

22nd March 1928

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

**Volume II**

***(8th March to 27th March, 1928)***

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**SECOND SESSION**  
**OF THE**  
**THIRD LEGISLATIVE ASSEMBLY, 1928**



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# LEGISLATIVE ASSEMBLY.

*Thursday, 22nd March, 1928.*

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

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## THE HINDU CHILD MARRIAGE BILL.

### PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

**Rai Sahib Harbilas Sarda** (Ajmer-Merwara: General): Sir, I beg to present the Report of the Select Committee on the Bill to regulate marriages of children amongst the Hindus.

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## THE INDIAN SUCCESSION (AMENDMENT) BILL.

**Maulvi Muhammad Yakub** (Rohilkund and Kumaon Divisions: Muhammadar Rural): Sir, I beg to move that the Bill further to amend the Indian Succession Act, 1925, as reported by the Select Committee, be taken into consideration.

Sir, in making this motion I think I need not take the time of this House by making any speech. As I stated in the Statement of Objects and Reasons while introducing this Bill, there was a serious conflict of opinion between different High Courts as to whether a certificate can be applied for and granted in respect of a portion of debts. The Allahabad High Court held that this cannot be done, while the Calcutta High Court held the contrary and a more equitable view, and the object of my Bill is to remove the difficulty created by the Allahabad view. The Calcutta view seems more reasonable, and this Bill is meant to give effect to that view. When this Bill was circulated for eliciting opinion, even the Allahabad High Court agreed to the amendment which I proposed. Nearly all the High Courts and judicial bodies were in favour of my Bill. Objection was taken to the last clause of the Bill which ran as follows:

“But nothing herein contained shall be deemed to allow separate and successive applications being made in respect of portions of the same estate whether by the same or different members.”

The Select Committee deleted this clause, and the Bill now as it stands is in conformity with the opinion of all the High Courts and public bodies, and I hope that the House will pass the Bill as it now emerges from the Select Committee.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

**Maulvi Muhammad Yakub:** Sir, I move that the Bill, as amended, be passed.

The motion was adopted.

### THE RESERVATION OF THE COASTAL TRAFFIC OF INDIA BILL.

**Mr. Sarabhai Nemchand Haji** (Bombay Central Division: Non-Muhammadan Rural): Sir, I beg to move that the Bill to reserve the Coastal Traffic of India to Indian Vessels, be circulated for the purpose of eliciting opinions thereon.

In making this motion, Sir, I beg to draw the attention of the House to the fact that this Bill serves to secure to India the benefits of that inherent right to regulate and reserve her coastal traffic, which has been vouchsafed to her by nature, and guaranteed to her by international law. As you are doubtless aware, Sir, maritime legislation in European countries has been bound up with the growth and development of international law. It is not my purpose at the moment to go into the details of the early laws of maritime towns and countries in Europe, such as the laws of Oléron and Barcelona, of Wisby in Sweden and of Amalfi in Italy, to say nothing of that codification of maritime custom and usage, which was effected by the Rhodian Laws of the eighth and ninth centuries. I would say that as a result of these legislative enactments and codification of maritime systems, by the time international law became a matter of practical politics in Europe, certain definite conclusions were arrived at with reference to maritime legislation. That is why we find that maritime law has played a definite part in international law, and international law is concerned with maritime legislation. It is therefore natural that the right to reserve the coastal trade of a country should be one which has a long history behind it, but, Sir, as I said before, it is not my intention to go into the details of that history. For my present purpose I merely content myself with quoting a definition of coastal trade which we might regard as being the crystallised expression of the former maritime usage and legislation, so far as this subject is concerned. The definition of coastal trade as given in Oppenheim's "International Law" runs as follows:

"The term *cabotage* or coasting trade as used in commercial treaties comprises now sea trade between any two ports of the same country, whether on the same coasts or different coasts, provided always that the different coasts are all of them the coasts of one and the same country as a political and geographical unit in contradistinction to the coasts of colonial dependencies of such country."

This being the case, Sir, the country of India, as a political and geographical unit, has as much right to reserve her coastal trade and to regulate it in the interests of her own nationals as is allowed to various countries by international law not only to reserve the coastal trade but even to prevent foreigners from fishing in their territorial waters. That is why it has been laid down that a State may, in the absence of a special treaty to the contrary, exclude foreign vessels from navigation along the coast and reserve this coast exclusively for its own nationals. That much with regard to the international aspects of this subject.

Turning to the national phase of the question, I hope I have said enough to show that in making this motion I seek to get for India no more than the benefits of legislation which she has a complete right to undertake and which I hope at a later stage will be accepted by this Honourable House.



This right of coasting legislation is so much a matter of the country's own affair that even within the British Empire it has been found necessary to recognise this right of a country even though it may happen to be a dependency or a dominion of the Crown. That is how it happens, Sir, that the British Merchant Shipping Act which so to speak is the fountain head of all maritime legislation within the British Empire has permitted every component part of the Empire to undertake any legislation it chooses with regard to its own coastal trade. This right of the subordinate legislature has not merely been recognized by Great Britain but has also been put into practice by Australia and has been confirmed by the Imperial Navigation Conference of 1907. When the subject of developing the Australian mercantile marine was being discussed in the early years of this century the whole subject of legislation within the Empire on this matter was gone into and with a view to settle the issues raised, an Imperial Conference specifically intended to deal with the navigation problem was convened in 1907 when it recommended among other things that the coastal trade of the Commonwealth be reserved for ships on the Australian register, that is, ships conforming to Australian conditions and licensed to trade on the Australian coast. This gives to a component part of the Empire a right to exclude under certain conditions ships of other parts of the Empire and it is a right which Australia has made full use of as those that are conversant with the history of Australian Navigation Acts well known. When discussing this point in course of a review of the subject to be found in the Report of the Royal Commission on the Navigation Act published by the Parliament of the Commonwealth of Australia in 1923-24, it is stated that to build up an Australian mercantile marine it was necessary to extend the protective policy of Australia to its merchant shipping, and this protection was accorded by introducing the system of licenses which in practice prevented non-Australian vessels from entering into the coastal trade of that country. It is further stated therein that:

"the [English] Parliament recognise that as an Island Continent we are largely dependent upon the strength of our merchant services for our existence. The Australian coastal trade was to be reserved for Australian owned ships, which were to be the source of a supply of skilled and trained Australian seamen in time of war, even as the British Mercantile Marine, during the recent war, helped to man the auxiliary cruisers, mine-sweepers, transports and other adjuncts of the British Navy."

