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COUNCIL OF STATE.

Friday, 19th September, 1924.

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

QUESTION AND ANSWER.

SIR EDWARD COOK'S RESIGNATION OF HIS APPOINTMENT AS SECRETARY TO THE HIGH COMMISSIONER FOR INDIA.

416. THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Under what circumstances and for what reasons was Sir Edward Cook transferred from his appointment as Secretary to the High Commissioner in England ?

THE HONOURABLE MR. G. L. CORBETT: Sir Edward Cook asked to be relieved of his appointment for private reasons.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: May I ask a supplementary question ? Is it likely that Sir Edward Cook will come back to India and take his place in the United Provinces where he has been gazetted ?

THE HONOURABLE MR. G. L. CORBETT: I cannot say what Sir Edward Cook's intentions are.

INDIAN POST OFFICE (AMENDMENT) BILL.

THE HONOURABLE MR. A. H. LEY: (Secretary, Department of Industries and Labour): I beg to move:

"That the Bill further to amend the Indian Post Office Act, 1898, for certain purposes, as passed by the Legislative Assembly, be taken into consideration."

This is a very simple little measure and I do not think that I need detain the Council for more than a minute or two with an explanation. Most Honourable Members are probably aware that the use of stamping machines has recently been authorised for the stamping of letters in place of postage stamps. This is a measure which was authorised by the International Postal Convention which was held in Madrid in 1920. The advantages of these machines to large users of postage stamps, such as big commercial firms or big Departments, are obvious, and I do not propose to go into any detail, nor need I describe the machines themselves in detail. They are very ingenious. They consist of two or three meters, one being an invisible meter which can only be set by an officer of the post office. Each machine has to be licensed by the post office, and is under the control of the post office. The machine is set at a certain figure according to the wishes of the user, say, Rs. 200 or 300, and when that amount has been expended in the stamping of letters, the machine is automatically locked and cannot be used any further,

[Mr. A. H. Ley.]

that is to say, till it is reset by an officer of the post office. The Government have considered this matter carefully and are satisfied that there is practically no danger of fraud on the postal revenue from tampering with the machines themselves. The machines are fool-proof and thief-proof. But it is obvious that steps have to be taken to prevent the counterfeiting of impressions of these machines, so as to put them in exactly the same position as postage stamps and render the counterfeiting of these impressions liable to the same penalties. That, Sir, is the only object of this very small measure.

The motion was adopted.

Clauses 1, 2, and 3, and the Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. H. LEY: Sir, I move:

"That the Bill further to amend the Indian Post Office Act, 1898, for certain purposes, as passed by the Legislative Assembly, be passed."

The motion was adopted.

IMPERIAL BANK OF INDIA (AMENDMENT) BILL.

THE HONOURABLE MR. A. C. McWATTERS (Finance Secretary): Sir, I beg to move:

"That the Bill to amend the Imperial Bank of India Act, 1920, as passed by the Legislative Assembly, be taken into consideration."

Sir, the genesis of this Bill was a promise which was made by the Honourable the Finance Member rather more than a year ago, when the action taken by Government in connection with the Alliance Bank affair was being discussed in another place. It was common ground between Government and its critics that it was undesirable that the Imperial Bank should have to wait upon Government in a matter of this kind, and that it should be dependent upon Government before it could render the assistance which was necessary either to prevent or to mitigate the consequences of a serious financial crisis. The object of this Bill is simply to give effect to that promise and to relax the ordinary provisions of the Imperial Bank of India Act in cases where the Imperial Bank considers it desirable to take action of this kind. I have little doubt that this Council will agree without hesitation that this is in principle a very desirable measure. The Bill was introduced last March in the Assembly and was circulated for opinions. Those opinions will have been read by all Members of this House and they will see that there has been practical unanimity in favour of the Bill. The Bill was then referred to a Select Committee where certain amendments were made, and it has now come to us. The Bill, therefore, has been already very fully considered.

With regard to some points of detail, in the discussion in the other House, an addition was made to make it clear that this Bill referred only to banking companies registered under the Indian Companies Act which had a rupee capital. I may say that there are no companies registered under the Indian Companies Act which have not got rupee capital, and as a matter of fact Government are advised that it is extremely doubtful whether a company with sterling capital can be registered under that Act. But as there has been no

authoritative decision on the point, it was considered that there would be no harm in making this matter explicit since it was Government's intention that this Bill should be confined to assistance to Banking companies with rupee capital. A second point which was made clear in the amendment suggested by the Select Committee was that the Imperial Bank should be able to give this assistance in combination, if necessary, with other banks. There is one other point I wish to refer to because it is not included in the Bill itself. The Select Committee observed that it was very important that action of this kind should be taken with due caution, and therefore they considered it desirable that, before taking any action of this kind, the Imperial Bank should have a proper valuation made of the assets of the banking company which it proposed to assist, and that the assistance which it was to give should be limited to a definite proportion of those assets as ascertained; and further they considered that any action of this kind must receive the prior approval either of the Central Board of the Bank or, in case of extreme emergency, of the committee of the Central Board. The Select Committee did not suggest including these provisions in the Bill itself, but they considered it desirable that they should be included in the bye-laws of the Bank. I may point out to the House that the bye-laws of the Bank have to be framed with the previous approval of the Governor General in Council under section 31 of the Imperial Bank of India Act and these suggestions of the Select Committee will be considered in due course.

There is only one other point. When the Bill was before the other House an amendment was moved and carried extending the provisions of the Bill to co-operative societies. In the opinion of Government that amendment was not really a good one. The object of the Bill which deals with financial crises scarcely applies to the conditions under which co-operative societies work, and apart from that Government consider it very desirable that these societies should not learn to depend upon Government or outside assistance but should stand upon their own feet; also from the point of view of the Imperial Bank itself it is not desirable that large amounts of its funds should be locked up in securities such as those possessed by these agricultural societies which are not of an easily realisable character.

These views were presented in the other House but the amendment was carried. Now Government consider that this amendment is not an improvement, but, at the same time, the Bill is a permissive one and, in view of the considerations that I have pointed out, the Imperial Bank will naturally act with considerable caution before venturing to give assistance of this nature. In view of the fact that the Bill is permissive Government do not propose to move an amendment deleting this provision.

I hope that the House will agree that the Bill is a desirable one. I think that the mere fact of its being on the Statute-book will in itself help to prevent the necessity for the use of these provisions. Their existence will inspire confidence and confidence is the very breath of life of banking.

THE HONOURABLE SIR DINSHAW WACHA (Bombay: Nominated Non-official): I welcome this little amendment of the Imperial Bank of India Act. It is a very good one; it is a very judicious one, and as the Honourable

[Sir Dinshaw Wacha.]

Mr. McWatters says it will certainly inspire confidence in the mercantile and banking public. I am very glad to see that this amending Bill has been introduced and I welcome the proposal.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to amend the Imperial Bank of India Act, 1920, as passed by the Legislative Assembly, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1, the Title and the Preamble were added to the Bill.

THE HONOURABLE MR. A. C. McWATTERS: I move:

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

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to amend the Imperial Bank of India Act, 1920, as passed by the Legislative Assembly, be passed."

The motion was adopted.

INDIAN CRIMINAL LAW AMENDMENT BILL.

