mr. W. S. J.
Wilson, Mr. R. A.

NOES—74.

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 Chaudhry, Mr.
 Ancy, Mr. M. S.
 Ariff, Mr. Yacoob C.
 Chaman Lall, Mr.
 Chanda, Mr. Kamini Kumar.
 Chetty, Mr. R. K. Shanmukham.
 Das, Mr. B.
 Das, Pandit Nilakantha.
 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.
 Hussanally, Khan Bahadur W. M.
 Hyder, Dr. L. K.
 Ismail Khan, Mr.
 Iyengar, Mr. A. Rangaswami.
 Jeelani, Haji S. A. K.
 Jinnah, Mr. M. A.
 Joshi, Mr. N. M.
 Kasturbhai Lalbhai, Mr.
 Kazim Ali, Shaikh-e-Chatgam Maulvi
 Muhammad.
 Kelkar, Mr. N. C.
 Kidwai, Shaikh Mushir Hosain.
 Lohokare, Dr. K. G.
 Malaviya, Pandit Krishna Kant.

The motion was negatived.

Mr. President: The question is:

“That clause 5 stand part of the Bill.”

The Assembly divided:

AYES—37.

Abdul Mumin, Khan Bahadur
 Muhammad.
 Abdul Qaiyum, Nawab Sir Sahibzada.
 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.
 Clow, Mr. A. 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.
 Lindsay, Mr. Darcy
 Lloyd, Mr. A. H.
 Marr, Mr. A.

Malaviya, Pandit Madan Mohan.
 Mehta, Mr. Jannadas 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.
 Sarfaruz Hussain Khan, Khan
 Bahadur.
 Shafee, Maulvi Muhammad.
 Singh, Mr. Gaya Prasad.
 Singh, Raja Reghunandan Prasad.
 Sinha, Mr. Ambika Prasad.
 Sinha, Mr. Devaki Prasad.
 Syamacharan, Mr.
 Tok Kyi, Maung.
 Venkatapatiraju, Mr. B.
 Yakub, Maulvi Muhammad.
 Yusuf Imam, Mr. M.

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.
 Rau, Mr. P. R.
 Rhodes, Sir Campbell.
 Rushbrook-Williams, Prof. L. F.
 Sastri, Diwan Bahadur C. V.
 Viswanatha.
 Singh, Rai Bahadur S. N.
 Stanyon, Colonel Sir Henry.
 Sykes, Mr. E. F.
 Tonkinson, Mr. H.
 Willson, Mr. W. S. J.
 Wilson, Mr. R. A.

NOES—73.

Abdul Karim, Khwaja.
 Abhyankar, Mr. M. V.
 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. Yacoub C.
 Chaman Lal, 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.
 Gulab Singh, Sardar.
 Hans Raj, Lala.
 Hari Prasad Lal, Rai.
 Hussanally, Khan Bahadur W. M.
 Hyder, Dr. L. K.
 Ismail Khan, Mr.
 Iyengar, Mr. A. Rangaswami.
 Jeelani, Haji S. A. K.
 Jinnah, Mr. M. A.
 Joshi, Mr. N. M.
 Kasturbhai Lalbhai, Mr.
 Kazim Ali, Shaikh-e-Chatgam Maulvi
 Muhammad.
 Kelkar, Mr. N. C.
 Kidwai, Shaikh Mushir Hcsain.
 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.
 Natsin 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.
 Singh, Raja Raghunandan Prasad.
 Sinha, Mr. Ambika Prasad.
 Sinha, Mr. Devaki Prasad.
 Syamacharan, Mr.
 Tok Kyi, Maung.
 Venkatapatiraju, Mr. B.
 Yakub, Maulvi Muhammad.
 Yusuf Imam, Mr. M.

The motion was negatived.

Mr. President: The question is:

"That clause 6 stand part of the Bill."

Honourable Members are aware that the motion in this case is to be:

"That Clause 6 stand part of the Bill," not "That clause 6 be omitted."

Mr. T. C. Goswami (Calcutta Suburbs: Non-Muhammadan Urban):—Sir, if the sting of the scorpion is in its tail, the venomous purpose of this Bill is in its last clause, clause 6. The object of this Bill is not to provide a right of appeal, which, I submit, this Bill does not really provide in the meretricious clause 3. The real purpose of this Bill is to deprive honest citizens incarcerated without trial and without even charges being framed against them, of the present, very meagre right of getting a writ of *habeas corpus* under section 491 of the Criminal Procedure Code. Sir, this clause, as I have already said, is the most vicious clause in the whole Bill.

I take this opportunity to explain a certain statement of mine which, I believe, has received considerable attention in this House. Some time ago when the Honourable the Home Member was trying to rub in the catch-phrase, "The King's Government must go on", I did say and I did

say deliberately that the devil's government must cease. Sir, it took me five months to take up that attitude, five months from the 25th October when the infamous Bengal Ordinance was promulgated. Sir, I say that this Government, by passing the Ordinance and by the certification of the Ordinance Bill in Bengal, have been wedded to sin, and have earned the wages of sin and deserves the wages of sin—death. I know that I have offended against the canons of the drawing-room politesse of a second class bourgeoisie. I do not apologise for my convictions; but I do offer this assurance, that it is with considerable pain that I have to use language which is either venomous or at all too severe. Sir, I have learnt too early in life, in contact with the political situation around me, with my political opponents, the truth of Shakespeare's advice, disguise fair nature with "*hard-favoured rage*". It is no pleasure to me to abuse anybody.

Sir, "*Reasons of State*" have been urged in support of this Bill. Reasons of State both in mediaeval and in modern times have been responsible for many forgeries. My Honourable friend Mr. Jinnah, on another occasion, namely, during the debate in this House on the Ordinance asked the Home Member to take him into confidence and place before him what evidence he possessed regarding the persons incarcerated. I thought to myself, that, should the Honourable the Home Member, who is a very reasonable and unsuspecting man, by mistake, have acceded to the request of the Honourable Mr. Jinnah, his department would have been put to the necessity of forging evidence. Sir, with regard to State necessity I should like to make a quotation which I shall expect all educated Englishmen here to recognise:

"State-necessity! No, my Lords, that Imperial tyrant, State-necessity, is yet a generous despot; bold is his demeanour, rapid his decisions and terrible his grasp. But what he does, my Lords, he dares avow, and, avowing, scorns any other justification than the great motive that placed the iron sceptre in his hand. But a quibbling, pilfering, prevaricating State-necessity that tries to skulk behind the skirts of justice; a State-necessity that tries to steal a pitiful justification from whispered accusations and fabricated rumours: no, my Lords, that is no State-necessity; tear off the mask, and you see coarse, vulgar avarice; you see speculation lurking under the gaudy disguise, and adding the guilt of libelling the public honour to its own private fraud."

So much for the State-necessity of the present Bill. Sir, I will now quote from a book which, I think in the interests of "*State-necessity*", ought to have been proscribed in this country. I refer to Mr. Buchan's *Life of Lord Minto*, published last year. On page 292 you will find the words of Lord Minto as to why deportees could not be released in 1909, even though Lord Morley had pressed for their release. Thus did he answer Lord Morley:

"One of the great hopes of our Reforms scheme was to rally the Moderates. Surely it would not be wise (mark the words, '*it would not be wise*', not that it was not just at least to release them) to turn loose those firebrands into the political arena just at the very moment when we are hoping that the reasonable and stable characters in Indian society will come forward and range themselves on our side, and on the side of constitutional progress. It seems to me that, if we were to do this, we should indeed be creating a '*self-contradictory situation*', (quoting Lord Morley's own phrase) in that, having withdrawn the deportees from political life for nine months or while nothing was going on, we should be liberating them at the very moment when the whole country will be in the turmoil of a general election and when we are trying for the first time to work out an entirely novel electoral machinery."

These are words full of meaning and significance, and throw a light on the present case. As in 1909, so in 1924-25. The substance of that, I suppose, is this: "It is true that the deportees ought to be released, justice

[Mr. T. C. Goswami.]

demands that they should be released; but if we do release them they will prejudice the chances of the Moderates at the elections." Another quotation from the same book. (Mr. K. Ahmed: "Use your own language. What is the use of borrowing quotations?")

"The worst of it, wrote Lord Minto in 1910, is that the meaning of outrages is so enormously exaggerated at home. . . . Speaking frankly there was at one time a very decided slackness on the part of Local Governments in respect to prosecutions for sedition. They were much more inclined to advise deportation and throw the responsibility on the Government of India and the Secretary of State and there was a tendency to complain of the weakness of our legal machinery, the truth being that it was often ample but that its application was neglected."

It is a quotation which ought to unteach even Mr. K. Ahmed his loyalty to all the foibles of this Government. Sir, I believe by a slip of the tongue my Honourable friend Mr. Ranga Iyer the other day described the Government's case for the Ordinance as a lie, and, if I remember correctly, he diluted that statement in the subsequent part of that speech. The Honourable the Home Member then quite rightly drew attention to the fact that a "machine" does not lie, that the "machine" of the Government is composed of individuals, individual officials; therefore the lie had been attributed to individuals. I have not the slightest doubt that some of the officials even in the highest positions have lied in connection with this Ordinance; and that their lie is a lie of the blackest description. As for the question of *bona fides*, the Honourable the Home Member, the other day, seemed to have felt sure that we in this House had no doubt as to the *bona fides* of Government, and that this House, at least, did not regard the Ordinance as having been directed against the Swaraj Party. I think a sufficient denial of that was given in this House on a previous occasion.

We are told that there are dangerous elements about in this country. I will tell you who the dangerous people are. Out of the mouth of Lord Amptill Parliament had the truth and out of the mouth of Lord Amptill this Assembly will again hear the truth. Lord Amptill speaking in the House of Lords (I am quoting from the Official Report) on the Indian Public Services Commission, on the 28th November 1922, said:

"Two or three years ago a man of great eminence and undoubted authority, whose name for the moment I forget, made a very remarkable statement. He said that the only really dangerous unrest in India at that time was unrest among British public servants. The full meaning and significance of that statement was hardly appreciated at that time and the existence of the danger was even denied. But now the existence of that danger is fully admitted, I think, by everybody. It is even admitted by my noble friend Lord Meston."

So the dangerous, the really dangerous, unrest in India is the unrest created by the British public servants, who have advertised themselves in the past and continue to advertise themselves as servants in the cause of India, as selfless servants of India in the cause of the Empire.

Sir, I should like to make one general observation. We are exhausting the last stages of constitutional struggle in this country. I wish the Government to take note of that. The Swaraj Party may perish in a vain effort to bring about a peaceful adjustment of interests. The Swaraj Party may perish in a last desperate attempt to tame the brute. But that will not be the end of the struggle. In all national struggles, in the history of the world, one set of leaders is succeeded by another set of leaders, and that again by yet another. One course of action fails and is discredited,

and another course of action is resorted to. Ordinances may impede constitutional agitation ; they cannot stave off revolt. Indeed they and like atrocities are the most powerful inducements to it. Can you, after all, be sure, I ask you, of paralysing the activities of all those who are determined to assail your rule by all possible means? Can you be sure even of your landlords and your title-holders? Indeed, can you really be absolutely sure of the loyalty of your army? Lord Morley's historic sense confronted him with these obstinate questionings. I will quote Lord Morley's own words in 1909 :

" It may be that the notion of co-operation between foreigners and alien subjects is a dream. Very likely. Then the alternative is pure Repression and the Naked Sword. But that is as dangerous and uncertain as conciliation, be that as bad as Balfour thinks, because it is impossible that the Native Army can for ever escape contagion . . . "

Sir, I know that the strength on which this Government has relied in launching this campaign of repression is the strength of brute force, and that is what Sir Charles Innes had in mind when he made his slight *fauz pas* the other day and challenged Pandit Motilal Nehru to bring out an army and meet the British army under Lord Rawlinson. (Mr. W. S. J. Willson : " He did not.") Well, Sir, I shall not take an undue advantage of Sir Charles Innes' *fauz pas*, because he is paid to keep up the lie of constitutional government in our country. It may be—and indeed it is natural—that mere paid officials and fortune hunters need not and cannot look ahead. These have been the ruin of Empires, as they supplied the motive power which brought them into existence. It is too late to supply a moral foundation to an Empire which has been reared on fear, craft and avarice. Sir, I felt when those glowing tributes were being paid, the other day in this House, to the late Mr. Montagu

Mr. Darcy Lindsay (Bengal : European) : Sir, on a point of order. Is my Honourable friend in order in the speech he is making on clause 6?