These two grounds are, among others, precisely the reasons why I suggest that the development of an Indian mercantile marine should be brought about by a policy of reservation such as has been adopted in Australia and as has been recommended, as I will presently show, by the Mercantile Marine Committee, appointed by the Government of India.

**Mr. President:** Order, order. I fail to understand what the Honourable Member is aiming at. His motion is a motion to circulate the Bill for the purpose of eliciting opinions on it. If this motion is accepted, it does not commit any Member to the principle of the Bill. If the Honourable Member wishes to go into the principle of the Bill at length, the second reading is the stage when he should do so.

**Mr. Sarabhai Nemchand Haji:** Thank you, Sir. I was quite aware that it was not necessary for me to go into the principle of this Bill.

**Mr. President:** It is not relevant.

**Mr. Sarabhai Nemchand Haji:** But I thought that as the Bill was being circulated for opinion it would be as well to put before this House a little

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of the history of that coastal legislation and similar legislative enactments in other countries which might help to allay the fears of some Honourable gentlemen that the Bill has such aspects that it should not be allowed even to go for circulation. All that I was concerned with, Sir, is this. Of course, if the principle has been discussed it has been only as a side issue. As I said I am concerned with the history of the subject, and, as you suggest, Sir, I propose to make my remarks on this subject as short as possible. But I hope you will allow me the indulgence of referring to the early history of this particular legislation and the suggestions made in that regard. That, Sir, has reference—and I will now come to India—that, Sir, has reference to the legislation on the subject so far as this Honourable House and this country are concerned. As you are aware, Sir, attempts were made to introduce this Bill in the second Legislative Assembly, and when the subject was brought up by my Honourable friend Mr. Neogy it was found necessary—probably at the instigation of the vested foreign interest—to examine the character of this Bill as to whether it was *intra vires* of the Indian Central Legislature on not. I have shown from history that it is, and the historical argument must have appealed to the Law officers of the Crown in England who, when the case was referred to them, decided that this Bill was wholly within the competence of the Indian Legislature even as it exists to-day. That being the case, Sir, it has been possible for us to discuss this subject on the floor of this House.

As the Bill I propose to circulate has got support from the recommendations of the Mercantile Marine Committee, I trust you will allow me to refer to that Committee for a minute or two. The Indian Mercantile Marine Committee was appointed by the Government of India to consider what measures can usefully be taken for the encouragement of ship building and the growth of an Indian mercantile marine by a system of bounties, subsidies and such other measures as have been adopted in Japan. This is one of the clauses of many that formed part of the terms of reference. It is not necessary for my purpose to read out others to the House. In order to suggest ways and means of developing an Indian mercantile marine this Committee, after having examined the whole subject thoroughly, came to the conclusion that something more was required beyond the provision of training vessels and that that something more was provided by their recommendation that the Indian coasting trade should be reserved for ships the ownership and controlling interest in which are predominantly Indian. If I may, Sir, I will just read out the specific recommendation that has been made by the Committee. Referring to the Government of India, they say:

“The Honourable Member for Commerce stated in the Legislative Assembly on behalf of the Government that this desire on the part of the people, that is, the people of India, for their own mercantile marine was a very natural desire. Recognising this natural desire, we (that is, the Committee) are of opinion that this should be met within a reasonable period of time and not in the distant future. This being so, it is our considered opinion that the provision of facilities for the training of Indian officers and engineers alone is not sufficient to meet the requirements of the case and that some further steps are required to achieve the object in view. These further steps, we recommend, should be in the form of the eventual reservation of the Indian coasting trade for ships, the ownership and controlling interests in which are predominantly Indian.”

This, Sir, is exactly what I seek to do by this Bill of mine, under which it is laid down that no common carrier by water shall engage in the coasting trade in India unless licensed to do so. This system of licenses is one

which has been recognised and recommended by the Mercantile Marine Committee. Not only that, but it is a system which is in vogue in Australia and in Canada. It is a system which I am sure will be found necessary if all that maritime legislation which the Commerce Department is undertaking at the moment is to be effectively put into operation. The system of licenses is to my mind very essential if, even apart from the question of reservation, the Indian mercantile marine is to be regulated in a proper manner.

With regard to the period during which this policy of reservation is to be consummated, bearing in mind the recommendations of the Committee, it has been laid down in the Bill that—

“A proportion of not less than 20 per cent. of the tonnage licensed for the first year, not less than 40 per cent. of the tonnage licensed for the second year, not less than 60 per cent. of the tonnage licensed for the third year, not less than 80 per cent. of the tonnage licensed for the fourth year, and all the tonnage licensed for the fifth and subsequent years shall have the controlling interest therein vested in British Indian subjects.”

Sir, in order that this Bill of mine may not come into conflict with the requirements of the British Merchant Shipping Act, to which I have already alluded, I have provided that the controlling interest within the purview of this Bill should have the following meaning:

“(a) that the title to not less than 75 per cent. of the stock is vested in British Indian subjects free from any trust or fiduciary obligation in favour of any person other than a British Indian subject,

(b) and that in the case of a joint stock company, corporation or association, the Chairman of the Board of Directors and not less than 75 per cent. of the number of members of the managing firm of and of the Directors of the Board are British Indian subjects,

(c) and that not less than 75 per cent. of the voting power is vested in British Indian subjects,

(d) and that through any contract or understanding it is not arranged that more than 25 per cent. of voting power may be exercised, directly or indirectly, on behalf of any person who is not a British Indian subject,

(e) and, finally, that by any other means whatsoever control of any interest in excess of 25 per cent. is not conferred upon or permitted to be exercised by any person who is not a British Indian subject.”

I hope, Sir, that these few details will enable this House to get an idea of the scope of the Bill and the method which it proposes to pursue in order to completely reserve the coastal trade of India for Indian vessels within five years of the placing of this Bill on the Statute-book.