THE HONOURABLE MR. J. CRERAR (Home Secretary): I move:

"That the Bill further to amend the Indian Penal Code and Code of Criminal Procedure, 1898, for the purpose of affording greater protection to persons under the age of eighteen years, as passed by the Legislative Assembly, be taken into consideration."

This, Sir, is a brief Bill which is nevertheless an important one. I do not think however that I need detain the House very long as the matter which it contains has been before the public and some aspects of it at least have been already before the House. I will therefore begin with the year 1912. In that year, Mr. M. Dadabhoy (now Sir Maneckjee Dadabhoy) introduced a Bill in the Indian Legislative Council dealing with this matter. In the same year other Bills dealing with matters germane to the same subject were introduced by Mr. Mudholkar and Mr. Madge and Government, as a result of the inquiry which these three Bills initiated, decided to introduce a Government measure. That measure was introduced by Sir Reginald Craddock in 1913 and was referred for opinion to Local Governments and subsequently to a Select Committee. The war supervened and it was found impossible to proceed with the legislation, and the matter now comes before the House. The circumstances now very considerably vary from the circumstances which subsisted in 1912 and 1913. As the House is aware there has been during the last three or four years an important body of legislation both Central and Local dealing with matters of a cognate character. The Indian Legislature in their Act XX of 1923, as the House will recollect, passed a measure expanding the provisions of section 366 of the Indian Penal Code and adding other sections with a view to implementing the ratification by India of the International Convention regarding the traffic in women and children. In the course of the present year a measure was enacted to alter the age in sections 372 and

373 of the Indian Penal Code. Besides that we have had a considerable body of very important legislation in local Legislatures. We have had the Burma Act for the Suppression of Immoral Traffic, the Bombay Prevention of Prostitution Act, the Calcutta Suppression of Immoral Traffic Act, the two latter of 1923, and two Local Governments, Bengal and Madras, have enacted Children Acts following pretty closely some of the more important provisions of the Parliamentary Statute relating to children; and a similar measure is, I believe, in process of being enacted by the Legislative Council of Bombay. Well, Sir, the measure now before the House, is as I said, a brief measure but a very important one.

It is intended in some respects to supplement certain aspects of local legislation to which I have referred, and in other respects to bring the general criminal law more into conformity with the standard set up in that legislation and more in conformity with the present state of public opinion in the matter. It has had to traverse very thorny and controversial ground, but I think the House will admit that, in the form in which it comes before it, it does represent a very useful measure, one which we can enact with every hope that it will become really operative.

I will touch very briefly upon the actual provisions of the Bill. As Honourable Members will observe it makes two important amendments in substance in sections 372 and 373 of the Indian Penal Code. It makes it perfectly clear that the ingredients of an offence under those sections will be complete even though the actual employment for immoral purposes takes place after the age of 18. It makes it also clear that the immoral employment contemplated does not extend merely to a habitual or permanent life of prostitution, but covers also single acts of illicit intercourse. We have also the very important provision which defines illicit intercourse, and that, as the House will immediately apprehend, has been one of the questions which have roused much difference of opinion, on which I submit an agreement has now been reached in the discussions in another place, which, without going so far as perhaps some of our reforming zealots might desire to go, represents nevertheless an important advance in the law. We must remember that this Bill applies to the whole of India, including very many backward tracts. I think it a reasonable proposition, a proposition which will be admitted by any one who has ever had any administrative connection with tracts of that kind, that there are certain things which in ordinary common sense, in humanity and in justice, however distasteful they may be to us, we must recognize. We must recognize that in some of these communities there are existing certain relationships which are regarded by those communities as quite respectable, which are really marital relations though they are not in any strict or judicial sense of the term matrimonial. It is to avoid any undue hardship in the application of the law to those cases that this definition has been framed. I must remind the House that the offences constituted by sections 372 and 373 are very serious offences indeed, and that the punishment may extend to ten years' imprisonment. We must therefore be very careful before we take steps which may have the effect of instituting a new offence,—we must consider that very carefully,—and we must consider further the conditions in which this law will be applied to which I have adverted very briefly. Most Honourable Members are

[Mr. J. Crerar.]

cognizant of the facts and many of them have direct acquaintance with the facts and will, I think, support me in that view.

I do not think I need add anything more except this. The House is probably aware that in the original form of the Bill there were certain provisions made for the cutsody of children and young persons dealt with under the Bill, what we may briefly call the rescue clauses of the Bill. The Select Committee in another place decided, for reasons which are set forth in their Report, that it would be inconvenient and probably improper that provisions of that kind should appear in our Criminal law. I think the House will appreciate the importance of that point of view. Consequently those portions of the original Bill have been omitted. I now move the motion standing in my name.

The motion was adopted.

Clause 2 was added to the Bill.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY (West Bengal : Non-Muhammadan) : Sir, with regard to clause 3 I have given notice of an amendment which runs as follows :

"That all the words after the words 'united by marriage' in *Explanation II* of clause 3 be omitted."

I beg to move that amendment.

The Honourable Mr. Crerar has in many ways made my work easy. He has given us the history of recent legislation in this direction, legislation that has been actuated by force of public opinion as well as by reason of convention elsewhere, which both the Houses of the Legislature have accepted in principle, namely, that in matters of this description the age of the minor girl should be raised as far as possible. He might have added that not only with regard to non-marital matters has an advance been made, but even with regard to questions of marriage the Legislature has not been slow in making such advance as is possible with regard to the raising of the age of consent in the case of married people, which is being further attempted to be raised. That legislation is still pending. I must recognize, Sir, that the changes that the Select Committee have made in the Bill in the other place are all for the better so far as they go. I am prepared to recognize within limitations the force of the suggestion that the Honourable Mr. Crerar has made, that so far as backward communities are concerned there are certain practices prevailing which have to be taken into consideration. The Government and the Legislature must do all they can to minimise what would be hardships, if a very rigid view was about to be taken. I cannot claim to be one of the Honourable Mr. Crerar's reforming zealots, and without being such I feel that the amendment that I have the honour to bring before this House ought to find acceptance. Where there is a basis of religious reasons Government and the Legislature ought to be careful, nay, apprehensive, about interfering with people's practices, but where no such reasons exist and when after all it is not proposed to penalise practices that may not appeal to some people, the question is whether in regard to the age question, with the advance of public opinion it would be desirable for the law embarking upon an amendment of this kind to give open, overt and almost aggressive recognition to practices that are certainly baneful;