Mr. T. C. Goswami : Yes, it is extremely relevant to that clause. Sir, I was saying that when tributes of praise were being paid to the memory of the late Mr. Montagu I felt that the House was forgetting that his greatest service was not so much as a friend of India but as an English patriot. For he realized that the maintenance of the British connection demanded that India should be pacified and should be conciliated. It was from that point of view that he approached the whole question of the governance of India. Sir, autocracy will not last. We have no need for benevolent despotism. And the alternative to a benevolent despotism is not bastard cæsarism.

Mr. President : Has the Honourable Member moved his amendment No. 7?

Mr. T. C. Goswami : No, I move my amendment that the clause be omitted.

Mr. President : I have told the Honourable Member that that motion is taken the other way round. Does he wish to move No. 7?

Mr. T. C. Goswami : Then I do not move No. 7.

Mr. President : The question is :

" That clause 6 stand part of the Bill."

The Assembly divided :

AYES—39.

Abdul Mumin, Khan Bahadur Muhammad.
 Abdul Qaiyum, Nawab Sir Sahibzada.
 Ajab Khan, Captain.
 Akram Hussain, Prince A. M. M.
 Ashworth, Mr. E. H.
 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.
 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.
 Rau, Mr. P. R.
 Rhodes, Sir Campbell.
 Rushbrook-Williams, Prof. L. F.
 Sastri, Diwan Bahadur C. V. Visvanatha.
 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—73.

Abdul Karim, Khwaja.
 Abhiyankar, 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.
 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.
 Goswami, Mr. T. O.
 Gour, Sir Hari Singh.
 Gulab Singh, Sardar.
 Hans Raj, Lala.
 Hari Prasad Lal, Rai.
 Hussanally, Khan Bahadur W. M.
 Hyder, Dr. L. K.
 Ismail Khan, Mr.
 Ivengar, Mr. A. Rangaswami.
 Jeelani, Haji S. A. K.
 Jinnah, Mr. M. A.
 Joshi, Mr. N. M.
 Kasturbhai Lalbhai, Mr.
 Kazim Ali, Shaikh-e-Chatgam Maulvi Muhammad.
 Kelker, Mr. N. C.
 Kidwai, Shaikh Mushir Hosain.
 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 Sayed.
 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. O. 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.
 Syamacharan, Mr.
 Tok Kvi, Maung.
 Venkatapattiraju, Mr. B.
 Yakub, Maulvi Muhammad.
 Yusuf Imam, Mr. M.

The motion was negatived.

The motion was negatived.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Alexander Muddiman: I do not now move, Sir, that this Bill be passed. The mutilations in the Bill by the deletion of operative clauses require that I should have time to consult with Government. I propose therefore to put down the motion that the Bill be passed first on the paper to-morrow.

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

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

THE INDIAN PENAL CODE (AMENDMENT) BILL.

(AMENDMENT OF SECTION 375).

Mr. President: The Assembly will now proceed with the consideration of the Bill further to amend the Indian Penal Code as reported by the Select Committee. Clause 2.

Mr. Kamini Kumar Ohanda (Surma Valley *cum* Shillong: Non-Muham-madan): Sir, I beg to move the amendment that stands in my name, namely:

"In clause 2 of the Bill for the word 'fourteen' the word 'sixteen' be substituted."

In the definition of rape in the Penal Code in section 375 it is said:

"A man is said to commit rape who has sexual intercourse with a woman with or without her consent when she is under twelve years of age."

I propose that this age should be raised to 16. Sir, it is somewhat unfortunate and somewhat inconvenient that two matters wholly different should have been brought together in the same Bill, matters arising out of marital relations and matters arising out of non-marital relations, cases of rape by a husband on his young wife when she is below 14 as proposed, and cases of rape on a young unmarried girl or, on a married girl, by a man who is not her husband. These two things should not have been grouped together. It is impossible to find any similarity in the effect of these two classes of cases. First of all, as regards rape upon a young girl if unmarried or, if married, by a man who is not her husband, there is no difference of opinion that the law should be reformed and the age of consent raised. As regards the other case, namely, rape by a husband on his wife, opinion is very much divided. I think it will be enough for my purpose at this moment to say that no other than the Home Member, the Honourable Sir Alexander Muddiman, is opposed to a change in the law. Owing to the combination of these two cases in the same clause, the real perspective regarding the more urgent reform, namely, reform of the law regarding rape in the case of girls by outsiders, has been lost sight of, owing to the introduction of a proposal which is more sensational, namely, regarding the rape on a wife by her husband. Now, the difference in effect of these two cases is immense. What is the effect of a rape by a husband on his wife? There is no social disgrace, no moral degradation, no possible infamy attaching to her or any humiliation or degradation to her friends or relations or family. But what is the effect in the other case? It is impossible to calculate the

[Mr. Kamini Kumar Chanda.]

injury done in the other case, namely, rape upon a young girl who is unmarried or, if married, by a person other than her husband. The disgrace which is caused to her is simply incalculable. Her social degradation, mental torture, the agonies she suffers are simply indescribable. She almost automatically becomes outcasted, a sort of social pariah in the case of Hindus, and if she is unmarried there is no chance of her being given in marriage to a Hindu. Not only this, but her whole family, her relations and friends are humbled, humiliated, disgraced and degraded. This is the difference in the two cases and they cannot possibly be met by the same provision of law. There is no difference of opinion regarding the fact that the law of rape as regards the latter class should be altered so as to raise the age. (*Mr. K. Ahmed*: "What about your religion?") No question of religion comes in. I do not follow my friend's interruption. How this matter affects our religion, I do not quite follow. (*Mr. Devaki Prasad Sinha*: "Nobody follows him.") Do not do him injustice. Sometimes his interruptions are very witty and very humorous. It is unnecessary to quote authority, but I shall place only one authority before this House, one passage from the report of the Anjuman-i-Islamia of Simla. This is what they say in their letter, dated the 18th August 1924, forwarded through the Deputy Commissioner, Simla:

"The age of consent for non-marital connection should be raised to 14 or up to 16. . . . The Anjuman views with alarm the growing immorality in the country, and strongly urges the Government to enact legislation to check it. The raising of the age of consent to 14 to 16 will serve the purpose to some extent. (This should be for non-marital relations only of course.)"

The age should be raised in those cases. There is no doubt about it, no difference of opinion about it. The question is how far it should be raised. The present age of twelve is simply absurd; it is a mockery to hold out this as a protection to young girls. Now, the question is to what age this should be raised. The Select Committee suggest fourteen years. My submission is that it is not enough. Does any one really think that a young girl of fourteen has attained years of discretion, that she has got proper understanding and can realise the nature and the consequences of the act and form a correct judgment on it? Has she got enough moral strength to withstand immoral proposals and overtures made to her, temptations held out before her? Is it any wonder that a young girl of fourteen or fifteen should fall a victim to wicked persons? Every practising lawyer who has got experience of criminal cases must have come across such cases now and again. Many of these cases happen in Bengal. The other day, while I was leaving for Delhi, I read of a case in which a young Muhammadan girl was carried away by two ruffians while she was going to her father's house and raped and the unfortunate thing is this; when the case is detected and the offenders are placed on trial before the court, almost invariably they raise the plea of consent. The girl being generally fourteen or fifteen years, or more, the benefit of the doubt being always given to the accused, the offenders more often than not escape. That is the worst part of it. You very frequently hear of these young girls of fourteen or fifteen being duped and victimised like this. I do not know if it will serve any useful purpose to quote any number of such cases, but, Sir, I would just place one case before this House so that they may see the importance and seriousness of this question. Some years ago there was such a case against a well-known European in a province holding a very high situation in life, a very rich and influential man in society. One of the foremost Viceroys of India,

Lord Curzon, was his guest at one time, Sir, one day a charge was brought against this gentleman, who was the host of Lord Curzon, for rape upon a very young girl who had not even attained her puberty. She sustained some injuries, and she was examined by a European Civil Surgeon, who is still in service. He certified that the age of the girl, in his opinion, could not be over 12. That is the age of consent under the present law. The man was sent up by a European Superintendent of Police who retired some little time ago as Deputy Inspector General of Police, but he is still in India. The case was tried by a very experienced and well known English District Magistrate. He retired the other day after having risen very high in service. No statement was made by the accused, but the defence that could be understood from the line of cross-examination was that there was consent. (*A Voice*: "Who defended?") Am I bound to answer this question? Very well, I myself defended in this case. I am not disclosing any confidential communication made to me, but I am merely stating the facts that are stated in the judgment. The defence raised was consent, and the defence was able to prove by the production of the birth register that the girl was over 12. In fact her age was only three months less than 14, but she looked very small, and although it was somewhat strange that there was consent by the girl, the circumstances were such as to support the plea and the learned Magistrate accepted the plea and the girl being over 12 at the time, discharged the accused. I do not think I need narrate the story further so far as my present purpose is concerned, but I will only say this. A certain Bengali newspaper was started some time later in another District, and the editor somehow got hold of the judgment and published it, and that judgment was quoted by the *Punjabee* of Lahore which was then in existence. That drew the attention of the Viceroy and the Local Government was asked to submit a report. The report was in favour of the accused, and nothing further was done. Now this girl, who in the opinion of the European Civil Surgeon, was not more than 12 but as a matter of fact was nearly 14, gave her consent. Do you think that she would be able to resist the temptation of any offer made to her by her master, a big European, whose guest the Viceroy was sometime before this case came up in court? Now supposing she was three months older and attained her 14th year. Do you think she would then, automatically, as it were, gain her years of discretion and would be in a position to understand the act and resist the temptation offered by the master? My submission is that 14 years is too little and my proposal is that it ought to be raised to at least 16. I will just say in a few words why the age of consent should be raised to 16.

Diwan Bahadur T. Rangachariar: Is there any country where the age of 16 is prescribed as the age of consent for the felony of rape?

Mr. Kamini Kumar Chanda: Yes, certainly. Egypt has raised the age of consent to 16, I believe England is going to do it.

Now, Sir, according to the Majority Act X of 1875, a young girl cannot enter into any contract, however unimportant it may be. She cannot contract for giving away even a sum of Rs. 10, she cannot deal in any property belonging to her legally. But in this case she is considered to be competent to give her consent if she is 14. That is, in the opinion of the Select Committee, she will be fit to part with the most valued possession she has, her virtue. Do you think it will be right to place her in this difficult situation? You might say, why not raise the age to 18? My

[Mr. Kamini Kumar Chanda.]

reason is this. Apart from the Majority Act of 1875, she is a major at 16, both under the Hindu and Muhammadan law. She is a major at 16 for adoption, for dower, for marriage, for divorce, and I think it will be enough to fix the age of consent at that age. Well, take another case. Kidnapping is an offence. Suppose a young person, a 14-year old boy or a 16-year old girl, is taken out of the guardianship without the consent of the guardian, it is an offence. If a girl under 16 is removed from the guardianship of her parents or other guardians for an immoral purpose, it is a more serious offence. That is alright. But supposing without kidnapping her she is deflowered in her own guardian's house, one can do it with impunity if she is 14 according to the Select Committee, but the moment she is removed from the house of her guardian without the guardian's consent, it becomes a very serious thing if she is not 16, no matter what the motive is. Now, which is the more serious thing? Is not removing such a girl from the house of her guardian not for any improper or immoral motive, far less serious than deflowering her in her guardian's house which can be done with impunity? Why, even a father is guilty of kidnapping his own daughter from the house of her husband if she is below 16. There is a case reported in I. L. R. 17 Calcutta. A father took away his girl from the house of her husband, one Dharmini Ghose. She was below 16, and therefore her husband filed a Criminal Case against his father-in-law. The learned Magistrate, who was a Muhammadan gentleman,—I forget his name now,—refused process on the ground that it was not for an improper motive. The case was sent up to the High Court and the Criminal Bench composed of J. Tottenham and J. Sir Gurudas Bannerjee, held that as the husband was the legal guardian the girl's father could not take her away. The mother also was similarly found guilty in another case where the girl was below 16. Therefore, if even in a matter like this, the girl ought to be over 16, I certainly think that the age of consent must be raised to 16 in rape cases. England is as I have said raising it to 16; in Egypt 16 is now the age of consent. Under these circumstances, it would be wrong to fix the age at 14, and therefore in my opinion it should be raised to at least 16.