I need not say anything more in regard to this Bill, Sir, except to add that the Bill will provide not only for the development of an Indian mercantile marine in the interests of India as an economic unit, by saving to India the large sums of money that are annually taken out of the country in shipping earnings, and by providing for Indian youths nautical careers which under the existing circumstances have been denied to them, but also in the interests of India as a political unit by providing a second line of naval defence for this country which is particularly necessary now that we are trying to reorganise the Royal Indian Marine with a view to make it a proper combatant navy. Lastly, I would draw the attention of the House to the fact that an India with a developed Indian mercantile marine and the economical prosperity which that development would bring about, would be a more effective component part of the British Empire and be

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better in a position to help the Empire in case of need than an India which has not got this requisite necessity of economic life so essential to make India economically self-sufficient.

Sir, I beg to move the motion standing in my name.

**The Honourable Sir George Rainy** (Commerce Member): It will not be necessary, Sir, I think that I should speak at any length on this motion. What I desire to do is to explain the attitude of the Government of India as regards the proposal made by my Honourable friend, Mr. Haji, that the Bill should be circulated for the purpose of eliciting opinions. The Government of India do not propose to resist this motion. They regard the matter as an important one, and it will do no harm if public opinion is fully elicited with regard to it. That perhaps is the more necessary because the Mercantile Marine Committee did not examine in detail one important aspect of the case. What they said in effect was this: if the end in view is to promote the development of India's mercantile marine, an effective means of doing it is to reserve the coastal trade. But they did not go on to consider—indeed they believed it to be impossible to do so on the data in their possession—whether that proposal was likely to be beneficial to the country. What they said was this:

“We do not consider that it is possible to say at this stage whether the reservation of the Indian coasting trade for shipping companies which are predominantly Indian in character is likely to be beneficial for India or not, for the simple reason that there are no data at present on which a satisfactory conclusion can be based.”

It certainly seems desirable before this proposal goes any further that that side of the case should be fully examined, because quite clearly an important measure of this kind ought not to be brought into effect until the probable effects on the trade and commerce of the country, and on the industries of the country have been fully examined. The subject is one, Mr. President, which was fully discussed by my predecessor, Sir Charles Innes, in a speech which he delivered in this House on the 19th March, 1926. On that occasion, he did endeavour to examine the question to what extent this scheme for reserving the coastal trade was likely to benefit or to injure Indian interests. I have not the least intention of going over the same ground again. But I am anxious to make it clear that while Government do not oppose the motion for circulation, they do regard the objections raised by Sir Charles Innes on that occasion as very serious and very important, and unless a further examination of the subject should show that they were not well founded, these objections would I think be regarded by them as very nearly conclusive against the scheme. It is right, Sir, that I should make the attitude of Government perfectly clear. While we do not oppose the motion for circulation, that does not for a moment mean that we accept the scheme.

There is another aspect of the case to which I should like to invite the attention of the House. My friend Mr. Sarabhai Haji pointed out quite correctly that there is nothing in the international law, or I think in international usage, to prevent a particular country from reserving its coastal trade for its own nationals. But I should like to draw the attention of the House to clause 2(4) of the Bill which says:

“‘The coasting trade of India’ means the carriage by water of goods or passengers between any ports in British India, or between any port in British India and any part or place on the Continent of India.”

The Bill, therefore, purports to regulate not only the trade between two ports in British India like Calcutta and Bombay but also between certain ports which are outside British India, as for example between Pondicherry and Madras or between Marmagao and Bombay. I think I ought to draw the attention of the House to the fact that if this Bill were passed into law in its present form, it would involve a breach of international agreements to which India is a party, and in particular to the convention and statute on the international regime of maritime ports which was concluded in 1923 and to which India is a signatory. The relevant article reads as follows:

"Subject to the principle of reciprocity and to the reservation set out in the first paragraph of Article 8, every Contracting State undertakes to grant the vessels of every other Contracting State equality of treatment with its own vessels, or those of any other State whatsoever, in the maritime ports situated under its sovereignty or authority, as regards freedom of access to the port, the use of the port, and the full enjoyment of the benefits as regards navigation and commercial operations which it affords to vessels, their cargoes and passengers.

The equality of treatment thus established shall cover facilities of all kinds, such as allocation of berths, loading and unloading facilities, as well as dues and charges of all kinds levied in the name or for the account of the Government, public authorities, concessionaries or undertakings of any kind."

**Mr. Sarabhai Nemchand Haji:** May I draw the attention of the Honourable the Commerce Member to the fact that the countries which have reserved the coastal trade and were present at this Conference definitely drew the attention of the Conference to the fact that this particular clause was not to have any reference to their right to continue their reservation of the coastal trade?

**The Honourable Sir George Rainy:** I entirely agree with what my friend Mr. Haji has said about the right to reserve the coastal trade, meaning by that the trade between two ports both situated in the same country is not barred by this clause, but my point is that it would quite definitely bar the regulation under that reservation of trade between a port like Madras which is in British India and Pondicherry which is outside British India, and similarly between a port like Bombay which is within British India and Marmagao which is outside British India . . . .

**Mr. Sarabhai Nemchand Haji:** May I point out, Sir, that both Marmagao and Pondicherry have practically no coasting trade?

**The Honourable Sir George Rainy:** I do not see, Sir, that has any relevance to the point I was endeavouring to bring out. My point is really this, that without a breach of our international agreements it does not seem to me that the Bill could be passed into law in its present form. It could be passed into law without any such breach if the coasting trade were defined merely as the carriage by water of goods or passengers between any two ports in British India. But then the point would have to be examined how far the reservation of the coasting trade would be effective for the purposes for which it is intended, if it is not possible to legislate so as to include these ports on the continent of India which are outside British India. It is quite possible that the result might be, for instance, to transfer a good deal of the entrepôt trade of Bombay to a port like Marmagao, and the reason why I have alluded to the point is this, that I hope, when the Bill is circulated, Local Governments and others interested will consider this question very closely, and let us have their opinions as

[Sir George Rainy.]

to whether, if the Bill has to be limited in this way, it is likely to produce the effect which those who support it hope that it will have.