objectionable and undesirable and have not the sanction of religion. My amendment has not for a moment proposed that anything should be done to penalize those practices themselves. I am only concerned with bringing the age question into line. We have raised the age with regard to sections 372 and 373 from sixteen to eighteen. It may be urged with regard to other matters, matters for example connected with offences such as kidnapping, that the necessary advancing of the age has not yet been made and there might be an inconsistency in raising the age in the case of one class of offences and not raising the age in another class. That exactly was the objection which the Honourable Sir Malcolm Hailey put forward, with force, on a previous occasion when the question of the raising of the age as a result of a Convention of the League of Nations first came before the Assembly. The force of that argument was admitted, and time was taken to consult public opinion and Local Governments and that time was usefully spent in the end, for the age was raised. That being so, the only question is as to whether this advancing of the age should be made nugatory regarding practices to which attention has been called, and out of respect to which *Explanation II* as it stands has been provided. We had a lower age limit in this section before, and such hardships as are now pleaded might then have well been pleaded for these connections did take place when the girl was of the age of sixteen. But the law never thought of making any provision of the kind that we are now invited to make openly and I say almost aggressively. The existing *Explanation* in section 372 quite sufficed. Well, Sir, as the House knows, time was when the Hindu community looked upon with the greatest disfavour the raising of the age of consent in the case of married people to twelve. There was a question of religious sanction behind that agitation, which was overridden, and the Government and the Legislature did not hesitate there to raise the age. Having deliberately advanced the age in that case, is it up to us to say that because the age of eighteen in non-marital cases is provided, practices that are spoken of in these cases should continue to enjoy the advantage or disadvantage of the lower age? Nobody suggests that after eighteen a girl should be free to do what she likes or that the guardians should be allowed to dispose of her as well as they may. Have we any right to say that the State, which is answerable for the welfare of all minors, should, after having taken a decisive step in other directions, continue to say that because in some province, among some sections of backward people, certain practices prevail, the advance of at least the age limit shall not be availed of in the case of those minors? I shall not bring out the old and as some say worn-out argument as to whether a minor who cannot sell or give away property is to be at liberty to give herself away and bargain for eternal damnation. That, Sir, is the class of argument that has been always produced in cases of this kind, and by advancing it now I shall not be much advancing my case. But the fundamental principle remains, and now that you have decided to advance the age and make necessary changes in other directions for very good reasons, it is not up to you to say that because of the existence of these practices that higher age limit should not apply to those cases. Well, Sir, when I was in the other House a gentleman from the south with fierce frankness proclaimed that the landed and wealthy aristocracy of his part of the country preferred for their own reasons damsels of sixteen for certain purposes and that the law should not interfere with that. Are we to listen to an argument of that kind? Sir, it is not a new class of cases

[Dr. Sir Deva Prasad Sarvadhikary.]

that we are considering. Where there is a semblance of marriage, and tha can be proved by the laws or customs of the community, the Courts would be very slow and loath to bring the offender to book. When we had a lower age limit this class of cases arose in connection with certain practices in Madras, and there were no hardships, with the existing qualifications and explanations. The House will bear with me for a moment while I read the decision of one of the full Bench cases in Madras.

"The acts imputed to the accused could not constitute an offence because they are sanctioned by the religious usages of Hindus."

I do not intend to interfere with anything that has religious sanction of any kind. The Hindu law has never been repealed, and if one of the many forms of marriage that the Hindu law sanctions, though they have become obsolete, be resorted to, I do not think any one would be able to bring the offender to book. The Court proceeded :—

"The 372nd and 373rd sections of the Indian Penal Code were intended for the protection of minors. They involve the declaration as a matter of general law that no person under the age of majority shall be devoted to a life of prostitution nor employed in, nor used for, any unlawful or immoral purpose nor placed in a position in which it is likely such person will be employed in, or used for, any such purpose. "

I admit, Sir, that we are making a further advance in this direction because we are bringing within the purview of the law cases even of a single illicit intercourse, but we should bear in mind that one single illicit intercourse may for ever ruin a girl's life and never give her the chance that she has in other communities and in other countries.

"This rule, which is obviously suggested by the highest considerations of justice and morality, must control the exercise of all private law."

I take my stand upon that. The Court says that :—

"even in those cases in which the private law assumes to vindicate itself on the specious plea of religion no harm can accrue."

I do not want to go so far, but the Courts gave ample protection and still will. The decision further says :—

"If the terms in which the law is expressed are sufficient to include within their provisions acts done under colour of religion, those who participate in such acts are liable to the penal consequences, however laudable their motives according to the peculiar standard of morality adopted by the professors of their religion.

The point was fully considered and decided by this Court in *ex parte* Padmavati.... The learned Judges observe : 'The argument that the treatment of such a transaction as criminal is impossible because the Hindu religion sanctions the practice and the private law recognizes private rights as flowing from it, is manifestly of no weight. An offence is every transgression of a penal law, and a rule of penal law is a rule of public law, and necessarily overrides every precept of private law, and cannot be affected by any arguments derived from that law..... With respect to the argument from religion, it is only necessary to observe that if the precepts of a particular religion enjoin acts which transgress the rules of penal law, these acts will clearly be offences. Where the Legislature intended that acts which otherwise would be offences should not be so because connected with religious observances, they have expressed that intention (Penal Code, section 292)."

That gives cover only so far as religious sanction is concerned. Here we are going to take a step further. In the terms of the *Explanation* II to clause 3

"any union or tie which, though not amounting to a marriage, is recognized by the personal law or custom of the community" is safeguarded against the higher age limit. The Madras Court went on further to show:

"Where the objection is founded not on a religious injunction but on a usage allowed by religion and suggested merely by sentiment, there can be no reluctance on the part of the Court so to interpret the law as to protect minors from a life considered by civilized nations as shameful."

And civilized nations have now leagued together and entered into certain negotiations which have been accepted and to which by the various enactments that have been referred to by the Honourable Home Secretary we have been trying to get sanction. Sir, I need not labour the point much further except to say that where a clear case on the basis of religious sanction can be made out, or where an institution is in vogue and is pleaded in mitigation of the offence and amounts to marriage the Courts of law will always give protection. Then, Sir, we have got to regard the section as a whole and as it stands. There also they have a certain amount of protection of which a capable defence advocate would not be slow to avail. The section says:—

"Whoever lets to hire or otherwise disposes of a minor under the age of eighteen years,"

and so on. To be an offence under this section it will have to come under the category either of "selling, letting to hire, or otherwise disposing of." To show how jealous and cautious the law Courts have been in deciding as to whether what has taken place amounts to "disposal of" or not, I shall quote from another decision. It is not a very savoury thing to do so, but I am afraid I have to refer to the decision.

"Where with the help of the mother of a minor girl a man performed the *kanyarikam* ceremony (which is, I suppose, somewhat prevalent in Madras)—which has the effect of an arrangement by which a man has sexual intercourse with a girl who has just attained puberty for three days—it was held that the mother and that man were not guilty of the offences under sections 372 and 373 because the act of the mother did not amount to 'letting to hire' or "disposal of the minor."

As regards these amiable relations about whom we are supposed to be so anxious, it will have to be established to the satisfaction of the Courts of law that what has taken place amounts to selling, or letting to hire, or otherwise disposing of, before it can be penalised and negotiation and transactions of other kinds are safe. Even where such an atrocious thing has taken place as I have read out in that last Madras case, the Courts of law did not say that it amounted to "disposal". Therefore, I do not think that there need be any undue apprehension in the interests of those who resort to these practices. For the sake of giving them some relief, imaginary or otherwise, we need not enact this *Explanation* merely because the age limit is increased. I do not think that we should let it go forth to what has been called the civilised nations an enactment which whittles down in some respects, and important respects, what the League of Nations had agreed upon, which has been given effect to in the course of various pieces of legislation that have already been enumerated, and to bring which to a logical conclusion it is but right that the explaining words which I take objection to should be omitted.

[Dr. Sir Deva Prasad Sarvadhikary.]