The Honourable Sir Alexander Muddiman (Home Member): Sir, if I

3 P.M.

rise early in this debate, it is for the purpose of making plain the attitude of Government towards this Bill and I would ask your indulgence, Sir, and the indulgence of the House if I travel slightly beyond the scope of the actual amendment. I think it will result in the saving of the time of the House and in making my point clear. Sir, I think there is no one in this House who would doubt that the attitude of Government towards the Bill is one of sympathy. We recognise the very great evil which my Honourable friend Sir Hari Singh Gour desires to combat by his Bill. If I was merely stating my own personal views I might even wish to support a more drastic change than is contained in the Bill as reported by the Select Committee. Still, we have to recollect that we are here enacting a criminal law for the whole of India. India is a vast country, I might say a continent, with varied people and varied climates. We must be careful that in enacting a general criminal law of this kind we are not led away by what are our personal views, personal conclusions formed by one who, in my case, is not an inhabitant of this country. This is a matter where a decision should, I think, rest with those who must necessarily be better acquainted with the actual intimate relations a consideration of which is involved by the provisions of this Bill.

Coming as I do from a province where the enactment of the Age of Consent Act in the year 1891 led to an agitation of an exceedingly serious character against the Government, I am greatly impressed by the need of caution. That Act produced what was the first sedition prosecution in Bengal, a case generally known as the Bangabasi case. I desire to bring very prominently to the notice of the Members of this House that amendments of social law of this kind, however earnestly they may be brought forward in the Legislature and supported in the Legislature by members of the community concerned have to be administered by the Government and if there is odium that odium falls on the Executive. Now, Sir, I am not one of those who desire to take the position that Government should not do anything in social reform. I think we should do our best to promote reform. But it is a matter on which we must have a clear lead from the people themselves. I would rather—perhaps I am old-fashioned—I would rather be charged with acting too slowly in this matter than take the risks which necessarily follow legislation in advance of general social opinion in the country. About the evil which the Honourable Member who introduced this Bill has attacked, there can be no possible doubt. He is moving against what I consider to be one of the most detrimental influences on the future development of this country. Let me warn him however that he will not take the people with him if he goes too far and too fast. If he does not take the people with him, moreover, I know well that the odium of the enactment will fall not on him but on the executive Government, and that must be a reason why we should observe a considerable amount of caution in this matter.

Now, Sir, I propose to refer very briefly to the opinions that have been received on this Bill. I would first of all point out that there is a clear-cut division of public opinion on the one hand as regards an advance in the age of consent outside the relationship of marriage and on the other hand as to an advance within the limits recommended by the Mover of the Bill and by the Select Committee. I find comparatively little opposition to the former, but the case is otherwise as regards an advance within the marriage tie, and it is not possible for this House to neglect the opinions that have been put forward. They come from various sources. I will briefly refer to them. The opinion of a Muhammadan association of considerable importance in Quetta is that as regards married girls there would be difficulty. The Hindu association of the same place consider the matter is one not to be dealt with by a Bill to amend the criminal law but by the operation of social reform in the communities themselves. I now turn to a weighty opinion. Perhaps I attach more importance to it, as it is that of a body with which I was closely connected at one time. Three Judges of the Calcutta High Court, two of whom are Bengali Brahmins and the other is a Muhammadan, consider that there is no necessity of legislation so far as married persons are concerned on the ground that society does not want it and it is against the religious ideal of the Hindus. There we have enlightened men, holding high positions telling us frankly that the proposal is in advance of public opinion. When I read that opinion I recall the days of the old Age of Consent Bill which although it was supported by many eminent Hindu gentlemen was certainly—unless my memory entirely betrays me—very violently opposed by the late Sir Romesh Chander Mitter. The Sessions Judge of Delhi again is doubtful about raising the age in the case of the wife. The Government of Bihar and Orissa, always cautious, consider that there should be a pronounced volume of Indian opinion in favour of the proposal before legislation on the lines is undertaken. The Judges of the Patna High Court

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are divided. Representative Indian opinion and district officers are all against the proposal to raise the age within marital relations. In Burma there is considerable support for the Bill. Burma, however, is on a little different footing. The opinion of Ajmer-Merwara, a small administration, is the same as regards the age of married relationship. The Bar Association in Assam from which my Honourable friend who just spoke comes is also against a change in the age where married relationship exists. The authorities of the North West Frontier Province are against it. The Governor in Council of the United Provinces supports the Bill as amended by the Select Committee. The general trend of opinion in the United Provinces is against the proposal in so far as married relationship is concerned. The Central Provinces Government state that officials and non-officials are strongly against any advance within marital relations.

Mr. Kamini Kumar Chanda: May I say just one word, Sir?

The Honourable Sir Alexander Muddiman: The Honourable Member will have his opportunity later. The Punjab state that opinion is divided. The Local Government is prepared to accept

Mr. Kamini Kumar Chanda: May I just say one word for a moment?

The Honourable Sir Alexander Muddiman: The Government of Bengal say that opinion as to a change of age when marital relations exist is divided, and the Indian Judges of the Madras High Court take very much the same view as their colleagues in the Calcutta High Court. Now, I have been through these opinions at some length and I am afraid I have wearied the House. My point was to show that there is a considerable volume of opinion, a volume of opinion that this House would in my judgment be unwise to neglect, which is definitely opposed to any change in the age of consent where the marriage tie is concerned. If the House considers that this opinion may be safely disregarded that must rest with the House. On this point of the raising of the age of consent within marriage as recommended by the Select Committee the Members of the Executive Council will not vote. Other official Members may vote and speak as they please.

As regards the raising of the age outside the marriage tie, Government will support the raising of the age to 13 and if the House so desire it and should it be decided that the age should be 14, they will raise no objection to it.

As regards the actual amendment before the House, I think I may say that the Honourable Member will not find support in the House for it. If he does I shall be very greatly surprised.

Mr. Sahib M. Harbilas Sarda (Ajmer-Merwara: General): Sir, I rise to support the motion of the Honourable Sir Hari Singh Gour. I am of opinion that in India no girl should be married before she is 16 and those who are in touch with public opinion, in this country know that in communal conferences, and in caste *Sabhas*, the question is being agitated, and in almost every conference and *sabha* the decision is that the marriageable age of girls should be raised. At the last All-India Vayish Conference, over which I had the honour to preside at Bareilly, in December last.

it was unanimously resolved that the minimum marriageable age of a Hindu girl should be 16. While I firmly hold to that opinion, I admit that the question of the age of consent with regard to Hindu married girls is a little complicated owing to the belief held by large numbers of people that a Hindu girl should be married before she attains the age of puberty. It is held that that is a part of the Hindu religion. Sir, this belief is wrong, this belief is mischievous, but the belief is there and we have got to take note of it. It would perhaps be better if once for all the question of marriage is taken up and a Bill is introduced showing that this belief is wrong and that considering the question of national well-being, all marriages henceforth amongst Hindus would be invalid where a girl is below 14 years of age. It is rather a drastic method, but considering that the question of religion is constantly brought into the matter this is desirable to forbid marriages of girls below 13 would be to take the bull of social evil by the horns and meet it face to face.

Baba Ujagar Singh Bedi (Punjab: Landholders): But what will be the consequences? Bloodshed and chaos.

Rai Sahib M. Harbilas Sarda: No child marriages would be stopped. Sir, legislation has a function to perform in promoting social reform, though it is perfectly true that it has its limitations. We cannot call in the aid of the criminal law whenever we wish to make an advance in social reform. Permissive legislation of a civil nature is legitimate and even necessary, such as the Widow Remarriage Act, the Special Marriage Act. And criminal law may also be had recourse to if we find that a practice or custom is inhuman or that it outrages our sense of humanity. It was on this ground that the age of consent in marital relations was fixed at 12. It was considered that cohabiting with a girl below 12 was an outrage on our sense of humanity and consequently they had had recourse to criminal legislation in a matter which affected Hindu society. I think, Sir, that that was years ago and opinion has since developed and has advanced enough during these last thirty years so that we can on the same ground now raise the age of consent in respect of the marital relations to 13. Considering that the different castes in Hindu society are agitating for raising the marriageable age of a girl, considering also that raising the age of consent in the case of married Hindu girls to 13 would have an educative effect, and not only an educative effect but will save many lives considering also that if girls are married after they have reached the age of discretion, many of the social evils of child marriage will be lessened; considering also that in the case of marital relations raising the age by one year will materially improve the physical well-being of young wives, I am of opinion that the age of consent should be raised to 13. The age of consent with regard to others is 14 and I think that is quite right.

Sardar Bahadur Captain Hira Singh Brar (Punjab: Nominated Non-Official): Sir, there is a similar amendment standing in my name. I would like to say a few words in this connection, Sir. The other day when I was present at the opening of the Delhi Baby Show I was very sorry that so few Members of this House found time to attend the Show. Had they done so I feel sure that they would have realised the great evil that this system of early marriage of young men and under-age girls results in. I saw terrible examples of what babies can be when the mothers themselves are not fully developed and are little more than babies. There was a great difference between the English and the Indian

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babies of the same age, and of course all these babies were from the Imperial City here, and they were all of a very poor physique, weak and undersized. If that is the condition of the children at the Delhi Show, what would it be in Calcutta, Madras or Bombay? Of course, the babies of to-day will be the future politicians of this country and probably the future rulers of this country. (Pandit Motilal Nehru: "Soldiers.") I do not think from the babies which we saw at the Baby Show that many of them will make a future General or a future Field-Marshal. Of that I am sure. Mr. President told us at the Show that babies require great care and attention, not only for one week, but for the 52 weeks of the year. I am sorry, Sir, I do not agree with you there. If babies are naturally healthy and strong, they can stand the climate all right, not by simply covering them up and wrapping them up in 20 coats and underwears, but they can stand the climate much better and they will require much less care, at any rate, they will not require care for all the 52 weeks of the year. I think, Sir, the real solution for preventing infant mortality does not depend entirely in cradling babies. It lies in smacking the parent who produces such children, and more so, in slapping many of our friends who always oppose the raising of the age to produce healthy children. I should say my friend Pandit Harkaran Nath Misra and other Pandits are simply ruining the people, because they say that the Shastras say that if a girl who is of a certain age, say 9, 11, or 12, is not married, it is a great sin to the parent. Don't they see that the sin lies the other way when half a dozen children are strolling about and the windows are shut up and they are not allowed to have fresh air? Is it not a sin when they call a baby of 9 or 10 years or a boy of 10 years husband and wife? It is a shame. (Voices: "No, no."). It is really a shame, not a shame for us but a misfortune for this generation and for the future generation. Yet my friend Pandit Harkaran Nath Misra and the Honourable Pandit Madan Mohan Malaviya come forward and say, "We want an Indian Sandhurst." Do you want an Indian Sandhurst for those puny little children? Girls of 9 or 10 years old, babies themselves who ought to be playing with their dolls rather than becoming wives, are mothers of children. Boys who ought to be getting their lessons in school are rearing a large family of half a dozen boys and girls. Is not this a sin or is that a sin that we should keep the girl in our homes until she is 18 or 20 when she will fully develop? (Laughter). What is the good of laughing here when the whole world laughs at us? (A Voice: "At you.") If you laugh at me, I laugh at you. That is why I stand here and say it is a shame to me and to you. I do not like to go into the society. I feel ashamed, because there is no manhood, there is no womanhood. I feel ashamed myself to go into society with a little girl of 12 years as my wife. What is all this nonsense? You come the other day here and say, "We want reform this and that; we want inter-marriage; we want widow marriage." Is not that all a shame? People get up on the platform and say all sorts of things. So many Lalas and Pandits get up on the platforms and say, "Now the time has come for this reform and that." But what happens? When they go home and when we meet them next morning, they say, "What can we do? We are helpless. When we went back home, our ladies would not allow us to do what we wanted to do. They say that they do not care what we talk, but they would not allow us to act accordingly." This may not be true. It may only be an excuse. I knew a friend of mine to whom I always gave an answer then and there. When I asked him "Will you do this thing for me?"

he used to say, "All right, I am going home and then I will consider this." I knew that he was going to refuse. That is the habit among us. We all talk, talk and talk a hundred and one things here, but what happens? All left in this House and all left in the platform and nothing carried to our homes, and nothing happens. Let me remind you of what Mr. Pal told us the other day. He told us of the story of a school-master who made a point of greeting all his scholars first, because he said he could never tell whether one of them may not turn out to be a great Sadi, or a Tulsidas, or a Bhim Sen or a Ram or a Ramachandra or a General Hari Singh Nalwa. But, Sir, of one thing I am sure, that none of these children—none of the children in the schools in Delhi—will turn out a Rustum or a Bhim Sen or a General. He may turn out a politician or a lawyer or a poet or something else, but I am sure he will not turn out a Rustum. It is our own fault and no one else's. We do not want to produce that stuff. The amendment in the law is very necessary in order to encourage Rustum Bhim manufacture in India. If I could have my own way, I would raise the age of consent to more than 16. (*A Voice*: "Why not 30 years?") at least to 24 years when the bones and the body are fully developed. I will tell you the story of a man whom I met in Patna. He was a wealthy educated gentleman of the age and size of Mr. Sinha who is sitting here. He told me he had six children. I was simply astonished to hear that he had six children and I inquired how he managed to get these six children. Well, Sir, the age of his wife was only 18. Now don't you think it is a shame and a national misfortune that a girl of 18 should be a mother with six children? It is more than a shame. My friends here want to follow Manu's advice, and go on producing children in order that they may have salvation. My Honourable friend the Pandit will say that we must have more children so that the 33 crores population of India may not be reduced. That must be Manu's doctrine or the doctrine of my friend the Panditji.