Finally, Sir, there is one aspect of the case which, I think, all Members of the House and also all those who are interested in the welfare of India will have to consider in connection with this Bill. What is proposed is, in a purely economic matter, to discriminate on racial or, if you will, on national grounds. Now, that is a matter in which India is very deeply interested in other parts of the British Empire. What every Member of this House will have to consider, if the Bill comes before it again at a later stage, is this, whether it is wise and in the interests of India that we should establish a precedent of that kind having regard to the reactions which it might have elsewhere. I will say no more than that, Sir. I put it for the present purely as a question.

**Sir Walter Willson** (Associated Chambers of Commerce: Nominated Non-official): Sir, this Bill states its purpose as the "reservation" of the coasting trade. If it were fully frank, it might state its purpose as the confiscation or expropriation of the trade out of certain hands in which it lies principally at present, into other hands specially and directly represented in this Assembly! It extends to the whole of the coastal traffic of India, but it appears to me that the framers of the Bill do not really know or appreciate, or do not wish this House to know or appreciate, some of the ramifications of the said coasting trade.

Now, Sir, the coasting trade includes in its ordinary commercial sense, though possibly not technically, that enormous trade which is carried on between Calcutta and Colombo, which at the present time is carried on in severe competition between coasting steamers and home going steamers, with the result that the rate is considerably lower than goods could ever be carried over that journey by the ordinary coasting steamers. . . . .

**Mr. Sarabhai Nemchand Haji:** Is Colombo an Indian port?

**Sir Walter Willson:** The Honourable Member need not try to teach me geography. I knew Indian geography probably before he was born.

**Mr. Sarabhai Nemchand Haji:** You seem to have forgotten it.

**Sir Walter Willson:** It is precisely because Colombo is under the Government of Ceylon that I mentioned it. Nevertheless it is definitely in the coasting lines carried on by the coasting steamers of India, and if you were to attempt to exclude any portion of that trade, you would very seriously affect the earnings of the ships and put up the cost of carriage.

The coal shipment trade of India would also come under this Bill. It is not primarily the concern of the three or four companies which are at present in the coasting trade. It owes its existence to the tramp steamer, a steamer which puts in an occasional voyage here and there. In the old days that was the way the coal trade was built up. Ships carrying coal between Calcutta and coast ports nearly always have to return in ballast if they return at all. It should be obvious that a ship which does not have to return at all, can carry cheaper than a ship which has to return empty. The general traffic on the coast is principally from East to West. The backward carriage from West to East is very little and is quite inadequate for the purpose of filling ships for the return voyage. A tramp may go to Calcutta for coal and afterwards go on . . . . .

**Mr. President:** Order, order. I must say the same thing to the Honourable Member as I said to the Honourable Mover. Is it right to turn this debate into a second reading debate? This does not commit any Member of the House to the principle of the Bill; the motion merely is that the Bill be circulated for the purpose of eliciting opinions thereon.

**Sir Walter Willson:** Well, Sir, if that be your ruling, I will confine myself to correcting one or two definite statements of the Honourable Member from Bombay. He referred to vested interests. This Bill only sets out to create a different set of vested interests. He also referred to the Mercantile Marine Committee Report and his point was, what steps should be taken to develop an Indian mercantile marine. The terms of reference to the Indian Mercantile Marine Committee were not to inquire into and see whether it was desirable to take steps, but merely to inquire what steps could usefully be taken. Mr. Haji definitely stated that the Mercantile Marine Committee, "after examining the whole subject thoroughly . . ."—Sir, I say they did not examine the point of view of desirability at all.

I am aware, Sir, that it is not, ordinarily speaking, the practice in this House to make any long speech on a proposal for circulation, but I do feel that to allow this Bill to go out as it is without one or two observations might be to let it go out as if with a sort of blessing from the House. What I feel is the principal danger to-day, is not what I am so often hearing in this House, namely, the exploitation of trade by vested interests as they are commonly called, but a different kind of exploitation altogether, and that is the exploitation of political feeling, of racial feeling and of patriotic feelings in the country in order to transfer, out of hands which have built up the existing trade from what it was years ago to what it is to-day, to transfer that trade into the hands of another single solitary firm at the expense of the shippers of the country. In the past Indian industries in Bombay and Bengal have been able to build themselves up in ordinary straightforward competition with the established interests of the British. The jute mills of Calcutta are owned by 70 per cent. of Indian shareholders to-day; the cotton mills of Bombay have passed almost entirely into Indian hands, either by purchase or by fair competition, and I deprecate as strongly as I can the attempt which is being made to expropriate existing interests, by means of playing upon popular feeling and using the machinery of this Assembly for the purpose.

**Mr. President:** Is any further debate necessary on this question? The Government have not opposed the motion and the motion is merely for circulation.

The question is:

"That the Bill to reserve the Coastal Traffic of India to Indian Vessels, be circulated for the purpose of eliciting opinions thereon."

The motion was adopted.

## THE SPECIAL MARRIAGE (AMENDMENT) BILL.

**Sir Hari Singh Gour** (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move that the Bill further to amend the Special Marriage Act, 1872, be referred to a Select Committee.

[Sir Hari Singh Gour.]

In moving my motion, Sir, I wish very briefly to recapitulate the facts which have induced me to make this motion. As far back as 1868, that great lawyer and distinguished jurist, Sir Henry Maine, pointed out to the late Imperial Legislative Council that it was the duty of every state to provide a secular law for the marriage of its subjects, and the religious neutrality which the Government of India and indeed all Governments profess is only consistent with providing a secular law of marriage for all subjects residing within that state. That Bill, Sir, was circulated, but afterwards Sir Henry Maine relinquished charge of his high office and his successor thought that the time was not ripe for a general legislation of that kind. And consequently its terms were restricted and it became the Act of 1872, the Special Marriage Act. After that, Sir, various attempts have been made in which you yourself, Sir, took a distinguished part in providing this country with a wider marriage law. In 1921 I was the author of an exactly identical Bill providing for a general civil marriage law for this country. That Bill, Sir, was circulated and opinions were collected from all parts of the country; and I hold in my hand a compilation from which it will be seen how strongly the country was in favour of my Bill. Not only that, but in the Madras Legislative Council a motion was tabled and eventually carried by 54 votes to 23 cordially supporting my Civil Marriage Bill. The language of the motion, supported and passed by the Madras Legislative Council, is as follows:

"That this Council recommends to the Government to convey to the Government of India its approval and hearty support of the Civil Marriage Bill brought in by Dr. H. S. Gour in the Legislative Assembly."