Sir, this piece of legislation has already had the benefit of consideration by a Select Committee in the other House. Under the rules, when that has taken place we cannot have a Select Committee here and the advice which the House would be entitled to get if the matter was carefully considered in a Select Committee of its own is not open to it. Incidentally, I should like to draw the attention of the House to the serious disadvantage in which this House is placed in matters of this kind. Even when we recommend Joint Committees as in the case of the Succession Act Consolidation Bill, the other House for reasons of its own does not fall in with our views and Joint Committees sometimes do not come about. The difficulty of considering the matter carefully in this House except by the whole House going into Committee such as it is obliged to do when the details of the Bill come before us is extremely great and that has placed me in some disadvantage. I may or I may not be right in what I am putting forward. If I had the advantage of consulting Colleagues interested in the matter round a table, there might possibly have been methods of obviating some of the difficulties that the Honourable Mr. Crerar has referred to. But broadly speaking, not having all the assistance and not also having all the opinions that from time to time come from various quarters, and the connected literature, this House is in a position of some difficulty. That is what I should like to observe generally, and if it is possible to obtain any relief that you, Sir, may think of, I think that that should be forthcoming. But, as it is, I have no doubt in my mind that although Government are actuated by the best of advice on the advice of some of the Provincial Governments in framing this *Explanation* with a view to giving protection to all sections of the community, it is up to us here to support the general point of view by declaring that only for very cogent reasons should a proclamation of this kind in our legislation be allowed. I have myself no doubt that there will be no hardship if these words are omitted, because, as I have tried to show from the decided cases, as well as existing *Explanations* of section 372 the law Courts are always careful and jealous in guarding the interests of people who, having regard to the peculiar surroundings, are led into doing things which, though not absolutely immoral still absolve them from the consequences of their action. For these reasons, I beg to propose the amendment that stands in my name.

THE HONOURABLE MR. G. A. NATESAN (Madras: Nominated Non-Official): Though I am a layman I venture respectfully to draw the attention of my Honourable friend, Sir Deva Prasad Sarvadhikary, to the fact that there is a place called Malabar in the Madras Presidency. If this amendment of my Honourable friend were accepted, it would totally exclude from the operation of the Bill marriages or *sambandams*, thousands of which are contracted in Malabar, and which are as good as marriages. My Honourable friend might say that there is Sir Sankaran Nair's Malabar Marriage Act. But if my information is correct, and I took care to consult my Madras friends this morning, not more than a dozen marriages have been registered under that Act. Surely, it is not the intention of my Honourable friend, Sir Deva Prasad Sarvadhikary, that that should be so.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member): Sir, I have no doubt whatever that in bringing forward this amendment my Honourable friend is actuated by a laudable spirit of social reform. But I would ask Honourable Members to bear in mind that ordinarily it is hardly desirable that the Legislature should penalise the customs and practices of communities, particularly in a country like India, merely because such practices and usages may be repugnant to our own advanced ideals in regard to social customs and habits. Indeed, except in cases where social customs prevailing amongst the people result in extreme injury to society or in the commission of what from a modern point of view is regarded as a crime, such as *Sati* and cases like that, social reform in a backward community ought to be the result of private efforts of the social reformer in the community itself rather than as a result of action by the Legislature. Moreover, I would ask the Honourable Members to keep in view the fact that India is not a country inhabited by one community, but is a sub-continent inhabited by a large number of communities some of whom are very backward in social and educational advance. In those circumstances it is not surprising that in some parts of the country customs and usages exist among the backward communities which, judged in the light of opinions and feelings as they prevail amongst highly advanced communities, may appear to be opposed to abstract principles of morality. Nevertheless among those communities such customs and usages of social union between men and women occupy, according to their own views, exactly the position which lawful marriage occupies in advanced societies. In these circumstances, to seek to penalise such customs and such practices is to my mind opposed to all sense of justice and of right. I believe not only in Malabar and other parts of Southern India, but even in the hilly tracts of northern India there are unions between men and women in certain backward communities, recognised by those communities as perfectly valid, which possibly judged by the higher standards of morality which exist in the case of advanced communities might be considered as opposed to our own notions of morality.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Then they become marriages.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI: They are not marriages in the sense in which that word is used in our legal phraseology or in the Penal Code or in the Criminal Procedure Code. They are not marriages in the light of the definition of "marriages" as accepted by our Courts, by the Legislature and by modern schools of law. Nevertheless among those backward communities such unions occupy practically the same position as lawful marriages occupy in more advanced societies, and it seems to me that it would be wrong on the part of the Legislature to interefere with such unions by declaring them as illegal and unlawful. On these grounds I ask my Honourable Colleagues to reject this amendment.

THE HONOURABLE SIR NARASIMHA SARMA (Member for the Department of Education, Health and Lands): I feel that I cannot let this occasion pass without saying a word by way of reference to Southern India which has been dragged into this controversy. The words "more

[Sir Narasimha Sarma.]

advanced '' and '' less advanced '' have been used without a clear understanding as to what is meant by advanced and the Honourable Sir Deva Prasad Sarvadhikary seems to imagine that the practice relating to *devadasis* and union with *devadasis* are somehow protected by this clause. As I read it, I do not think the practices of *Kanyarikam* and similar practices, which I would certainly characterise as barbarous, are protected, but from my knowledge of Malabar whose customs would to a certain extent be included in the *Explanation* I can definitely say there are no people more progressive and more cultured, to be found both among men and women, than among the people inhabiting Malabar. You find among the upper classes hardly a woman who is not literate and many of them are learned in Sanskrit and know English. The peculiar customs of Malabar have been so adapted as to promote unions between men and women of different castes. The exact form of marriages as they obtain in other parts of India does not obtain in Malabar among large classes of the population. For instance a man need not support his wife there. I suppose many of us would consider it a blessing if it were so. The children of the union live on the property of the mother, the *tarwal*, which is indivisible. You cannot compel a lady to depart from her home and accompany the husband. There is freedom of divorce towards which civilised societies seem to be moving. Therefore, I would take strong exception to using the word "backward '' when we speak of such Provinces or tracts of country as Malabar. The reason why this *Explanation* is so widely worded is to include unions which technically in our conception of the term may not be marriages but still which are unions which are respected as sacred, which carry obligations of a character which indicate very progressive conditions, where the people are very highly literate, and I do not think therefore that the Select Committee of the Legislative Assembly was wrong, was not well advised, in providing this *Exception* to suit the varying conditions of a widely differing Continent like India. I hope therefore this explanation would soothe the ruffled feelings of my friend Dr. Sarvadhikary. There is absolutely no idea in the mind of any one to sanction barbarous customs which perpetuate the humiliation of women. It is intended to raise the standard of women, and I can assure you that in some of these tracts which but for this *Exception* would be adversely affected, the status of women is very much higher than that obtaining in India, in Europe or America. I therefore think that this *Explanation* is perfectly sound in principle.