Mr. K. Ahmed: Which Pandit, the Pandit from Benares or Allahabad?

Sardar Bahadur Captain Hira Singh Brar: All Pandits are the same. Mr. Das the other day told me of a story of a 10-year old girl about which I do not want to say anything here. Healthy children are the foundation of a strong nation. Every one knows that the parents cannot produce healthy children. Much is said on the platform about early marriage and all these things. To be useful we must have long life which we cannot have if early marriage is not stopped. Early to marry and early to die is the motto of Indians. We marry early and die early. There are people here like my friend Mr. Harkaran Nath Misra who do not want to live because they have not got good health. They are fed up. My friend Mr. Sinha shuts up all windows so that the cold breeze may not come in. Is that going to kill us? Now, which Honourable Member does not know that all the Eucalyptus oil that is produced in Australia, is consumed in India. If you have healthy children they can run about in a shirt and a knicker. They do not catch cold or chill or fever and they do not die even because of cold or fever or sunstroke and other similar ailments like that, but the children of my friend Mr. Bhattacharya of Patna will die from a little cold fresh breeze. How are we going to make a future Sandhurst in India. How will your officers fight in France, America and other places where the climate is trying, in the snow and the frost if you cannot live in the open air in India? How are you going to have your national army. My friend Mr. Datta told me the other day. I said, "How are

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you going to manage about your officers in the future army if you cannot produce healthy children." He said he will send us to the North-West Frontier. I said, "that is very fine but the time may come when you will have to change places. How long are we going to defend the Frontier when you are holding high offices and getting huge salaries." He said: "Oh, I will give you the brain". We are not going to carry your brain on our head. What is this nonsense. Why should we defend the frontier and you should pull the wires from Calcutta and Madras. The Swaraj Party wants to die. They are fed up and when they die they will get into a better house than this. I will tell you another story. I am going to tell you story after story until you are convinced. Mr. President is not going to stop me to-day. I am sorry to have to refer to the miserable condition of the boys of the St. Stephen's College when I was there the other day. Painfully I noticed that 75 per cent. of them were sunk in their seats and almost all of them had spectacles. What is the cause of that? I do not see amongst other nations this blindness. Is it not due to early marriages? I can bet my Honourable friends that a force of one thousand of such persons could be scattered by two or three people like the Khataks whom we saw at the Military Tattoo the other night. And what is the good of breeding persons like these who cannot strive against healthy and strong people. There is no good your interrupting me; if you had been with me that day you would have seen how really undersized those boys were.

Another thing is this, and I hope I will not offend the ladies sitting here. (Laughter.) What is the cause of our ladies not mixing in society? A little girl of 14 or 15 has one or two weak little children and consequently she does not care to go out and mix in social life. That is the reason why we always hear praise of the *purdah*, the *purdah*. People do not really know what is behind the *purdah*. The evil behind the *purdah* is early marriage, and that is why they do not wish us to see what is behind, there are the young wife and weak children. Well, now I will not mention names, but you will see the faces and figures the broadness of body and bone of certain Honourable Members here and compare them with those who sit alongside of them. (A Voice: "Captain Ajab Khan.") Well my friend Captain Ajab Khan could I am sure put three of those little babies I saw at the show in his pocket and could walk away with them without anybody knowing they were there. And there may be a few others like him. Pandit Motilal told me that his nephew was married when he was 25 years of age, and his son, Pandit Sham Lal Nehru's son—well, everybody has seen him. That is just the difference between early marriage and marriage after full maturity.

Now, Sir, I think I have . . . (Voices: "Go on, go on.") Very good. I will go on. I will tell you another story. (Laughter.) Now I will read you what Mr. Dutt has put in. He says:

"Moreover, the evils of early marriage are much exaggerated and should be allowed to be removed by spread of education and social reform and not by legislation, which should be deferred until the general public opinion has advanced in favour of an appropriate change. The humanitarian reasons of health and infant mortality urged by Sir Hari Singh Gour is certainly a matter worthy of consideration, but as a matter of fact these are more due to economic and other social causes, such as poverty, want of good milk, and seclusion within *purdah* without any physical exercise."

And this is what Pandit Madan Mohan Malaviya said :

"When the Bill was considered in the Select Committee last year I expressed the opinion that the age of consent should be raised to 14 years in the case of strangers, but that it should be left at 12 in the case of husbands. I adhere to this opinion. The opinions that have been received strongly support it. In view of these opinions the age of consent should be left by the law where it is in the case of a husband and we must trust in such cases to social and religious reform associations to protect our young women who are married before 14 from the indisputable evil results of the consummation of marriage before they have completed at least fourteen years of age." He should have stated that all the Pandits agree that the age should not be less than 14. Then there is Mr. Pal, whom I congratulate on his bold utterance. He said :

"I see no reason why it should be fixed at 14 instead of at 16 if not even higher, in so far as non-marital connections are concerned. I therefore fully support the recommendation that it should be raised to 13, as decided by the majority of my colleagues."

(Cries of "Divide, divide.")

With these few words, Sir, I submit my amendment.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhamadan): Sir, my sole object in rising at this stage is to speak to the amendment moved by my friend Mr. Chanda. If he wanted the authority of the sacred Shastras in favour of 16 he would have found an unequivocal passage in the well-known book known as *Shusrat Samita*. I will give to the House a passage from Chapter X, verses 54 and 55, translated literally. They say :

"When a man who has not attained the age of 25 causes a girl less than 16 years of age to conceive the embryo dies in the womb. If however the child is born it will not live long and even if it lives its body will be void of strength. Therefore a man should not cause a girl who has not attained to this age of 16 years to conceive."

Diwan Bahadur T. Rangachariar: Does it say you should be transported for life?

Sir Hari Singh Gour: Well, Sir, so far therefore as the arguments of reason and religion are concerned, there is a great deal to commend in the amendment moved for the raising of the age to 16, and I think I must explain to the House why I did not myself select that age and submit it for the acceptance of this House. I thought, Sir, that I would be well advised in moving along the line of least resistance and carrying the large body of public opinion as voiced in this House if I moved slowly and cautiously, and I therefore fixed the age at fourteen; and I would ask Honourable Members who would like to raise the age to sixteen to wait till the age of fourteen is placed on the Statute-book and the country is prepared for a further move onwards. I would therefore advise my friend, Mr. Chanda, not to press his amendment to the vote but to support the motion, supported as it is by the Select Committee, that the age be raised to that of fourteen.

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

Mr. President: The original question was :

"That clause 2 stand part of the Bill."

Since which an amendment has been moved :

"That in clause 2 for the word 'fourteen' the word 'sixteen' be substituted."

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

The Assembly divided:

AYES—65.

Ahmed, Mr. K.
 Aiyangar, Mr. K. Rama.
 Akram Hussain, Prince A. M. M.
 Alimuzzaman Chowdhry, Mr.
 Ariff, Mr. Yacoub C.
 Bhat, Mr. K. Sadasiva.
 Bhore Mr. J. W.
 Chaman Lall, Mr.
 Chanda, Mr. Kammi Kumar.
 Chetty, Mr. R. K. Shanmukham.
 Cosgrave, Mr. W. A.
 Crawford, Colonel J. D.
 Das, Mr. B.
 Datta, Dr. S. K.
 Dutt, Mr. Amar Nath.
 Fleming, Mr. E. G.
 Ghazanfar Ali Khan, Raja.
 Ghulam Bari, Khan Bahadur.
 Goswami, Mr. T. C.
 Gour, Sir Hari Singh.
 Gulab Singh, Sardar.
 Hans Raj, Lala.
 Hira Singh Brar, Sardar Bahadur.
 Captain.
 Hyder, Dr. L. K.
 Jinnah, Mr. M. A.
 Joshi, Mr. N. M.
 Kasturbhai Lalbhai, Mr.
 Kelkar, Mr. N. C.
 Kidwai, Shaikh Mushir Hosain.
 Lindsay, Mr. Darcy.
 Lohokare, Dr. K. G.
 Mahmood Schamnad Sahib Bahadur,
 Mr.
 Malaviya, Pandit Krishna Kant.

Marr, Mr. A.
 McCallum, Mr. J. L.
 Mehta, Mr. Jamnadas M.
 Misra, Pandit Harkaran Nath.
 Moir, Mr. T. E.
 Muhammad Ismail, Khan Bahadur
 Saiyid.
 Murluza Sahib Bahadur, Maulvi
 Sayad.
 Mutalik, Sardar V. N.
 Naidu, Mr. M. C.
 Nambiyar, Mr. K. K.
 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.
 Purshotamdas Thakurdas, Sir.
 Ramachandra Rao, Diwan Bahadur
 M.
 Ray, Mr. Kumar Sankar.
 Reddi, Mr. K. Venkataramana.
 Rhodes, Sir Campbell.
 Rushbrook-Williams, Prof. L. F.
 Sadiq Hasan, Mr. S.
 Sarda, Rai Sahib M. Harbilas.
 Singh, Rai Bahadur S. N.
 Sinha, Mr. Ambika Prasad.
 Sinha, Mr. Devaki Prasad.
 Sykes, Mr. E. F.
 Tok Kyi, Maung.
 Wilson, Mr. R. A.
 Yusuf Imam, Mr. M.

NOES—22.

Abdul Mumin, Khan Bahadur
 Muhammad.
 Abul Kasem, Maulvi.
 Ahmad Ali Khan, Mr.
 Ajab Khan, Captain.
 Ashworth, Mr. E. H.
 Blackett, The Honourable Sir Basil.
 Burdon, Mr. E.
 Duni Chand, Lala.
 Ghose, Mr. S. C.
 Graham, Mr. L.
 Hari Prasad Lal, Rai.
 Hussanally, Khan Bahadur W. M.

Innes, The Honourable Sir Charles.
 Muddiman, The Honourable Sir
 Alexander.
 Narain Dass, Mr.
 Rangachariar, Diwan Bahadur T.
 Sastri, Diwan Bahadur C. V.
 Visvanatha.
 Singh, Raja Raghunandan Prasad.
 Stanyon, Colonel Sir Henry.
 Tonkinson, Mr. H.
 Ujagar Singh Bedi, Baba.
 Willson, Mr. W. S. J.

The motion was adopted.

Dr. S. K. Datta (Nominated: Indian Christians): Sir, I move the following amendment which stands in my name:

"In clause 2 of the Bill for the word 'thirteen' the word 'fourteen' be substituted."

This demand to raise the age to 14 has been a very long one in the history of Indian social reform. Even before the passing of the Age of Consent Act of 1891, Mr. Malabari wrote:

4 P.M.

"It is not contended for a moment that India should adopt European ideals of life. All that is sought is that she should go back to the older, wiser ways. A wife at 10, a widow at 12 (in many a case the age limits stand much lower), a mother

at 13—these are monstrosities in the face of which it is madness to think of a consistent, progressive public life. And so long as this state of things continues, so long will the Indian Sphinx continue to laugh at the efforts of man to shake her from her purpose which is to puzzle, to mystify, and to undo the work of years."