Honourable Members will find from this paper book that the other Governments were equally in favour of my Bill, and when I moved a motion for reference of that Bill to Select Committee, it was acceded to by this House. But in the Select Committee I found that there was a difference of opinion, and rather than take the chance of wrecking my Bill I restricted its scope to Hindus, Buddhists, Sikhs and Jains, making it however clear that I should lose no time in enlarging its scope so as to reduce the Bill to a pure Civil Marriage Bill. That Bill was passed into law and, as Honourable Members are aware, it is Act XXX of 1923. And from all accounts that Act has been well received and a very large number of marriages have been contracted under its provisions. But since then the opinion in the country has been clamouring for the establishment of a pure civil marriage law in this country and I therefore, Sir, once more ask this House to refer to a Select Committee the Bill which was referred to a Select Committee as far back as 1922.

I may very briefly explain the object of my Bill. As the law at present stands, inter-marriages between Hindus, Buddhists, Sikhs and Jains are possible subject to the provisions of Act XXX of 1923. The Indian Christian Marriage Act further provides that one party to the marriage must be a Christian. Therefore inter-marriages between Christians and non-Christians are equally possible in this country, but there is no machinery of law for the purpose of solemnizing and registering such marriages apart from the Church and the priestly institutions. Indeed, all civilised countries of the world—and when I say so, I have the support of the opinion of a Royal Commission that incidentally went into this question—all civilised countries of the world have their civil marriage law. In



England you have a civil marriage law. In all parts of Europe you have a civil marriage law. I understand, Sir, that in Asiatic countries like Japan and Angora you have a civil marriage law. An Indian is entitled to marry under the civil marriage law but only outside the territorial waters of this country. Let me give you an illustration. Supposing a Hindu wishes to marry a Muhammadan. He cannot marry within British India. But if he were to take a boat and go three miles outside the territorial waters of India, three miles out of the harbour of Bombay or Calcutta, he will immediately become subject to the British law because under the international law a British ship is regarded as a floating island and being thus subject to the British law, he can contract such a marriage. He can contract such a marriage outside the territorial waters of India, in any part of Europe, in England or in America. The disability, therefore, is a purely territorial disability. The marriage contracted outside the territorial waters of India is a good marriage, good for all purposes, at all times and everywhere. As Mr. Ameer Ali in his well known work on Muhammadan Law points out:

"A marriage between a Moslem and non-Moslem celebrated in a foreign country is valid under the Mahomedan Law, if it is performed in accordance with the requirements of the *lex loci contractus* or the rites of the communion to which the wife belongs."

**Maulvi Muhammad Yakub:** Page?

**Sir Hari Singh Gour:** Page 187, Vol. II. So that the position is this. Indians are entitled to-day to contract a civil marriage outside India. The disability from which they suffer is a purely territorial disability. A Hindu can marry a Muhammadan and a Muhammadan can validly marry a Hindu. Let me quote to you, Sir, the same high authority on the subject. At page 187 Mr. Ameer Ali says:

"But it is a mistake to suppose that under the Mussalman Law, a Moslem may marry a woman belonging to the revealed faiths *only*, by which are meant Islam, Christianity and Judaism. Marriages are allowed between Moslems and the *Ahl-ul-Hawa* (free-thinkers), the Sabaeans, Zoroastrians, as well as the Jews and the Christians. A Moslem may, therefore, lawfully intermarry with a woman belonging to the Brahmo sect. Nor does there seem to be any reason why a marriage with a Hindu woman whose idolatry is merely nominal and who really believes in God should be unlawful . . . ."

(At this stage Mr. President vacated the Chair which was taken by Mr. Deputy President.)

"The Mogul Emperors of India frequently intermarried with Rajput (Hindu) ladies and the issue of such unions were regarded as legitimate and often succeeded to the imperial throne. What the Muhammadan Law requires is that any such union should not lead to the introduction of idolatry in a Mahomedan household."

That is, I submit, the highest authority on Muhammadan Law and it lays down that inter-marriages between Hindus and Muhammadans are legal and may be contracted. But whatever may be the Muhammadan Law on the subject the fact remains that marriage being an international institution, a Hindu or a Muhammadan is entitled to contract a civil marriage, a non-denominational marriage, with any person, of course outside the ordinary limits of consanguinity, under the civil law, and if my Bill is passed, all that my Bill will do is to enable the Indian to contract such marriages within the limits of British India which he is to-day entitled to do outside the territorial waters of India. That is all that my Bill is intended to do.

[Sir Hari Singh Gour.]

Now I wish to point out to the House that it is the primary duty of the State to provide for the marriages of all religionists, and the religious neutrality to which the Government stands committed is only consistent with providing for a non-religious marriage law. As I have said, such a law exists in all parts of the civilised world. India is the only country which has not such a law and it is a disability from which every British subject, whether European or Indian, suffers in this country. Let me give you, Sir, an illustration. An Englishman in England, if he is a free-thinker or for the matter of that if he is a Roman Catholic or belongs to one of these persuasions which would not admit of a Church marriage, is entitled to contract a civil marriage, and when he goes before the Civil Marriage Registrar the only rule which applies restricting his marriage is the natural law of consanguinity. But suppose he comes out to this country and joins one of the public services, the Civil Service or the Medical Service, and suppose he wishes to contract a marriage in this country, there is no machinery of the law under which he can contract a civil marriage. He has either to go to the Church or if he does not go to the Church, he has to go three miles outside the territorial limits of British India so that he may be once more subject to the English law of marriages and thus contract the civil marriage. This disability affects all classes and communities in this country and I therefore submit that upon the general ground it is the duty of the State—and when I say so, Sir, I have the high authority of Sir Henry Maine—it is the duty of the State to provide a secular marriage law for all its subjects. That is my first reason for coming back to this House with a Bill which I introduced as far back as 1921.

**Nawab Sir Sahibzada Abdul Qaiyum** (North-West Frontier Province: Nominated Non-Official): What about the religious sanctity of such marriages?