THE HONOURABLE MR. K. V. RANGASWAMI AIYANGAR (Madras: Non-Muhammadan): I think that I should oppose this amendment because we have to reckon with the custom of the various communities. The personal law or custom of many communities vary. Personally I am for marriage reform in several directions of the several communities concerned, but this Bill only wants to raise the age of consent for unlawful and immoral purposes and marriage reform need not be introduced here, the object of the Bill not being for that purpose. *Quasi*-marital relations should not be treated as cases of immorality and unlawful purposes. Sir, I should think that the analogy brought in of the Malabar marriages does not fit in here. They are as sacerdotal as any of the other marriages in other countries, and I should raise my voice of

protest against any expressions of disparagement concerning the Malabar *Sambandam*. I take exception to some of the statements made. They have got a peculiar custom of contracting marriages without lighting the fire or observing any other ceremonies of the east coast, but they are as sacerdotal and as good and fast as any marriages in the other parts of the country. For an example of *quasi*-marital relations some marriages called the sword marriages adopted by the Mahrattas may be cited. Even such *quasi*-marital relations should not be differentiated from what are called *pucca* marriages. With these words I should say that I do not agree with the amendment of my friend Dr. Sarvadhikary.

THE HONOURABLE MR. YAMIN KHAN (United Provinces West: Muhammadan): Sir, I strongly oppose the amendment. My reasons are that in different communities they have their own notions of morality. My attention has been drawn by a gentleman here to the system of union which is called *mutao*. It is recognized among the Shiah sect of Mussalmans. It has the same force as marriage but is contracted for brief periods. It is not marriage and has not the legal significance attaching to the word "marriage". Then Sir, in my Province the *Shudras* have a curious notion about the second marriage of a widow. It is not called a marriage. The word they use is *Karao*. It has not the same meaning as the word "*shadi*" or "*beao*." It is quite different. In *karao* amongst the Shudra classes they do not undergo any form of ceremony, and for marriage it is necessary that a certain form of ceremony should be gone through, because if there is no ceremony then sections 494 and 498 of the Indian Penal Code will have no force, because under section 494 of the Indian Penal Code a second marriage of a woman is bigamy, and that is punishable and triable by a Court of Session. And for that it is necessary to prove that a certain form of marriage has been undergone by a woman before it can be established that a woman already married has contracted a second marriage with another man. Now Sir, in a *karao* marriage as there is no ceremony that will be a great difficulty if my friend's amendment is accepted. He wants to do away with the word "customs". But when children are born under a form of *karao* marriage— that is when a brother of the widow simply comes and tells a man to keep the widow in his house as his wife, that is quite sufficient: or the relations of the deceased husband may allow the widow to live with a certain man; and both these are supposed to be good unions, and the children born of them are quite legitimate and entitled to inherit property. So the words which my Honourable friend wants to delete will affect these kinds of connections and will be absolutely prejudicial to the children born under these unions. I think the words of *Explanation II* have been very carefully drafted with the view of including all kinds of unions which can be considered to have the same force as ordinary marriage, and it is not advisable to delete these words. I therefore oppose this amendment.

THE HONOURABLE DR. DWARKANATH MITTER (West Bengal: Non-Muhammadan): Sir, I find that there has been some confusion in the discussion with regard to the idea of marriage. The Honourable the Leader of the House suggested that there was a definition in the Indian Penal Code of marriage as distinct from what is understood as marriage having reference to the personal law of each community. The Hindu, Buddhist, Muhammadan,

[Dr. Dwarkanath Mitter.]

Sikh, Jain or Jew—whenever a question of marriage arises between them the validity of that marriage has to be determined by the personal law of each of those communities. I would not have supported the amendment of my Honourable friend Dr. Sarvadhikary if the Honourable Mr. Crerar would have agreed to this, that from the words "*quasi*-marital relations" the word "*quasi*" be removed. Because I quite acknowledge and recognize that in different parts of India marriage is not governed simply by the personal law, but by customs which have the force of personal law. And as we all know, it has been recognized by the Judicial Committee of the Privy Council perhaps 50 years ago that in India custom outweighs the written text of law. That being so, if the intention of the amendment is to protect girls who have entered into a union which has the force of marriage, not simply by the personal law but by any particular custom which prevails in a particular community, the removal of the word "*quasi*" will meet that condition. And in this connection, Sir, may I draw your attention to this. This *Explanation* was added to the Penal Code in 1912, and it ran as follows :—

"For the purpose of this section and section 373 illicit intercourse means sexual intercourse between persons not united in marriage or bound by any union or tie which though not amounting to a marriage is recognized as lawful by their personal law."

The question, Sir, is not one of social reform, as the Leader of the House has been pleased to point out. What is the necessity for introducing legislation changing the *Explanation* which originally existed in the Code as it now exists, merely because the age has been raised from 16 to 18. I find that Mr. Mayne, whose classic textbook on criminal law is well known, when this *Explanation* was introduced, pointed out that the result of that *Explanation* would be—and it is a very significant comment which Mr. Mayne makes—I find that that edition is edited by Swaminandan, a Madras Barrister, who says :

"It remains to be seen whether the interpreters of the section will use the amendment of *Explanation II* for the furtherance of immorality and unbridled licentious habits of well-to-do classes."

Of course I am reading the text ; those are Mr. Mayne's remarks. This is not a weakness simply of the well-to-do classes but one which affects all classes. But what I submit is, that if it is said that marriages recognized by personal laws or by customs will be excepted by reason of this *Explanation*, that will meet the case, not only of Malabar, but also of the institution of dancing girls which exists in Madras of which of course we read in books. I do not know myself how the institution is carried on, but it is generally said that the institution of dancing girls is not a very desirable institution. Of course it has existed in Madras for a very very long time, but I do not know that any sanctity attaches to the institution ; although of course they have their own peculiar rights, and I understand there are adoptions amongst them and they live also like householders. With regard to the case of Malabar, a Malabar marriage is a good marriage for this reason that their society as I understand it, instead of being a patriarchal society where the father is recognized as the head of the family as in other parts of the world, is a society where the mother is the head, where a marriage is a good marriage and must be recognized and must fall within the first part, which is marriage recognized by law or custom. I therefore appeal to the Honourable Mr. Crerar.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI: "Recognized according to custom or according to personal law?" That is the point.

THE HONOURABLE DR. DWARKANATH MITTER: I am thankful to the Honourable the Leader of the House. Marriages by custom are legal marriages. No one has ever said that any marriage which is recognized by custom is not regarded by the Legislature as such especially with reference to the Penal Code or with regard to any question of legitimacy or inheritance, no one has said that such a marriage has not been recognized as a good marriage. As I stated at the outset, it has been recognized both in Hindu and Muhammadan law that custom must outweigh the text of the law, and I therefore submit that the removal of the word "*quasi*" might meet what the Honourable Sir Deva Prasad Sarvadhikary wants.