That great Indian reformer, Mr. Malabari, during the eighties was responsible for an agitation in the United Kingdom. The purpose of that agitation was to bring pressure to bear upon the Government of India so that the age of consent should be raised from 10. In the opinion of those reformers the age should have been 14. The Government of India acceded to the demand in the year 1891 (as the Honourable the Home Member has recently told us) to raise the age to 12. A Bill was introduced in the Legislative Council on the 9th of January 1891 by the Law Member, Sir Andrew Scoble, but immediately it was opposed particularly by public opinion in Bengal, though not in the same degree by public opinion in the other provinces of India. Going through the history of the agitation of those days, one is greatly struck by the arguments which were adduced against the Bill of 1891, the very same arguments have been used to-day, again particularly in Bengal. May I quote the arguments of those days as summarised in the great speech which was made on the 19th March 1891 in the Legislative Council by Rai Bahadur Krishnaji Lakshman Nulkar, the representative of the Bombay Presidency. He tells us that he had examined the various objections, and they might be summarised as follows:

"(1) The proposed law, so interfering with 'the religious belief and worship' of the people, would amount to a direct breach of the promise of Her Majesty's Proclamation of 1858.

(2) The evil against which the proposed law is directed has no existence, but, granting that it does exist in any appreciable degree, the existing law against hurt, grievous hurt and culpable homicide is sufficient to adequately punish the offence in question.

(3) There can be no such offence as rape between husband and wife; such is not recognised by the English law, and therefore its existence in the Indian criminal law is an anomaly, and as such must not be extended.

(4) The proposed law would lead to police oppression and false charges by enemies.

(5) The new law would defeat its own ends by banding the people together for effectual evasion of it by perjury and forgery, and so would have the effect of completely demoralizing them . . . "

The Honourable Member then proceeded to take up these arguments. Anyone who reads the debate is struck by the strong case that he made even as early as 1891 for raising the age. Among the arguments brought forward in those days for the Bill was the action taken by a great Indian Prince, the Maharaja of Jaipur, who had forbidden marriages within his territories until the age of 14, as also the opinion of the great zamindar, the Maharaja of Vizianagram. The document which created the greatest of impression was a petition which had been sent to His Excellency the Viceroy the previous September, that is, in September 1890:

"praying that the age of consent be raised to fourteen years, fifty doctors practising among native women in India have given the harrowing details of suffering and cruel deaths among thirteen cases of child-wives which came before them with a few years' practice."

The document created a very great impression on the Legislative Council—this memorial which was sent to His Excellency the Viceroy signed by 50 leading women doctors. If you will permit me, Sir, I desire to draw the attention of the House to certain figures, which, I think, will show the

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tendency of early marriages in this country over a considerable period of years. In the first place, I shall give the House the position in Bombay. The figures of married girls in Bombay are as follows: In 1881 there were 668 girls out of 1,000 between the ages of 10 to 15 who were married. In 1891 there were 660, in 1901, 539; in 1911, 622; in 1921, 548; in other words, a drop from 668 per thousand to 548 from 1881 to 1921. Take the case of Madras. In Madras in the year 1891 there were 310 per 1,000 between 10 and 15 who were married. In 1901 there were 248; in 1911 there were 268 and in 1921 there were 234. Take the case of Bengal. In 1881 there were 666 Hindu girls per 1,000 between 10 and 15 who were married. In 1891, there were 621; in 1901 there were 600; in 1911 there were 587 and in 1921 there were 510. Throughout these figures then, the House will realise the percentage of married girls between the ages of 10 to 15 is steadily getting lower and lower during the period from 1881 to 1921. May I now be permitted to turn for a moment to Burma which the Home Member mentioned a few moments ago. Hindu girls married between 10 and 15 per 1,000 in 1891 were 62; in 1901 there were 141, in 1911 there were 151 and in 1921 there were 44; in other words the proportion of Indian girls was considerably smaller than that for India itself. The Burmese figures for Buddhist girls is as follows:—4 per 1,000 in 1891, 10 in 1901, 5 in 1911 and 2 in 1921.

Now, with these figures, I wish to draw the attention of the House to the question of vital statistics. Statistics often give a wrong impression, still I quote them for what they are worth. On account of the consummation of marriage between 10 and 15, the cumulative result is probably felt in the years coming after that period whether that is reflected in the death rate or not, I am not sure, but these figures are suggestive. In Madras, where after all a quarter of the girls between 10 and 15 were married (250 per 1,000) the figures between the ages of 15 and 20 are 8·2 per 1,000 among males and for girls 10·7, in Bombay 10·26 per thousand males and 12·55 per thousand females. In Bengal 17·5 per thousand males and 20·0 per thousand females; in the United Provinces 14·15 per thousand males and 16·51 per thousand females. The main feature is that between the ages of 15 and 20 the female death-rate is higher than the male death-rate. In Burma the male death-rate is 9·81 per thousand and the female death-rate is 8·78 per thousand. In fact, the figures are reversed. In other words, in every part of India the female death-rate is higher with the exception of Burma where it is 8·78 as against 9·81. Another exception to this rule is Bihar and Orissa. The Honourable Members from that province will bear me out when I say that that province is a bad province from the point of view of early marriages; in Bihar and Orissa the general death-rate also is higher than in most of the other provinces in India. On the other hand, Bihar and Orissa has a very substantial number of aborigines who number several millions. These aborigines have a higher marriage age than the people in the plains. Taking all these figures into consideration, the conclusion is that there are only two provinces of India, namely, Burma and Bihar and Orissa, where the female death-rate between the ages of 15 and 20 is lower than the corresponding figures for the males.

Now, Sir, so much for the figures. There is another good reason why the age of marriage is steadily though slowly becoming higher. I think a reference has already been made to these facts in this House. The causes

are not far to seek. In the first place, advanced social opinion in the country in favour of raising the age limit is becoming operative. In the second place, it seems to me, as my Honourable friend Mr. Ghose said the other day, that the problem of marriage is an economic one and it is becoming more and more expensive. Therefore, a girl's marriage is actually put off until a time when things become better and there is money to marry her and the parents can get her a good home.

Next, I shall place before the House certain opinions which I have taken the trouble to collect during the last few months. I had a letter circulated to about 25 women doctors throughout India and here are some of the opinions of these women doctors. I have already said that the letter was circulated to 25 women doctors and not one of them has urged the marriage age lower than 14. One woman doctor says:

"Within the last few years the following girls have been admitted into hospital:

- 1 girl of 12
- 3 girls of 13
- 11 girls of 14
- 36 girls of 15
- 86 girls of 16."

She tells me that practically in every case the labour was difficult and that in a number of cases the infants died. This lady writing from somewhere in Southern India says further:

"The earliest marriages in this part of India occur among the Brahmans. Not only are these girls far more delicate than most other girls, but the early child-bearing increases this tendency and reduces their capacity for taking up their domestic responsibilities. Consequently their children are strikingly unhealthy and enfeebled. Apart from midwifery cases, we not infrequently have had girls of 12 and upwards (some of whom had not reached puberty) suffering from venereal diseases contracted from their husbands. We have had one case of serious mental trouble and several girls suffering from various minor nervous disorders following the too early consummation of marriage."

Here is now the testimony of an Indian woman doctor. She writes:

"With all my heart I wish the age of consent to be raised."

May I take the opinion of an Indian woman doctor from Bengal? She says:

"I will give two cases as illustrations of the evils of early marriage. One was about 30 years ago where the girl was married at the age of 10. She conceived when just 12 years of age and I delivered her, when not quite 13 years old, with the help of the Assistant Surgeon and one of the local private practitioners. In the 35 years of practice I have seen many a girl who has become a mother before she is fourteen. In many cases she has led a sickly life and in many other cases she has never had any more children."

Thus goes the medical opinion which is unanimous. I can refer to medical opinion before 1891. Again, I have in my hands the opinions of doctors who have actual experience extending over several years. They all say that the existing system has brought about an enormous amount of suffering and an enormous amount of what we might call a cruelty to thousands of women. Now that the Assembly is considering the question of raising the age of consent, it seems to me that it is an opportune time to try and make some progress. We should make at least progress of two years, namely, from 12 to 14. People may say that we ought to have public opinion behind it. It is perfectly true that there ought to be public opinion

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behind it. May I refer you, Sir, to Dicey's "Law and Opinion in England" where he writes about characteristics of law-making opinion? He says:

"Laws foster or create law-making opinion. This assertion may sound, to one who has learned that laws are the outcome of public opinion, like a paradox; when properly understood it is nothing but an undeniable though sometimes neglected truth.

Every law or rule of conduct must, whether its author perceives the fact or not, lay down or rest upon some general principle, and must therefore, if it succeeds in attaining its end, commend this principle to public attention or imitation, and thus affect legislative opinion. Nor is the success of a law necessary for the production of this effect. A principle derives prestige from its mere recognition by Parliament, and if a law fails in attaining its object the argument lies ready to hand that the failure was due to the law not going far enough, i.e., to its not carrying out the principle on which it is founded to its full logical consequences. The true importance, indeed, of laws lies far less in their direct result than in their effect upon the sentiment or convictions of the public."

And here to-day, as a member of a particular community, I desire to speak for a moment, Sir, of the problems before that community. At the time when the first report of the Select Committee was presented to the House I raised certain objections to the Report because of a clause in the Indian Christian Marriage Act, Part VI, section 60, entitled The Marriage of Native Christians:

"Every marriage between Native Christians applying for a certificate shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise:

- (1) the age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years."

In other words, under the Indian Christian Marriage Act, in the case of an Indian Christian, a girl may be married the day she reaches her 13th birthday. I also mentioned that there had been growing up throughout India a feeling that the age of marriage itself should be raised. In the first place I was sure the Protestant Churches in India were behind the movement to raise the age.

Pandit Shamlal Nehru: Will you not send in an amendment to that effect?

Dr. S. K. Datta: We not only wanted this Act amended in that respect; we wanted it amended in other particulars also. We are at the present moment drafting an amending Bill, not merely in the matter of age, but in several other particulars also. In the second place I was not quite clear regarding the position that the Catholic Church would take up. To-day I am in a position to give their opinion. Canon 1067 of the Code of Canon Law of the Catholic Church reads as follows:

"A man cannot contract a valid marriage before the age of 16 years completed; a woman before the age of 14 years completed. Although marriage contracted after these ages is valid, Pastors of souls should nevertheless warn young people against marrying at an earlier age than is customary in the country they live in."

One of the Jesuit Fathers in India adds:

"Because of the special difficulties in countries like India, *very limited* faculties of dispensation from this Canon have been given to Bishops by the Holy See."

I have it on the authority of the Anglican Bishop of Bombay that it is clear that the Catholics would have no objection to the proposed age in the Bill, that is to say, to raising the age to 14 years.

Sir, it may be thrown at me in this House that I speak for a religion that is not Hindu, and that I have no right to speak on a question like this mainly on that ground. In the first place I would like to say this, that it is precisely those friends who might say this to me on this particular question, who are the ones who emphasise that after all I am an Indian first, and being an Indian first I think it is perfectly legitimate for me to consider everything that concerns the people of India. And I believe that by passing this Bill and making the age 14, we shall all be taking a very great step forward in the matter of social reform. In the second place, Sir, I can only say this. My ancestors may have been hopelessly wrong, but they came out of Hinduism for one particular reason among others that they felt there was not a sufficient amount of social liberty. I will not say that they were right or that they were wrong, but they were convinced that there was not enough social liberty within the fold of Hinduism. And for this reason I think it is for the leaders of Hindu social opinion in this country to ask themselves the question whether Hinduism should not free itself from some of these things. It may then not be necessary for people who desire social liberty to come out of it. There are many ways in which that has been done and one is glad to see it. In the early days of Bengal after the new policy of education was introduced into Bengal, most of those who desired a change became Christians. Then came the Brahmo Samaj and they found social liberty there and they became members of that Samaj; the Arya Samaj movement at a later stage provided social liberty and was acclaimed by many thousands in North India who desired social liberty. The fact that there have been these movements all indicate that there are men and women who do desire reform.

Lastly, Sir, we are ready at all times to speak about individual liberty. This House is perfectly willing to give women votes, but here to my mind is a custom, here to my mind is a practice on which men of this country will not dare to ask the opinion of the women. They have legislated for them. If ever there was a "man-made law," this compulsion of young girls to become mothers is one of them. I feel sure there are women in India who themselves are demanding freedom. We all demand this freedom for them. As I consider this matter of social freedom, I look into the future and I see the movement for freedom here, there and elsewhere, and it seems to me that the time will come (it may not come in our day, but it is bound to come in the days to come) when it will be possible to create in India a civil social status in which all people can partake, whether they be Hindu, Muhammadan or Christian. I look forward to that day when we will all have the same laws of marriage, the same laws of divorce, and the same laws of inheritance. French India has it to-day. It is open to any Hindu or Muhammadan in Chandernagore or Pondicherry to deliberately place himself under the French civil law, and then inheritance, divorce, marriage in his case are all regulated by the French civil law. It does not change his religion, but unity is brought about in that way. And I look forward to the day when in India we shall have such unity, and all these steps we are taking are bringing that day nearer. I ask the House that it may give this liberty to Indian society, to give liberty to the women-folk of India, and for their sake to bring about this great reform that is necessary, for after all the corner-stone of freedom is in the first place liberty of conscience and in the second place social liberty (Applause).