**Sir Hari Singh Gour:** I am coming to that. We pass on to the second reason. Honourable Members will see that with the enactment of Act XXX of 1923, all the difficulties with which the sponsors of that Bill had to combat, namely, difficulties about caste and religious sanction, have been done away with, and inter-caste marriages and inter-communal marriages have been legalised by Act XXX of 1923, so that we have covered the ground already. But I submit it is necessary for the national unity of this country and for establishing the statutory equality of all His Majesty's subjects in this country that, so far as the law is concerned, they should be free to contract a civil marriage with any person whom they like subject alone, as I have pointed out, to the natural law against consanguinity. That, I submit, is an invulnerable argument in favour of my Bill.

Now, I turn to some practical difficulties. If my Bill becomes law, inter-marriages between persons who are at the present moment excluded from the provisions of the Special Marriage Act would be permitted. Let me in this connection point out that, so far as the present law is concerned, it is perfectly legal even within British India for a person to marry anybody provided he signs a declaration before the Marriage Registrar that he does not profess any of the religions, namely, Christianity, Jewish or Muhammadan religion, and Mr. Justice Greaves of the Calcutta High Court in a reported case pointed out that a declaration under the Special

Marriage Act does not take away the personal right of that person to belong to that religion, in other words, that declaration is merely a formal declaration for the purpose of the Special Marriage Act. I beg to submit that it is possible to take two opinions on that subject. If I wish to marry and I am a Muhammadan or a Hindu, I go before the Registrar and say that I declare I do not profess the Hindu or Muhammadan religion. I make that declaration subject to a mental reservation and I submit that it should be the policy of the law not to encourage what would be a technical perjury, or a false declaration. I therefore submit that the law should provide a much more straightforward course and say, "If you wish to marry we will not compel you to subscribe to what may conceivably be construed to be a false declaration". As I have said, the Calcutta High Court have pointed out that this declaration is only a formal declaration required for a particular purpose. But I submit that even a formal declaration of that character should not be required of persons who wish to contract a civil marriage. I ask every Englishman and every Hindu and Muhammadan in this House, what right is it of a third person to ask me and my intended wife as to what religion we profess. The question what religion I profess or my intended wife professes is a question between me and my God, and he has no right to ask me that question, and in a secular Government, a Government pledged to religious neutrality, it is the less defensible. That Government can only ask what particular religion I belong to if it is the defender of any particular faith, but a Government which is purely secular and pledged to religious neutrality has got no right to ask me to confess, or my intended wife to confess to our religious faith. I, therefore, submit, that in the first place I follow the practice of all civilised nations in asking this House to support my Bill. In the second place, I appeal to those friends of mine who are for the nationalisation of this country, who desire that India should be united and communalism shall go. The good feeling that will be created between the different communities in this country with a possibility of inter-marriages between them would be a political asset the value of which can never be under-rated. Thirdly, I am asking this House to do in a straightforward manner what it is possible to do under the present statutory law of this country—only it requires a declaration which a scrupulous man may hesitate to sign, and if he does not, he has to take a trip out of the territorial waters of India to contract the marriage. Therefore, I am only removing a disability which is purely artificial. . . . .

**Mr. Deputy President:** The Honourable Member has repeated this argument three times.

**Sir Hari Singh Gour:** I suppose it has gained in emphasis and momentum by the repetition I have made. . . . .

**Mr. Deputy President:** It does not require any momentum if the country is so eager as the Honourable Member thinks it is.

**Sir Hari Singh Gour:** I am very glad to hear it, and that you are well aware of it.

Now, Sir, I pass on to the next question. I have purposely given notice of this motion for reference of my Bill to a Select Committee, the reason being that this Bill was referred to a Select Committee before and there may be some differences of detail which may be required to be examined by the Select Committee. This Special Marriage Act of 1872

[Sir Hari Singh Gour.]

is becoming a patchwork. In 1872 it was intended to deal with a very narrow class of people. In 1923 its provisions have been further enlarged and we are now trying still further to extend the provisions of that Act. The Select Committee will examine the Special Marriage Act and I should be quite prepared in the Select Committee to accede to any suggestion that may be made consistent with the desire I have in view, of so wording the law as to serve the purpose I have in view, namely, of establishing a civil marriage law in this country. Sir, in making this motion I feel fortified by the fact mentioned on the last occasion, that I am only a co-author of this Bill which was countersigned by the Leader of the Swaraj Party, my Honourable friend, Mr. Srinivasa Iyengar and their Chief Whip, Mr. Goswami, and I have bespoken the support. . . . .

**Mr. Deputy President:** But they are not in the House now to support you.

**Sir Hari Singh Gour:** That is because on the days we are building a nation when there is a nation-building measure in this House, the nation-builders are not here. Well, Sir, I venture to submit that I have the support of my Honourable friend, Lala Lajpat Rai and my. . . . .

**Mr. Deputy President:** He is also not in the House.

**Sir Hari Singh Gour:** And my Honourable friend, Mr. Jayakar, and a few leaders of Muhammadan opinion. I therefore feel that I stand on solid ground. I need not labour that point, and I, therefore, move that the Bill be referred to a Select Committee.

**Mr. Anwar-ul-Azim** (Chittagong Division: Muhammadan Rural): I do not think it will be right for me just to keep quiet on a subject like this. *(An Honourable Member: "Louder please.")* I may be called a reactionary from Sir Hari Singh Gour's point of view. I had the unique fortune of being trained in a liberal and calmer atmosphere. *(Mr. M. R. Jayakar: "Louder please.")* As a Cambridge man my views on this point and kindred subjects are very liberal. In spite of that I do not feel that I can support our distinguished legal colleague, Sir Hari Singh Gour, in his eager wish to bring about some sort of fusion amongst the various races and creeds that inhabit this land. He has quoted a great Muhammadan jurist in support of his Bill. On a little analysis it will be apparent that Mr. Ameer Ali never advocated anything which is not based on the Quran or the Shariat. You know, Sir, that the whole of the Muhammadan law and the traditions based thereon are the works of Muhammadan jurists who followed the Prophet from generation to generation. The Muhammadan viewpoint has been gathered, sifted and analysed and has been embodied in works of Muhammadan law. Here in 1928 I find that it has fallen to the lot of a Hindu gentleman in an indirect way to tamper with our religious faith. I do not know what advantage there would be if this Bill is either referred to the country for their opinion or for that matter even to a Select Committee. I am certain it will not get any support from any Mussulman of any consequence in any part of India. The law as it stands now absolutely meets the requirements of the non-Muslim people who live in this country and they should be grateful to Dr. Gour for his enactment of 1923, known as Act XXX of that year. It is easy now for a Buddhist, Sikh, Jain or a Hindu to remove their caste difficulties