THE HONOURABLE MR. LALUBHAI SAMALDAS (Bombay: Non-Muhammadan): Sir, I do not want to give my silent vote on this question because the question of morality has been raised, not of religion, not of social reform—but it is a question of morality. Are we going back or lowering our moral level by putting on our Statute-book a measure of this character? As it is, Sir, my Honourable friend, Dr. Mitter, has made it quite clear that if we accept this *Explanation II*, we are going back on the old *Explanation* as it stands in the Act. Probably that is a compromise which has been arrived at in the Select Committee of the other place, because while, they all wanted to raise the age from sixteen to eighteen they did not agree as to the best manner of doing it. Is that a sufficient reason to bring down the moral level from the present higher level? I am not one of the social reforming zealots referred to by the Honourable Mr. Crerar; still as one who does take a pride in belonging to the social reform party, I do hope that the amendment moved by the Honourable Sir Deva Prasad Sarvadhikary will be accepted by Government—may I suggest that Members on the Government Benches may be given freedom by the Leader of the House to vote as they like and that they should not be asked to vote for the measure. I am quite sure, Sir, that if they consider the question on its own merits, the Members on the Government Benches will feel that it is absolutely necessary either to delete the latter portion of the clause as suggested by my Honourable friend, Sir Deva Prasad Sarvadhikary or at least to drop the word "*quasi*" which has been added, not by Government but in the Select Committee. That word had not been put in by Government in the first instance in the original Bill—but it has been put in as the result of a compromise by the Select Committee. The Government, as Government did not put in the words "*quasi*-marital relation", and the Government Benches should have the freedom to vote against it or in favour of it as they desire.

THE HONOURABLE SARDAR JOGENDRA SINGH (Punjab: Sikh): Sir, my only reason in rising to speak on this amendment is that the Age of Consent Bill was first brought forward before the Government by my late lamented friend, Mr. Byramji Malabari. There was a great agitation against it. My venerable friend, the Honourable Sir Dinshaw Wacha could tell you more. He was deeply concerned in this matter. It is a great thing that the age of consent has been raised to sixteen. I will not go into the question whether the amendment moved by my Honourable friend, Sir Deva Prasad Sarvadhikary, is

[Sardar Jogendra Singh.]

required or not; but I do feel that the definition of "marriage" itself should be clear enough to include all kinds of marriages. Why should there be a further complication by the use of the word "*Quasi*"? The Honourable the Leader of the House knows that in the Punjab there are various kinds of marriage that are contracted; and the High Court has gone even so far as to recognize that a man and a woman who have been living together openly for a long time should be regarded as legally married. If that is so, and the law recognizes it, where is the need for putting in any further explanation in the law itself? Then, Sir, as to the advanced ideas of marriage, I would refer the House to a very interesting book by Edward Carpenter, 'Love's Coming of Age'. If love ever comes of age, men and women will then obey a higher law, which will claim complete self-servitude.

THE HONOURABLE MR. J. CRERAR: Sir, my reply will be very brief. I am sure that the views expressed by my Honourable and learned friend and those who have supported him will command respect and sympathy, but will not carry conviction. My Honourable and learned friend has disclaimed the zeal of the reformer, but I think he has gone very far to justify his assumption of the title. He has made one suggestion which, if I may venture to say so, is rather surprising coming from so distinguished a lawyer—the suggestion that by their proposals the Government are asking the Legislature to give an open, an overt and an aggressive recognition to immoral practices. Now, Sir, surely, if the Government and the Legislature hesitate to impose a penalty of ten years' imprisonment in connection with a particular form of union, they are not giving an open, an overt and an aggressive recognition to immoral connections. When we examine more closely the general position taken up by the Honourable Mover, I think we shall find that his ground is really a very narrow one. He himself said, or at any rate he indicated, that the Courts would take a very liberal view of this enactment. Well, Sir, when you are passing a penal enactment, it is a very dangerous thing in the first instance to presume that the Courts will take a liberal view. He went on to suggest that the Courts should be satisfied by "any semblance of marriage". Well, Sir, if my Honourable and learned friend is content with a penal provision of this character on the presumption that the Courts will give it a liberal interpretation, if he is content that the Courts should recognize and give the benefit to any semblance of marriage, I cannot conceive why he should object to the words of the *Explanation* as it stands. Then, again, my Honourable and learned friend said that his intention was that the practices which a religion sanctioned should be respected and protected. But, Sir, is that the only kind of practice that is entitled to some measure of respect, to some measure of protection? Are there not social customs, communal customs, which so long as they do not transgress any grave principle of morality, which nevertheless have no specific religious sanction, are they also not entitled to some measure of respect, to some measure of protection? I submit they are. I did not entirely understand nor clearly gather whether the Honourable Dr. Dwarkanath Mitter supported the amendment. It appeared to me that though he intimated his support of the amendment, his whole argument was opposed to it, and he also, if I may venture to say so, took a somewhat narrow ground. What is the objection to the word "quasi"? If the

relations are marital relations without qualification, then they amount to legal matrimony and are not within the danger of the Bill. If they are relations regarded generally by the most responsible opinion of the community concerned as practically amounting to marital relations, though not definitely so in law, then they are quasi-marital. And a further point; it is not clear to me whether he urged that we should accept custom as well as personal law. Indeed the particular form which this *Explanation* has taken in the Bill was derived to a large extent from a suggestion made by the Government of the United Provinces, and I think I might read what they said :—

"His Honour is not satisfied that the second *Explanation* to the latter section represents, as it now stands, the best solution of what is undoubtedly an extremely difficult problem of definition.

"It appears to him that the expression 'their personal law' will be open to a large variety of interpretations by the Courts and that, in particular, it has very little relation to the well-recognised caste practices which will usually be the real question for consideration."

"He is, for example, doubtful as to whether the widespread and comparatively reputable practice of *karao* can be described as a personal law."

This is the same instance which my Honourable friend, Mr. Yamin Khan gave.

Sir, I would ask the House to consider carefully this. Does this *Explanation* go too far? Are they prepared to cut down this Explanation to the terms suggested by the Honourable Mover? Are they prepared to set up an offence of that character in the conditions and circumstances and with reference to the particular customs and habits of certain communities—are they prepared to do that and to permit Courts to inflict a penalty of ten years' imprisonment for an infringement of the law?

THE HONOURABLE THE PRESIDENT: To the motion before the Council that clause 3 do stand part of the Bill an amendment has been moved:

"That all the words after the words 'united by marriage' in *Explanation* II, be omitted."

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

The Council divided :—

AYES—4.

Jogendra Singh, Mr.	Mitter, Dr. D. N.
Lalubhai Samaldas, Mr.	Sarvadhikary, Dr. Sir D. P.

NOES—30.

Abbott, Mr. E. R.	Misra, Pandit S. B.
Amiruddeen Ahmad Khan, Nawab Bahadur.	Mitter, Mr. K. N.
Ayyangar, Mr. K. V. R.	Naidu, Mr. V. R.
Berthoud, Mr. E. H.	Natesan, Mr. G. A.
Coldstream, Lieut.-Col. J. C.	Padshah Sahib Bahadur, Saiyed Mohamed.
Commander-in-Chief, H. E. the.	Rampal Singh, Raja Sir.
Corbett, Mr. G. L.	Sarma, Sir Narasimha.
Crerar, Mr. J.	Shafi, Dr. Mian Sir Muhammad.
Dawn, Mr. W. A. W.	Singh, Sirdar Charanjit.
Ismail Khan, Mr.	Thompson, Mr. J. P.
Khaparde, Mr. G. S.	Umar Hayat Khan, Col. Nawab Sir.
Ley, Mr. A. H.	Wild, Mr. A. C.
MacWatt, Major-General R. C.	Yamin Khan, Mr.
McFarland, Mr. W. G.	Zahir-ud-din, Mr.
McWatters, Mr. A. C.	Zulfiqar Ali Khan, Sir.

[The President.]

The motion was negatived.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 5.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: There is an amendment to this clause standing in my name which I beg to move, namely:

"That the word 'eighteen' be substituted for the word 'sixteen' in clause 5 of the Bill.