Mr. Amar Nath Dutt (Burdwan Division: Non-Muhammadan Rural):
Sir, after having voted for raising the age in non-marital cases to 16, it

[Mr. Amar Nath Dutt.]

may be surprising to some that I should rise to oppose this lesser amendment of Dr. Datta. But, Sir, as I have expressed myself in clear and unambiguous language in my note of dissent, I think I have made myself thoroughly clear about my position in this matter. Sir, I am opposed to the raising of the age of consent in the case of marital relations to 14 or to any figure than what is to be found already in the Indian Penal Code, for the simple reason that this Legislature, constituted as it is by an alien Government, whose faith and religious, moral and social ideas are quite different from those of the children of the soil, has no right to legislate or thrust its will upon an unwilling people

Pandit Shamlal Nehru: It is you who are legislating.

Mr. Amar Nath Dutt: No, it is not I that am legislating. I am sorry my friend changes his position when it is a question of social legislation. When it was politics, his views were different. Then this House was a Legislature brought into existence by an alien Government, with whom we could hardly co-operate, and my friend was out to destroy this very Assembly where we are sitting. My friend and those who are of the same opinion as he is, and I am one of them, was out to destroy, not only the hybrid constitution of dyarchy in the provinces, but also this irresponsible bureaucratic system of government. We are out to destroy this system as Swarajists, and therein my friend agreed with me, but here when there is a question of certain views on social matters which are in conformity with advanced social ideas, he thinks this is our own Legislature. I will not believe that it is we who are legislating. That is my first objection.

Secondly, Sir, I am myself opposed to early marriages. I am opposed to *purdah*, I am in favour of female education. At the same time I know that there is a lot of people all over India, in my own province at least of which I am sure who have not kept pace with these progressive ideas about female emancipation, female education and early marriage. That being so, I ask whether any democratic constitution, any democratic Government, has any right to legislate upon matters like these for a people whose social and religious ideas are different from theirs? I quite sympathise with Sir Hari Singh Gour when he says that he urges the passing of this Bill upon humanitarian grounds; but I will request him also to remember that besides early marriage and early consummation of marriage being the reason of infant mortality, there are other factors also, namely, want of proper food, want of sustenance, the seclusion of women, want of physical exercise. Now, Sir, I ask the Honourable Member who has been impelled by such humanitarian reasons to legislate upon a matter like this in the interests of the coming generations of this country, although he has been sitting in this Legislature for the last four years, has he ever thought of introducing a Bill to give better food, better milk, to the starved women and starved babies of our people? Was he with us, Sir, when we wanted to reduce the salt tax and to give these poor men and women whose sickly constitutions

Pandit Shamlal Nehru: On a point of order, Sir. May I know if salt has anything to do with the relations between husband and wife?

Mr. Amar Nath Dutt: That was the result of a bureaucratic Government. But my Honourable friend was not always with us in those matters. He

comes to us only in such matters as will not offend the bureaucracy and will at the same time give him probably some title to the gratitude of the future generation as a second Manu, as my Honourable friend Mr. Shanmukham Chetty put it the other day, a second Manu of the twentieth century. Be that as it may, Sir, I beg to submit that it is not for us in this House to legislate on social matters and thereby interfere with the marriage customs or the religious ideas of our orthodox friends. I have declared more than once in this very hall that I am myself not an orthodox Hindu, nor do I believe in orthodoxy. But at the same time I have this much respect for my orthodox brethren among whom I live and among whom I expect to live till the end of my days, that I do not wish to offend any of their feelings. Right or wrong, the feelings are there; the belief is there, that they must have consummation after attainment of puberty, it may be before 12 or it may be before 13, it does not matter which. So, Sir, I beg to submit that it will be proper for us not to interfere in cases of marital relationship by raising the age of consent.

Then there is one other matter to which I would like to refer in opposing Dr. Datta's amendment, which I think will appeal not only to the author of this Bill but also to Dr. Datta who quoted medical opinion in support of his amendment. There is a danger of police inquisition. I will not take up the time of the House by dealing with the Indian Police and how they behave towards the people of this country. This will be one more handle in the hands of an unscrupulous police to terrorise and oppress men and thereby get bribes. On that ground also I ask even my heterodox friends to consider whether or not they are willing to arm the police of this country with powers such as these. On these grounds, Sir, I think I shall have the support of this House when I oppose the raising of the age of consent to 14. An amendment stands in my name, and when the time comes I shall move that and ask the House not to interfere with the present law.

***Colonel J. D. Crawford** (Bengal: European): It was not my intention, Sir, to take part in this debate even though the fact that the Bill affects my community gives me a certain *locus standi*. Just a fortnight ago, however, I was for reasons which were entirely unconvincing invited to address a meeting convened for the purpose of initiating a Delhi branch of the International Council of Women. I was not aware that I had been in favour of women's rights. In fact, my inclinations had always rather been towards the exertion of women's undoubted influence through the home rather than through public life. But the previous debate in this House on this Bill forced me to realise that there are very many questions of this nature in which we, men, would be well-advised to take counsel with our womenfolk. However, Sir, the small part I played on that occasion has brought me telegrams and letters from women in Bengal and it is with a view to voicing their opinion that I intervene in this debate. The Bengal Presidency Council of Women, a body composed of Indian and European ladies who are working constantly for social reform and in questions affecting their sex and children, have sent me the following telegram:

"Bengal Presidency Council of Women vigorously support Sir Hari Gour's Bill regarding the age of consent without amendment. Earnestly trust you will support Bill when discussed to-morrow and oppose proposal of Select Committee."

* Speech not corrected by the Honourable Member.

[Colonel J. D. Crawford.]

That, Sir, is an emphatic record of public opinion amongst the women in Bengal condemning the recommendations of the Select Committee to restrict the age of consent to 18.

Diwan Bahadur T. Rangachariar: May I ask the Honourable Member what is the strength of that Association and who form the component parts of that Association?

Colonel J. D. Crawford: I regret to say I have not the figures with me, but if my Honourable friend knew more of Calcutta

Diwan Bahadur T. Rangachariar: How many people, how many ladies were present?

Sir Hari Singh Gour: If my Honourable friend had put me that question I would have satisfied his curiosity to his satisfaction.

Diwan Bahadur T. Rangachariar: Do so now!

Sir Hari Singh Gour: I will certainly do so and I will let you have the papers from the women of all parts.

Colonel J. D. Crawford: I believe other Honourable Members have also received messages from the women in their provinces; and with your permission, Sir, I would like to read a very brief extract from a letter from the Women's Indian Association in my Honourable friend Diwan Bahadur T. Rangachariar's province. (*Diwan Bahadur T. Rangachariar:* "I know the Association very well.") They say:

"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.

But we do not ask you to accept Western standards of culture or morality, however good, but to just go back to the pure Hindu teaching of the Shruti. 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 Pandits and Shastris and are informed that the ancient Vedic teaching clearly visualised marriage as between a mature young man and woman.

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 Vedas unstained by comparatively modern additions and interpolations."

What is the question, Sir? It is a perfectly simple one. At what age do we consider, in the interest of the mother and child and of the future health of generations of Indians, intercourse between the sexes ought to be permitted? We have just had the vote of this House in favour of 16 and I am perfectly convinced that every Member of this House believes himself that that is the right age. I would like, Sir, to refer very briefly to some figures which were given by Mr. B. C. Allen in a brilliant speech he made on this subject on the motion of Rai Bahadur Bakshi Sohan Lal to refer his Bill further to amend the Indian Penal Code to a Select Committee. Mr. Allen said:

"I am sorry to have to trouble the House with a few statistics. But statistics with regard to mortality in child-birth are difficult to obtain, and I doubt whether

Honourable Members are in possession of them. In England, for some years past, the mortality has been at the rate of $4\frac{1}{2}$ per mille, that is to say, for every 2,000 children born, nine mothers die. Similar statistics are not procurable at all from many parts of India, but I have been supplied with some information from the source to which I referred before. In Bombay towns the statistics show not $4\frac{1}{2}$ per mille but 16 per mille. Shikarpur has a rate of 60 per mille, i.e., for every thousand babies born, 60 mothers die. Poona, 33 per mille, Bombay, 25 per mille. The United Provinces and Madras returns are much more favourable, but I fear that these returns are very incorrect. Does the House realise what these figures mean? They mean that in the course of one generation three million, two hundred thousand mothers die, who would not have died if the conditions were as satisfactory here as they are in England."

That, Sir, is an appalling state of affairs and this House will be shirking its responsibility if from fear of agitation or from lack of determination to overcome the difficulties of making such legislation effective, we were to connive at the dreadful suffering to which our women and children are submitted owing to ignorance or antiquated custom. We are all of the same opinion as to the age at which intercourse should be permitted. We have heard much in this House, Sir, of the slavery to which Indians are subjected owing to the existing constitution. I would suggest that that exists very largely in the fertile imagination of our youthful politicians. But as to the slavery of one sex to the carnal desire of the other, there is ample evidence on medical grounds. We, Sir, will have little justification for political freedom if we have not now the courage ourselves to free our womenfolk from the terrible bondage to which they are at present subjected and which has been the cause of the loss of life of so many mothers and children, and which is one of the main contributory causes of the physical emasculation of India's manhood. I will urge the House to take its courage in both hands; and in accepting Dr. Datta's amendment I am convinced that this Assembly will not only have added to its reputation but will have placed on the Statute-book a legislation which in the long run will lead to very real benefit to the health of the nation. So 14. let it be.

***Pandit Madan Mohan Malaviya** (Allahabad and Jhansi Divisions: Non-Muhammadian Rural): Sir, I entirely agree with those friends who think that there should be no consummation of marriage until a girl has completed her fourteenth year of age. I go further, Sir. I support the expression of opinion of the Shusrat Samhita, to which reference was made by Dr. Gour, that a marriage should not be consummated until a girl has completed her sixteenth year. I think it is right that the consummation of marriage should be postponed till a girl has attained her sixteenth year. But, Sir, at the same time, so far as this proposal to raise the age of consent within the marital relation is concerned, I am sorry I am opposed to it and for this reason. In a country where marriages before the age of 14 are permitted, it is not right that the age of consent in the case of husband and wife should be fixed by law at 14. I have said and I repeat again, that I am whole-heartedly with those friends, with every one of those friends who desire that consummation of marriage should not take place until at least a girl has reached her fourteenth year. But, while these marriages are permitted to the extent that they are, and while marriages take place to the large extent that they do before a girl has reached her fourteenth year, I consider it is not right of the Legislature to lay down the age of consent in the case of husbands and girls of 14. I should still leave it to social reformers and individuals to work to establish the higher

[Pandit Madan Mohan Malaviya.]

age. A great deal of progress has been achieved in the direction of social reform. Marriages do not take place at these early ages at which they used to do and I hope and trust that all of us who have expressed any opinions in favour of the measure before the House will really give a little more time to educating public opinion in the various communities in which the custom prevails in order to raise the age of consent to the figure that is desired; but at the same time I feel, Sir, that this is work which should not be undertaken at the present stage of public opinion among those among whom marriages take place at an early age, to establish this rule by law. I therefore think that, so far as husbands are concerned, the matter should be left where it is, namely, that the age should be left at 12. To ascertain whether the proposed amendment is a desirable one, we should use one single test. Would it be right of the Legislature, in view of the opinion that prevails among those among whom marriages take place earlier than 14, to lay down by law that no marriage should take place before 14? (Sir Hari Singh Gour: "They don't do that.") If it will not be right, I say it will not be right to lay down this other rule either. We must trust to social reform and the progress of education, to the progress of ideas generally and of social advance among the different sections of the community. I would certainly say that every effort should be made by introducing lessons in school, by organisations of social reform associations, by the publication of pamphlets and tracts, to educate public opinion against the effects of early marriages, but I submit, Sir, that, in view of the opinions that have been received from the Local Governments, the provinces, and public associations, it will not be right on the part of this House to raise the age to 14 in the case of married persons. Of course, it is possible that there may be, it is probable that there are many Members here, who feel strongly that it is their duty to lend their vote and their protection to girls below 14 but I would ask them to bear in mind that it would be a violence to the feelings of those who do not agree with them; and I do not think that in a matter in which social and religious considerations come in this House should legislate so much in advance of the general opinion of the communities and the people that are concerned. I therefore strongly urge that in the case of married persons the age should be left where it is.