and contract any kind of marriage they like amongst themselves. Dr. Gour will be very wise to let us all alone, because, if this Assembly passed this Bill, it will be giving some impetus to things which will be irreligious from our standpoint. Dr. Gour mentioned the precedents of the Moghul Emperors. I am certain I am not bound by precedents especially in this matter. The law as it stands is absolutely simple. A Muslim can not marry any body else who is not the follower of a revealed book, and the Moslem woman has no option, even if the non-Muslim man was the follower of a revealed book. My suggestion to Dr. Gour is that it would be absolutely wise on his part not to allow this Bill to proceed any further for we are very conservative in these religious matters.

**Mr. Muhammad Yamin Khan** (United Provinces: Nominated Non-official): I congratulate my friend Dr. Gour on his persistent effort for a very long time in introducing this measure. I was in the first Assembly when he tried to bring in this measure, and I supported him even at that time. I think that the only possible way of creating a nation in India is by means of removing the difficulties in the way of marriages between different communities and people following different religions. The only hindrance in this country is the caste system which had been introduced before the Mussulmans came in and the caste people have been following their system with great rigidity in this direction. People belonging to castes are not willing to have any liberal ideas on account of their conservatism. India can never progress until this evil is removed altogether. The only way to remove this evil is to allow people to get married wherever they like. My friend Mr. Anwar-ul-Azim has touched on points about Muhammadan law. I am equally anxious with him that nothing done in this Assembly should go against the religion of Islam. This Assembly has no right to sanction anything which the Mussalman religion does not allow; but there are some difficulties which have to be considered. This is only a permissive law. This law only allows people who profess different religions, if they love each other, to get married. In such cases religion should not be allowed to stand in the way. If a man and a woman love each other their religion should not be allowed to stand in the way of their becoming husband and wife. This is sanctioning great immorality, if people love each other and are not allowed to get married, though they are husband and wife in the eye of God, and not in the eye of man. No religion which has got any liberalism in it will prevent such alliance. As far as Muhammadan law is concerned Islam allows every Mussulman man to get married to a lady who professes a religion in which she believes in the unity of God. This is according to the Mussulman association in the past with the Jews and the Christians. The real idea of this was that Muslims were persecuted in Arabia by idolators and therefore God did not sanction any Mussalman woman to get married to an idolator man because of the fear that she will be persecuted by the man to revert to that idolatory. A Mussulman man was not allowed to marry a woman who was an idolator, because they could not live happily together. The very essential ingredients of husband and wife living jointly are that they should live a happy home life, and if a man is a believer in the unity of God and the woman is an idolator, they cannot and could not possibly be happy in their home life. If a woman is not an idolator, but she believes in the unity of God, I don't see any reason why a Mussulman man cannot be happy with her, whether she believes in Jainism, Hinduism or the Parsee religion, that is, the Zoroastrian faith, or any other religion. That is merely a notion and

[Mr. Muhammad Yamin Khan.]

a wrong interpretation of the law which has been a hindrance in the way of so many lovers getting mated. I think, Sir, if India goes on towards becoming a nation we must be liberal, and unless a nation becomes liberal in its views, in the treatment of social and home life, it cannot be liberal in other matters.

There is one difficulty about which I am myself not sure, Sir, and it is a belief amongst the Mussulmans which has been engendered in their minds for a long long time, that a Mussulman woman cannot get married to any man who is not a Mussulman. That is the interpretation which has been put by different Mussulman doctors of law, that a Mussulman woman cannot get married to anybody else who does not profess the religion of Muhammad. That is the only possible difficulty, but for a man there is nothing.

I will deal first with the case of the Mussulman woman, because that is the only difficult problem. If a Mussulman woman happens to love a man who is not a Mussulman and she lives with him as his wife, what is the law that can stop her from doing that? The only thing is that the children who are born Mussulmans will be considered to be illegitimate. If the man with whom she is living is a Hindu, their caste people would not recognise them, so the children become illegitimate simply because a woman loves a man who does not profess the same religion. That is the main difficulty. The only thing which a non-Mussulman has to do is to provide these children by giving a kind of gift or by making a will. If there is no will or no gift made, then they do not inherit at all. That is the main difficulty in the way. I think you cannot in these days and in the twentieth century stop people from living together if they choose to do so. Recognition of them is what this measure aims at. It is this that in the case of these children born in this way of living if the parties go before a Registrar or a man who contracts the marriage, these children will be recognised as legitimate children, as having been born in wedlock. I think it a great hardship nowadays for these children and women, and one which should be removed by some measure of this kind which will give them some kind of status so as to be able to inherit the property of their parents, and the only thing possible is that this measure should be accepted.

Another case is about a Mussulman marrying a Christian or Jewish girl. If she remains a Christian or a Jew, that marriage is quite valid. The Mussulman professes his own religion and the lady professes her own religion, and all the children are legitimate.

(At this stage Mr. Deputy President vacated the Chair which was resumed by Mr. President.)

If a Mussulman marries a Hindu girl or a Jain or a Parsee girl, why should that illegitimatisé his children. The marriage is not considered valid. There is no reason why the law should stand in the way of a man who wants to get married, who has got some lady from amongst the Hindus or Jains or Parsees whom he loves, and that lady wishes to retain her own religion. There is no reason why she should not be allowed to get married if she loves him and the man is not willing to sacrifice his religion. This law is very hard on the people who sincerely and

devotedly belong to each other and only you are stopping them from getting their marriage sanctioned in the eyes of the world. Personally, Sir, I believe that if a woman professes a religion which believes in the unity of God, she should be allowed to marry any one and the law should sanction such marriage. There are very few amongst the Hindus now-a-days who are idolators. The majority of them absolutely believe in the unity of God. Of course there may be some who do not believe in any kind of deity. Some even do not believe in God. They may be atheists. Of course marriage with an atheist is doubtful and that cannot be valid, but in that case if she comes under the influence of a Mussalman and goes on living with him, she will certainly begin to believe in the same way.