The section proposed to be amended reads as follows:—

"Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary."

To that section the amendment proposed by the clause in the Bill is that for the word "fourteen" the word "sixteen" should be substituted. That is the amendment which this Bill seeks to make. I desire further to amend that amendment by asking that the word "eighteen" should be substituted for the word "sixteen". Honourable Members will observe that the change now proposed is that the age in that section should be higher than it has been hitherto. It is a move in the right direction but does not go far enough. I ask, why make it 16 and not 18, because you have raised the age limit with regard to some of the offences, if not in regard to all. There is no reason to lag behind because some offences of this class still remain to be dealt with? The remainder of the work will be done in time. In the meantime, however, where an offence of the kind mentioned in section 552 has occurred, is there any reason why a girl of eighteen who is certainly a minor under the Minority Act should not be dealt with for the purposes of this section in exactly the same way as a girl of fourteen or sixteen, as the case may be?

Questions of *habeas corpus* and some other difficult questions might possibly arise and some reliance is placed in this concern on a ruling reported in the Indian Law Reports 16 Bombay. There however the Court was clearly of opinion that the Court should be guided by the circumstances of each particular case and that the welfare of the infant irrespective of its age should be the main feature to be regarded. What is good for a girl of 16 is certainly good for a girl of 18—still a minor—and there is no reason why this differentiation of age should be made now when we are attempting to amend the law. I do recognise, as I have said, that there are other amendments in the law which will have to be made, exactly the thing that I urged when exception was taken to raising the age to 18 in connection with other matters. And what I urged then has been partially accepted. I do not want to labour the point long, but I submit that there ought not to be any differentiation in the wording of the section 552 of the Criminal Procedure Code and sections 372 and 373 of the Indian Penal Code so far as the age of the girl is concerned.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI: I have no hesitation whatever in asking the House to reject this amendment. It is quite true that under the Indian Majority Act a girl under 18 years of age is not a major for certain purposes: but as I am sure every Honourable Member of this House knows both under the Muhammadan law as well as the Hindu law a girl after she has arrived at the age of puberty is at perfect liberty to give herself away in marriage to any one she likes, irrespective of the consent of her guardian, whoever that guardian may be. In fact according to Hindu law, if the parents of a girl, after she arrives at the age of puberty, do not give her in marriage to some one it is considered a sin on the part of the parents, and the girl can give herself away in marriage to any one she likes, provided he does not come within the limitations which are laid down by Hindu law with regard to prohibited degrees and so on.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Why provide an age-limit?

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI: I will explain why. There have been conflicting rulings in the judgments of the High Courts as to when an Indian girl may presumably be said to have arrived at the age of puberty. It is 14, 15 and 16 in various judgments, and, therefore in order to settle that dispute once for all, perhaps it may be desirable in this section 552 to substitute 16 in the place of 14 as it stands at present. I can see no reason whatever to go beyond 16 when according to the personal law of both Hindus and Muhammadans a girl after she has arrived at the age of 16 at least is regarded as major for purposes of marriage and can give herself in marriage to any one she likes. Indeed it seems to me that if we look at the language used by the Legislature in section 552 the section will be reduced to something ridiculous in its nature if we substitute the word 18 for the word 14. It seems to me that to speak of a female child under the age of 18 years is ridiculous. I would like my Honourable friend to address a young lady of 17 years and 11 months as a mere child and see what reply she will give him.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: I would not care or dare to face "sweet 16" with that epithet.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI: I have no doubt that my Honourable and learned friend during the long course of his practice at the Bar has come across cases which I certainly have in the Punjab more than once where two guardians, a female guardian and a male guardian, claiming to be the lawful guardians under the personal law, one of them with the consent of the girl has married her to somebody but the other guardian puts in an application under section 552 that the girl is being unlawfully detained or in order merely to involve the opposite party in trouble goes into Court under the Indian Penal Code and charges the husband of the girl to whom she has been lawfully married with her own consent with abduction or kidnapping. My Honourable and learned friend will be encouraging that sort of practice if he were to substitute 18 in place of 14 in the present section. The number of applications under section 552 will go up by leaps and bounds if the suggestion contained in my Honourable friend's amendment is accepted. I would therefore ask the House to reject the amendment.

THE HONOURABLE THE PRESIDENT: Does the Honourable Member desire to press his amendment?

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Yes.

THE HONOURABLE THE PRESIDENT: The question is:

"That in clause 5 of the Bill the word 'eighteen' be substituted for the word 'sixteen.'"

The motion was negatived.

Clause 5 was added to the Bill.

Clause 1, the Title and Preamble were added to the Bill.

THE HONOURABLE MR. J. CRERAR: I move:

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

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill further to amend the Indian Penal Code and Code of Criminal Procedure, 1898, for the purpose of affording greater protection to persons under the age of eighteen years, as passed by the Legislative Assembly, be passed."

The motion was adopted.

INDIAN SUCCESSION (AMENDMENT) BILL.

THE HONOURABLE SIR ARTHUR FROOM (Bombay Chamber of Commerce): Sir, I beg to move for leave to introduce a Bill to amend the provisions of section 27 of the Indian Succession Act, 1865.

Honourable Members of this Council are no doubt aware that when the Indian Succession Act of 1865 was passed, section 27 of it was framed on the lines of the legislation in England. Some time later the law in England was altered, but no alteration has been made in the law out here. I do not suggest that we in India should blindly copy the law of England, but on this occasion I think the amendment of the Act in England in order to afford relief with regard to small estates might well be adopted in this country. I should like to explain at once that the Act, which I seek to amend as regards section 27, does not apply in any way to intestate or testamentary succession in the property of any Hindu, Muhammadan or Buddhist. And equally that Act does not apply to Parsis who come under a separate Parsi Intestate Succession Act. So, in effect this small Bill which I am introducing has relation only to Europeans and Anglo-Indians in this country. The Statement of Objects and Reasons I think will make quite clear to the Honourable Members of this Council the object I have in view. It is to deal with quite small estates. When a widow, in cases where there are no lineal descendants, succeeds to the property of her husband, if that property is Rs. 5,000 or less, it is suggested she should enjoy the benefit of the whole. I think, Sir, that is a very reasonable suggestion. Take, for instance, a small property of Rs. 2,000. Under the law as it stands at present the widow would receive a thousand and the balance of a thousand would go to her kindred relations. I think it would be much better and much more befitting for the widow to receive the whole. This only has application up to Rs. 5,000; but if the estate is bigger than Rs. 5,000, the

widow still has a first call of Rs. 5,000 of it. I think Honourable Members of this Council will recognize the benefit of the law in England with regard to this matter which deals with estates up to £500—and will agree that a similar law introduced into this country for small estates of Rs. 5,000 can only be regarded as beneficial.

There is just one other matter I would like to refer to. There is a slight printer's error in the Statement of Objects and Reasons. 53 and 54 Geo. V, should be 53 and 54 Vict.

Sir, I beg to move for leave to introduce this Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That leave be given to introduce a Bill to amend the provisions of section 27 of the Indian Succession Act, 1865."

The motion was adopted.

THE HONOURABLE SIR ARTHUR FROOM: Sir, I introduce the Bill.