Lala Piyare Lal (Delhi: General): I feel, Sir, that this piece of legislation, so far as it is designed to attack marital relations, will seriously affect a certain class of people; it may injure their religious feelings and interfere with their social customs. This class forms the majority of the population of this country, though their representation in this House is not adequate. I refer to the people who cherish the beliefs and traditions of their forefathers and cling to them. I mean, Sir, the orthodox portion of the Hindu community. On its face, the Bill applies to all classes and communities of India but its main object is to stop the custom of early marriages which prevails to a large extent amongst certain castes and communities of the Hindus. The Christians are not concerned with this measure. They have got their own law governing the marriageable age of men and women. It will touch the Muhammadans only slightly. Early marriages are very scarce among them, though in my 45 years' practice at the Bar, the only case I had came from a Muhammadan family and I still remember the disastrous effects it had on the life of the married couple. The husband was sent to jail and the parties never got reconciled thereafter. Personally I am opposed to marriages and their consummation

at an immature age, nor do I think that there are any in this House who will be prepared to defend that practice. It has many disadvantages but they need not be exaggerated.

Pandit Shamlal Nehru: Why are you opposing, then?

Lala Piyare Lal: You will see. Be that as it may, the fact, however, remains that there is a conservative element in our society and it is our duty to represent the views of that school of thought also before this House.

Sir, the object of the Bill may be laudable but its policy is open to serious objections and severe criticism. Social reforms can better be left to the growth of public opinion and moral pressure than to legislation of a penal character. Progress in religious beliefs and social manners is naturally and usually slow and those who are engaged in this class of work know the difficult nature of their task. Signs of progress are, however, visible in various directions. The Sikhs and the Arya Samajists have thrown off their shackles and have raised the marriageable age of their girls, and many others seem inclined to follow the same course. But in any case, it is safer to proceed cautiously and to walk steadily than to run at break-neck speed.

There can be no objection to raise the age of consent in the case of strangers but the case of marital relations stands on a different footing altogether and it would be unwise to meddle with it by legislation. While I am myself opposed to early marriages, I cannot shut my eyes to the fact that there are millions of my countrymen who still think—and firmly believe—that a girl should be married before signs of puberty appear on her person. I hold no brief for that belief. It is not for me to defend it. You may, if you like, call it prejudice or superstition but you cannot and should not ignore its existence. Marriage among the Hindus is a sacrament and it would be unwise to interfere in a delicate matter of this kind in which religion plays an important part.

This Bill was twice referred to Select Committee and on each occasion it has been reported unfavourably. Moreover, the opinions of eminent authorities have unequivocally declared it unnecessary and uncalled for and it would therefore be an act of rashness to proceed with this measure in the face of an opposition of this magnitude. It is likely to create agitation which it would be advisable to avoid. I feel, Sir, that it is not a case in which the majority of the House have a right to impose their will on the minority.

Diwan Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I regret very much I have to oppose the amendment of my Honourable friend Dr. Datta, while I agree with him in all the arguments he has put forward as to the evil of early consummation of marriages. If my Honourable friend Dr. Datta, with all his eloquence could go about the country and address a thousand platforms if not a hundred thousand platforms, and educate the country to acceptance of this position, I am sure in another 10 years the country will be ready to accept the amendment that he has proposed. I know, Sir, that public opinion is advancing fast in this direction. I may say at once that I had a family consultation over this Bill, when I consulted my wife and daughters as regards the wisdom of this measure. They all agreed that it is a wise measure indeed to increase the age to thirteen. That shows what progress is really being made in the direction of development of public opinion in favour of late consummation of marriage. But I must advise my ardent friends in the cause of this reform to proceed slowly and cautiously. Nothing is lost.

[Diwan Bahadur T. Rangachariar.]

The nation is not one year old. The nation is going to live long and I am sure in another 10 years, if my Honourable friend Sir Hari Singh Gour does not find a place here, there will be hundreds of Hari Singh Gours in his place to urge for this reform.

Pandit Shamlal Nehru: May I know when this section was enacted last?

Sir Hari Singh Gour: 1891.

Diwan Bahadur T. Rangachariar: I do feel, Sir, that this is not the place for us to force social reform. Here you are appealing to an audience which is willing to agree with you. That is the unfairness about it. The unfairness of the position is this. Here you have got everybody who feels with you, who agrees with you in all your views, whereas for one here, there are a hundred thousand outside who do not agree with you. That is the unfairness of the position. You want to take advantage of the Legislature in forcing down the public throat a reform, a much needed reform I may say, by making relationship between husband and wife a crime. What is it you are doing? You want to subject the husband to imprisonment, I see from the Schedule, in the case of consummation after 12, to two years' rigorous imprisonment and fine. If she is under 12 years, then of course, there is the law already.

Sir Hari Singh Gour: Why don't you quarrel with it? It is also a social reform.

Diwan Bahadur T. Rangachariar: That is a settled fact. We are not trying to go below 12 years. You want to advance from 12 to 14. That is the effect of the amendment. I am quite willing, speaking for myself, to admit that it is perhaps not unwise to increase the age to 18 years. But you must realise the difficulties which parents have to contend with in the matter of keeping husband and wife apart. They have to live together in the same house, under the same roof, oftentimes. Boys go to their father-in-law's houses for study. They live in the same house as the girl. It is all very well to say—it may be a counsel of perfection to say—that they should be kept apart. But the difficulties of parents have to be recognised. I do not put it on the ground of any orthodoxy, or on account of the religious sanctity attached to it. You have to educate public opinion. My point of view is that public opinion is not ripe for it. The public opinion must rise to it. I may mention that in some places marriage is essential to the performance of certain duties. For instance, in the case of the Dhikshadars who perform worship at Chidambaram, unless he is a married man he is not entitled to enter the temple and perform worship. Therefore, in some cases, you may entail social disabilities. We know that the habits and customs prevailing are so many and so different. Is there any man here who can come forward and say he knows the habits of the Hindus in all parts of India? Speaking for my own province, I am quite ignorant of the social habits and customs of many a community in my own province. Much more so should be our ignorance when we speak of a continent like India where you have got so many people with different social habits and usages. What is it you propose to do? You propose to send the husband to jail for consorting with his wife. You know, Sir, in certain communities, going to jail puts a man out of caste altogether, even if it is simple imprisonment. In the case of the Nattukottai Chetties in my own province, confinement even for a day inside a jail puts him out of caste. Why, you profess to do good for the girl. What is it you are doing? You are putting her husband out of caste altogether by doing these things, and thereby making

the life of the girl and the life of the boy unpleasant altogether. Let us proceed cautiously. There is no object in hurrying through these things. I quite admire the ardour of my friends, but let that ardour be also spent in educating the public. Let them also spend some portion of their time in doing this work outside. May I ask my Honourable friend Sir Hari Singh Gour, how many platforms he has addressed in this connection outside this hall? (*A Voice*: "Never.") Has he ever summoned a meeting in his own province and addressed the people on the value of these reforms? Sir, it is easy to avail yourself of the position which you occupy here and appealing to an audience where all are wedded to your views and get them to aid in this legislation. It is very easy indeed but it is not so easy a task to go to the country and convince your own countrymen and countrywomen. Sir, we have heard of petitions sent by Women Associations. Does my Honourable friend believe in those Associations? How many women really—women of the country really—are members of that Association? A Mrs. Jinaraja Dasa, an Australian lady, who has married a Buddhist coming forward no doubt and advocating this reform. Lady Sadasiva Aiyar, who is a very grand old dame, no doubt a great and ardent social reformer in my province, is a member of that Association.

5 P.M. How many people are there out of the 5 lakhs of the population in Madras, of whom about 2 lakhs are women, adult women, who are in favour of this? How many Associations are there? Let us not force the pace. I am quite willing for 13 speaking for myself individually because I do think you can move slowly in that direction but to raise the age to 14 is, I am afraid, a most impracticable measure, a most unwise measure, by which you will be courting unpopularity not for yourself but for the Government which encourages it.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, I think my Honourable friend Sir Hari Singh Gour is to be congratulated on his introduction of this Bill. It represents, among other things, a courageous effort on his part to lead public opinion and to overcome conservative orthodoxy in the matter of premature sexual intercourse. The Bill, however, purports to deal with the subject by amendment of sections 375 and 376, Indian Penal Code—the law relating to rape. As a Member of the Select Committee to which the Bill was referred for report, I wrote a minute of dissent from which I make the following extract:

"I should certainly support a provision to make non-marital intercourse with a girl under 14 punishable as rape. But so far as husband and wife are concerned, there seem to be practical difficulties in the way of effective legislation. * * * * * If there is a feeling to raise the age all round to 13, I will support it, but I doubt its practical value in marriage cases."

• To that opinion I still adhere. Indeed it has been confirmed by the opinions which we have received.

With your permission, Sir, and that of the House, I will try and make a detailed examination of the questions before us. We are dealing with one particular form of rape, namely, that in which sexual intercourse takes place with the consent of the woman, such consent not having been obtained by force or fraud, i.e., a case falling under the last of the five definitions of rape given in section 375, I. P. C., in which consent is no defence where the woman is under the age of 12 years.

Then we have a sub-division of this branch into two heads, namely, (1) rape by a man who is not, and (2) rape by a man who is the husband of the woman raped. We have already disposed of the first part. We are now concerned with the second

[Sir Henry Stanyon.]

A study of the opinions received reveals:

- (1) that public opinion is almost unanimous in favour of raising the age of lawful consent from 12 to 14 years against a seducer who is not the husband of the woman seduced; while a large body of it asks that the age limit should be placed even higher, and
- (2) that public opinion is strongly divided for and against any alteration of the existing law as between husband and wife and that a large preponderance in this case is in favour of non-interference.

In my humble opinion we should treat the two branches of the subject quite separately. We have dealt with one but we have now to deal with the more difficult of them. All or most of us know of the sad case of Haree Mohan Majthee, reported in I. L. R. 18 Calcutta 49, which was the immediate cause of the age of lawful consent being raised from 10 to 12 years by Act X of 1891. In taking that course having regard to the well established fact that in almost every case a girl of 10 years is absolutely immature and physically unfit for sexual intercourse, the Legislature was justified in overriding a large volume of orthodox opinion against the change. But to my mind there is all the difference in the world between raising the age for lawful consummation of marriage from 10 years (when the wife is certainly immature) to 12 years, and raising it from 12 years (when the wife is frequently pubescent) to 13 or 14 years.

In my opinion it is a mistake to classify as rape any sexual intercourse between a husband and wife. Such a classification is unknown to English law. Under that law unlawful carnal knowledge of a girl under the age of 13 years is a felony punishable as rape, and unlawful carnal knowledge of a girl over 13 but under 16 years of age is a misdemeanour punishable as an indecent assault. The age limit for marriage in England is 14 years for a boy and 12 years for a girl. It is a rule of common law that in regard to the offence of rape *militia non supplet actatem*, a boy under 14 years cannot be convicted of that offence, there being a presumption that he is physically incapable of committing it. That is a *presumptio juris et de jure* and judges have time after time refused to receive evidence to show that a particular prisoner was in fact capable. In England if a male over 14 could get married to a girl over 12 but under 18, and sexual intercourse took place, he could not be convicted either of rape because his wife was under 13 or of indecent assault because she was under 16. The intercourse would not be unlawful carnal knowledge. But no one in England could ever lawfully marry a girl under 13 years, because of other legal and social safeguards which stand in the way. These safeguards are also to be found in the Indian Christian Marriage Act (XV of 1872), which, besides requiring, where either party to a marriage is a minor, the consent of the guardian of such minor, provides for the particular cases of Native Christians that the age of the bridegroom shall exceed 16 years and that of the bride shall exceed 18 years. The particular point that I wish to make is that under English law there can be no such thing as unlawful sexual intercourse between a husband and wife, and no husband can rape a wife who has not been legally separated from him even though her age might be under 18 years.

But in India in cases to which the Indian Christian Marriage Act does not apply, marriages are often celebrated many years before consummation is physically possible. I know of no rule of Hindu or Muhammadan law or any well recognised custom which fixes a limit of age below which a girl

may not be married, and though education and reform have made, and continue to make, excellent changes in public opinion regarding the union of immature children, child marriages are still the rule. Consequently the Indian Legislature has been compelled to enact an age limit for the consummation of marriage. It has done so by making consummation before that age punishable as rape.