THE HONOURABLE SIR ARTHUR FROOM: Sir, I also beg to move the following:—

"That this Council do recommend to the Legislative Assembly that the Bill to amend the provisions of section 27 of the Indian Succession Act, 1865, be referred to a Joint Committee of this Council and of the Legislative Assembly, and that the Joint Committee do consist of 12 Members."

It will doubtless be in the recollection of Honourable Members that the Honourable the Home Member, Sir Alexander Muddiman, introduced a Bill from the Chair of this Council in February last at the Delhi Sessions. The Bill was one of considerable importance and seeks to consolidate the law applicable to intestate and testamentary succession in British India. That Bill I understand has not been dealt with in the other House, and there is a suggestion from this House to the Assembly that when it comes up there it should be referred to a Joint Committee of both Houses. I think therefore it would be expedient for this small Bill to be referred to that Committee at the same time, and that is my object in the motion which I have just brought.

THE HONOURABLE MR. YAMIN KHAN (United Provinces West: Muhammadan): Sir, I support the motion. I am thoroughly in favour of this Bill and I think it is a step forward towards the protection of widows. According to Muhammadan law also the widow is entitled to the dowry which is fixed before marriage, and I am glad that that provision in our law is being recognized by my Honourable friend in his measure. I have seen very many hard cases in which widows were hardly hit. This Bill will remove difficulties in many cases. I quite see the advisability of clause 1 of section 27-A as proposed by my Honourable friend, that where the property does not exceed Rs. 5,000 that may go entirely to the widow. But he has not made any limitation as to the amount up to which this charge will remain. Supposing the intestate leaves property worth three lakhs, then this condition will still be applicable and there will be a first charge on the property of Rs. 5,000 which will go to the widow, and the remainder after paying the debts will be apportioned amongst the other relations who inherit the property. In this case the poorer people might be affected. Among Europeans this may not affect them very much, but among Anglo-Indians and Indian Christians who follow the same law of

[Mr. Yamin Khan.]

Indian succession and are not well-to-do, they might be affected in this case and the relatives of the intestate might be affected by this provision. So I think that it is very advisable to refer this Bill to a Joint Committee. I am personally in great favour of this Bill, but it is going to affect the poorer people. For instance, at present if the intestate leaves Rs. 5,000 and there is a widow and a brother, Rs. 2,500 goes to the widow and Rs. 2,500 to the brother under the existing law. This Bill of course will deprive the brother, who might be poor and in need of it, of that Rs. 2,500. It is therefore advisable that poor people like this who are going to be affected should be consulted. It might have been better if the Bill, because of this provision, had been circulated amongst the communities who are going to be affected. Of course I am no authority, but I am speaking as the friend of several Anglo-Indians who have settled down in India, who own property and zamindaris, and here and there I know of cases which might be affected by this provision. So I simply venture to suggest to the Honourable Mover of the Bill that he might do well to consult those people, as it will strengthen his hands in the future.

With these observations I support the motion.

THE HONOURABLE SIR ARTHUR FROOM: Sir, I thank the Honourable Member for his observations on this Bill. The only remark I have to pass with regard to his suggestion is that what I had in mind was that an estate of Rs. 5,000 might usually be regarded as so small that a division of it does no good to anybody, and I consider that the wife of a man has the first call on his property up to that amount. Still, I have no doubt that the point raised by my Honourable friend will be fully considered if this Bill goes to a Joint Committee as I have suggested.

THE HONOURABLE THE PRESIDENT: The question is:

"That this Council do recommend to the Legislative Assembly that the Bill to amend the provisions of section 27 of the Indian Succession Act, 1865, be referred to a Joint Committee of this Council and of the Legislative Assemby, and that the Joint Committee do consist of 12 Members."

The motion was adopted.

STATEMENT OF BUSINESS.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member): It was hoped, Sir, to conclude the business of the current Session on Tuesday next. Owing, however, to the course of events in another place certain difficulties have arisen which I am under the necessity of placing before you. Motions are being made in the other House to-day for the consideration and passing of a Land Customs Bill. Government are anxious that the Bill in question should become law during the current Session and, if this desire is to be secured, the following alternative courses suggest themselves.

In the first place, the existing arrangement under which the Council will not meet again till Monday next might be left undisturbed. In that event the Bill, if passed by the other House to-day, would be laid on the table of this Council on Monday, and it would not be possible, save in virtue of a direction by yourself under rule 27 of the Indian Legislative Rules, to proceed with

the Bill in this Council before Thursday, the 25th instant. Some Honourable Members would probably find it inconvenient to remain in Simla for a meeting on that day, and, in these circumstances, you would perhaps, Sir, be prepared, in the event of the Bill being laid on Monday, to consider favourably the giving of a direction under the rule to which I have referred that the consideration and passing of the Bill should be put down for the following Tuesday or Wednesday. Alternatively, a meeting of this Council might be held to-morrow for the laying of the Bill, in which case the consideration motions could be put down for Tuesday next under the ordinary rule. This course, however, is open to the objection of bringing Members to the Council Chamber for the sole purpose of seeing the Bill laid on the table and it may be—especially in view of the fact that I can of course give no guarantee that the Bill will in fact be passed by the other House—that the general convenience would be better served by adhering to the original arrangement under which we will not meet again until Monday.

THE HONOURABLE MR. A. C. McWATTERS (Finance Secretary): Sir, would there be any objection, in the event of the Land Customs Bill being passed in the other House to-day, if the Bill and connected papers be circulated to Honourable Members this evening or to-morrow morning? In that case Honourable Members would have the papers in their hands for some days, even though the Bill has not formally been laid? And perhaps in that case you might find less objection in ruling that the Bill might be taken into consideration on Tuesday or Wednesday?

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI: There is, Sir, if I may venture to say so, nothing in the Rules to prevent that being done.

THE HONOURABLE THE PRESIDENT: Does any other Honourable Member wish to make any observations?

THE HONOURABLE PANDIT SHYAM BIHARI MISRA (United Provinces: Nominated Official): Sir, I entirely support the proposal made by the Honourable Mr. McWatters; I think this would be the best course to be adopted in the circumstances.

THE HONOURABLE THE PRESIDENT: In view of the statement made by the Honourable the Leader of the House, to the effect that he can give no guarantee that the Bill will be passed to-day in another place, I am not prepared to call the Council together for to-morrow morning. Therefore, if any Bill is passed, with which the Government wish to proceed, they must lay it on the table on Monday, and I must reserve full liberty of judgment as to what direction I shall give on that day. I do not want to make up my mind until I have ascertained on Monday what the views of the House in general then are. I am not prepared to ask the House to say now, before the Bill has been passed, whether they will agree to its being taken on Tuesday or not. It will of course influence my judgment, and no doubt that of Honourable Members also, if any Bill which is passed to-day is at once circulated to all Honourable Members so that they will be in a position on Monday to acquaint the Chair with their opinion as to whether it should be taken at once or after the usual interval. I may add that should the Bill be circulated to-night or

[The President.]

to-morrow morning, there will be no objection, if Honourable Members desire to move amendments, to their sending them in informally at once.

The Council will now stand adjourned until Monday next, the 22nd September, at Eleven of the Clock.

The Council then adjourned till Eleven of the Clock on Monday, the 22nd September, 1924.