I think, with all due respect, that this is a wrong classification. The primary conception of rape is carnal knowledge of a woman (1) against her will, (2) without her consent, or (3) with her consent obtained by intimidation or fraud. One important feature which makes the crime of rape so serious is the indelible disgrace which it inflicts upon the woman. There are women who would rather lose their lives than suffer a loss of honour and virtue.

Now, all these features are absent from intercourse between a husband and wife. Provided the wife is not under the age of consent, the husband may have intercourse with her against her will or without her consent. If he resorts to assault, wrongful restraint or wrongful confinement to achieve his purpose he may be punishable for such offence, but he cannot be indicted for rape. Nor in the eyes of anyone will the intercourse be regarded as dishonourable or degrading to the wife. Nevertheless, a husband who indulges in the animalism of insisting on intercourse with his child wife under the age of 12 years, commits a crime as serious as rape in the ordinary sense of that term and therefore his inclusion as an offender punishable under section 376, Indian Penal Code, has not involved any injustice.

But when we come to intercourse between a husband and his lawful wife who is over the age of 12 years we are presented with a difficult problem and we shall certainly alienate a large volume of public opinion if we treat such intercourse as rape. It is still unduly premature. It may be harmful to the wife, and it is certainly against the interests of the race generally. But it seems to me that it would be a misnomer to call it rape. In dealing with the Bill before us we must proceed from the point of view of penologists and not of social reformers. I feel as strongly as anyone in this House or out of it, the need of social reform in this matter. But we are not justified in using criminal law to enforce a reform which is only necessary or desirable from a moral or eugenic standpoint. This is all the more so since we know that education has already made and will continue to make substantial progress in bringing about that reform. The number of people who understand and appreciate eugenism increases constantly. One of the most hopeful features is the spread of female education and the fact that Councils and Associations of Women in India have taken up this subject with characteristic energy and enthusiasm. I am sure we all wish them success in their efforts to lead the inferior sex in this matter.

But the question for us to-day is whether we shall do any good to the people of India by legislating that intercourse between husband and wife, the wife being over 12 years, shall be defined and made punishable as rape. I may point out that the limit of 14 years desired by the Honourable Sir Hari Sing Gour and other Members would be in excess of the limit for rape fixed even in England and would involve amendment of the Indian Christian Marriage Act, 1872, and possibly other enactments. The 13 years recommended by the Select Committee is not open to these objections. But I would remind the House that the law introduced by Act X of 1891 has remained a dead letter so far as husbands and wives are concerned, though the offence is cognizable by the police and not bailable. I have not heard

[Sir Henry Stanyon.]

of a single case of a husband being prosecuted for rape on his wife during the 34 years that have passed since the enactment came into force. No one with any knowledge of the circumstances of this country can believe that marital intercourse with wives under the age of 12 years has not taken place during this period. That particular form of rape must have been committed times without number. But with public opinion indifferent, with the police reluctant to prosecute, and with the husband and his parents-in-law of one mind, either detection has not taken place, or prosecution with any chance of success has been impossible.

The Bill before us would make every case against a husband non-cognizable by the police—even that of rape on a wife under the age of 12 years. That is a very serious weakening of the present law. What hope can there be that any private complainant will ever come forward to prosecute a husband for rape on his own wife whether she be under the age of 13 years but over 12, or even if she be under the age of 12 years? The check which police cognizance imposed in the latter case is certainly not one which should be removed. If we remove it we shall put the protection of the child-wife back to where it stood before Act X of 1891. It would be a blunder of the first magnitude.

I may sum up my views in this way. We should take advantage of the strong public opinion in favour of tightening up the law against the stranger seducer. As regards husband and wife, I should leave sections 375 and 376, Indian Penal Code, as they are at present and if legislation is held desirable to punish as a crime marital intercourse with a wife over 12 but under 18 years of age, I would recommend that it should take the form of a new section, being treated as a non-cognizable, bailable offence, punishable with a very light sentence. Such a provision will remain a dead letter as a penal enactment but it may help to educate public opinion in the way so many of us consider desirable.

The Honourable Sir Alexander Muddiman: Sir, the House has taken a step which I confess has somewhat surprised me in raising the age as high as 16 outside the marriage tie. The question now before the House is as to whether it should raise it to 14 within the marriage tie. When I spoke on this at an earlier stage of the discussion I drew attention to the very large bulk of opinion which was opposed to raising the age within marriage. I then said that the Government of India were prepared to leave it to the House to vote on this question, but by that I meant the question of raising the age within marriage by one year. I did not, I must confess, consider it was likely that the House would be inclined to raise the age as high as 16 years outside marriage and I must modify the attitude which I previously took up in that respect. I shall therefore feel it my duty to oppose the present motion. In doing so, I wish to make it perfectly clear that I do so merely from the fact that I consider that the authorities which have been consulted disclosed so considerable a body of public opinion opposed to an increase in the age which is now suggested by the motion under consideration, that I think, looking at the matter from an administrative point of view, we might be faced with serious agitation if this measure was to be passed into law. If the age is to be raised as high as 14, you will be taking a step for which we shall have to bear the burden. I hope the House will consider very seriously before it votes on it and I think it is a pity that the discussion should come to a vote at so late an hour and in so thin a House. I trust

the House will consider this question very very seriously before it takes a step which it may seriously regret.

Mr. President: The original question was:

"That clause 2 stand part of the Bill."

Since which an amendment has been moved:

"That in the said clause for the word 'thirteen' the word 'fourteen' be substituted."

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

The Assembly divided:

AYES—45.

Ahmad Ali Khan, Mr.
Ahmed, Mr. N.
Ariff, Mr. Yacoob C.
Bhak, Mr. K. Sadesiva.
Chaman Lall, Mr.
Chanda, Mr. Kamini Kumar.
Chetty, Mr. R. K. Shanmukham.
Crawford, Colonel J. D.
Das, Mr. B.
Datta, Dr. S. K.
Fleming, Mr. E. G.
Ghazanfar Ali Khan, Raja.
Ghulam Bari, Khan Bahadur.
Goswami, Mr. T. C.
Gour, Sir Hari Singh.
Gulab Singh, Sardar.
Hans Raj, Lala.
Hira Singh Brar, Sardar Bahadur Captain.
Ismail Khan, Mr.
Jinnah, Mr. M. A.
Joshi, Mr. N. M.
Kasturbhai Lalbhai, Mr.
Kazim Ali, Shaikh-e-Chatgam Maulvi Muhammad.

Lindsay, Mr. Darcy
Mehta, Mr. Jamnadas M.
Misra, Pandit Harkaran Nath.
Muhammad Ismail, Khan Bahadur Saiyid.
Murtuza Sahib Bahadur, Maulvi Sayad.
Naidu, Mr. M. C.
Nehru, Dr. Kishenlal.
Nehru, Pandit Shamlal.
Pal, Mr. Bipin Chandra.
Patel, Mr. V. J.
Phookun, Mr. Tarun Ram.
Ramachandra Rao, Diwan Bahadur M.
Ranga Iyer, Mr. C. S.
Ray, Mr. Kumar Sankar.
Rhodes, Sir Campbell.
Sadiq Hasan, Mr. S.
Sarfaraz Hussain Khan, Khan Bahadur.
Sinha, Mr. Devaki Prasad.
Sykes, Mr. E. F.
Willson, Mr. W. S. J.
Yakub, Maulvi Muhammad.
Yusuf Imam, Mr. M.

NOES—43.

Abdul Qaiyum, Nawab Sir Sahibzada.
Abhyankar, Mr. M. V.
Aiyangar, Mr. K. Rama.
Ajab Khan, Captain.
Aney, Mr. M. S.
Ashworth, Mr. E. H.
Bhore, Mr. J. W.
Blackett, The Honourable Sir Basil.
Burdon, Mr. E.
Clow, Mr. A. G.
Duni Chand, Lala.
Dutt, Mr. Amar Nath.
Ghose, Mr. S. C.
Graham, Mr. L.
Hari Prasad Lal, Rai.
Innes, The Honourable Sir Charles.
Iyengar, Mr. A. Rangaswami.
Kelkar, Mr. N. C.
Lloyd, Mr. A. H.
Malaviya, Pandit Madan Mohan
Marr, Mr. A.
McCallum, Mr. J. L.
Moir, Mr. T. E.

Muddiman, The Honourable Sir Alexander.
Mutalik, Sardar V. N.
Narain Dass, Mr.
Nehru, Pandit Motilal.
Neogy, Mr. K. C.
Piyare Lal, Lala.
Rangacharar, Diwan Bahadur T.
Rushbrook-Williams, Prof. L. F.
Samiullah Khan, Mr. M.
Sarda, Rai Sahib M. Harbilas.
Sastri, Diwan Bahadur Q. V. Visvanatha.
Singh, Mr. Gaya Prasad.
Singh, Rai Bahadur S. N.
Singh, Raja Raghunandan Prasad.
Sinha, Mr. Ambika Prasad.
Stanyon, Colonel Sir Henry.
Svamacharan, Mr.
Tonkinson, Mr. H.
Ujagar Singh Bedi, Baba.
Wilson, Mr. R. A.

The motion was adopted.

Mr. President: The question is:

"That clause 2, as amended, stand part of the Bill."

The Assembly divided :

AYES—55.

Ahmad Ali Khan, Mr.
 Ahmed, Mr. K.
 Ariff, Mr. Yacoub C.
 Ashworth, Mr. E. H.
 Bhat, Mr. K. Sadasiva.
 Bhole, Mr. J. W.
 Burdon, Mr. E.
 Chaman Lall, Mr.
 Chanda, Mr. Kamini Kumar.
 Chetty, Mr. R. K. Shanmukham.
 Clow, Mr. A. G.
 Crawford, Colonel J. D.
 Das, Mr. B.
Datta, Dr. S. K.
 Fleming, Mr. E. G.
Ghazanfar Ali Khan, Raja.
 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.
 Ismail Khan, Mr.
 Jinnah, Mr. M. A.
 Joshi, Mr. N. M.
 Kasturbhai Lalbhai, Mr.
Kasim Ali, Shaikh-e-Chatgam Maulvi
 Muhammad.
 Lindsay, Mr. Darcy.

Lloyd, Mr. A. H.
 Lohokare, Dr. K. G.
 Mahmood Schammad Sahib Bahadur,
 Mr.
 Mehta, Mr. Jammadas M.
 Misra, Pandit Harkaran Nath.
 Muhammad Ismail, Khan Bahadur
 Saiyid.
 Murtuza Sahib Bahadur, Maulvi Sayed.
 Naidu, Mr. M. C.
 Nehru, Dr. Kishenlal.
 Nehru, Pandit Shamlal.
 Pal, Mr. Bipin Chandra.
 Patel, Mr. V. J.
 Phookun, Mr. Tarun Ram.
 Ramachandra Rao, Diwan Bahadur
 Mr.
 Ranga Iyer, Mr. C. S.
 Ray, Mr. Kumar Shankar.
 Rhodes, Sir Campbell.
 Rushbrook-Williams, Prof. L. F.
 Sadiq Hasan, Mr. S.
 Sarfaraz Hussain Khan, Khan
 Bahadur.
 Sinha, Mr. Devaki Prasad.
 Sykes, Mr. E. F.
 Willson, Mr. W. S. J.
 Wilson, Mr. R. A.
 Yakub, Maulvi Muhammad.
 Yusuf Imam, Mr. M.

NOES—23.

Abdul Qaiyum, Nawab Sir Sahibzada
 Aiyangar, Mr. K. Rama.
 Ajab Khan, Captain.
 Aney, Mr. M. S.
 Duni Chand, Lala
 Dutt, Mr. Amar Nath.
 Ghose, Mr. S. C.
 Hari Prasad Lal, Rai.
 Kelkar, Mr. N. C.
 Malaviya, Pandit Madan Mohan.
 Mutalik, Sardar V. N.
 Narain Dass, Mr.

Neogy, Mr. K. C.
 Piyare Lal, Lala.
 Rangachar, Diwan Bahadur T.
 Sastri, Diwan Bahadur C. V.
 Visvanatha.
 Singh, Mr. Gaya Prasad.
 Singh, Rai Bahadur S. N.
 Singh, Raja Raghunandan Prasad.
 Sinha, Mr. Ambika Prasad.
 Stanyon, Colonel Sir Henry.
 Syamacharan, Mr.
 Ujagar Singh Bedi, Baba.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the
 24th March, 1925