**Mr. K. Ahmed:** What do the Arayans believe?

**Mr. Muhammad Yamin Khan:** They believe in the unity of God. This measure gives permission to these kind of people to set an example which may ultimately make India one nation, which would be accepted by anybody.

My friend Mr. Anwar-ul-Azim says he is not bound by the examples set by the Moghul Emperors. At the time of Akbar, whom I consider the first nation builder, the first man who was a real nationalist, he saw the consequences of the caste system prevailing in India, and he knew that India could never be united unless he as King set this example so that other people may follow his example. Unfortunately his example was not followed after a few generations, but it was he who laid down this principle and he started by being himself an example, and in those days whatever a King used to do was followed by everybody. Nobody had the right to question what the King did excepting the people who were doctors of law. At that time, even in the time of Jehangir and in the time of Shah Jehan, the Mussalman doctors of law did not question the validity of these marriages with Hindu ladies. Those laws were accepted and the children were considered legitimate—not only legitimate but they even became Emperors of India. In those days no illegitimate child would be welcomed by the public at large; but these children were held to be all right and they were respected by all. Their example was followed in many quarters. So now, after three centuries, I think it is not right to go and question that. Whatever example towards progress has been set by them should be followed by this House which is a progressive House, which is a cosmopolitan kind of House in which we have got all kinds of people and we have all got the same interest at heart, namely, the benefit of India and the advancement of India, for making India a nation. All our efforts must be directed towards that end. As I have said I am not sure whether my views may be worth anything. I know there may be some differences of opinion among the Mussalmans in India, and for this purpose I am not for sending this Bill to the Select Committee but I think this Bill should be sent to the Select Committee after it has been circulated for public opinion. By that our hands will be strengthened by knowing whether there are in India people who are ready to support this measure or whether they are still so conservative that they have no regard for building up the nation but would stick to the caste system which has been the real cause of the destruction of the whole of Indian progress and which is still standing in the way of the achievement of the goal which most of us have in view.

**Khan Bahadur Sarfaraz Hussain Khan** (Patna and Chota Nagpur *cum* Orissa: Muhammadan): Sir, I entirely agree with the views expressed by my Honourable friend Mr. Yamin Khan. I rise not only to support but to give my wholehearted support to him. What appeals to me most is that this Bill will tend to the advancement of the Indian nation. However much you may try to remove communal differences, you may have as many meetings as you like for the same purpose, but the result will not be satisfactory. Intermarriages surely will go a long way to advance the cause of the nation. That is the chief ground why I give my wholehearted support to the measure.

Now, Sir, from the Muhammadan point of view I can say that so far as I find in the holy Koran, marriage between persons of different religions is not prohibited. The only thing that is objected to is marriages between Mominins and Mushrikins. Now Mominins are believers in and worshippers of one God while Mushrikins worship all sorts of material objects except God; so marriages between persons who worship one God and one God alone are permitted; but marriages with persons who worship material objects—we may call them idolators—are discouraged. This Bill is purely permissive. There is no compulsion. The Bill if passed is bound to raise the standard of marriages. Besides, it will tend to monogamous marriages as well.

Now regarding the question of marriage, there is no doubt that in our religion permission is given to marry four wives, but then the permission is on condition that the man or men who marry more than one wife should do equal justice to all the wives and should provide equally for their maintenance. Is it very easy for a man to do equal justice to all his wives? So that permission also tends to monogamy. The Prophet has given, I mean, the holy Koran has no doubt given permission to marry up to four wives. This Bill tends to monogamy which is according to the injunction of the holy Koran, I mean taking the rationalistic view of it. Monogamy raises the standard of our women and also creates good feelings, domestic felicity, and peace in the family. So, Sir, I say that, as this Bill tends to monogamous marriages, as this Bill tends to the elevation of women and as this Bill is not against the Muhammadan law or the injunction of the holy Koran, I wholeheartedly support the motion that the Bill be referred to a Select Committee. I would not however object to a motion to circulate the Bill for eliciting opinions thereon, but in that case my fear is that the matter will be shelved. This Bill has been before the House for a long time and there is no need to send it out for eliciting opinions. When the Bill goes to Select Committee Muhammadans will be there. Hindus will be there, both orthodox and advanced—in fact every school of thought will be there and they can change anything they do not like in the Bill. So there should be no real objection to the motion to refer the Bill to Select Committee, unless there is some lurking desire in the minds of some not to go on with it. Of course one cannot say so openly, but unless there is some such desire, there is no reason whatsoever for sending the Bill out to elicit opinions. The question is very simple, and having said so much from the Muhammadan point of view as well as from the rationalistic point of view, I support this motion and resume my seat.



**The Honourable Mr. J. Orerar** (Home Member): Sir, I move that the Bill be circulated for the purpose of eliciting opinions thereon.

I think that this motion will commend itself to the House because, even during the course of the present debate, there has already been revealed a very remarkable degree of diversity and even of confusion of thought on the subject matter of the Bill. I do not however desire my motion to be in any way misconceived. So far as the objects which the Honourable the Mover propounds to himself are concerned he will, I am sure, receive a great deal of sympathy and support in this House. I am however myself, in dealing with the particular motion which the Honourable and learned gentleman has moved, confronted by a preliminary difficulty of a somewhat formidable character. I am very doubtful indeed whether in point of fact the Bill which the Honourable Member has moved to be referred to Select Committee would attain the objects which he has in view. If I were not reluctant to ascribe to the Honourable and learned gentleman a failure to appreciate exactly the precise state of the law in the matter, I should almost surmise that the amending Bill which he proposes was framed with regard to the law as it stood in the Act of 1872 and without regard to the amendments which were introduced by Act XXX of 1923. I must point out to the House that, though at this stage it would be entirely inopportune and doubtless not in order for me to go into any question of detail, I must point out in regard to the main operative provision of the Bill that most serious difficulties must undoubtedly arise; and I call attention to them not because I think that the objects propounded by the Honourable Member cannot in some form be attained (?) my object is simply to point out that the Bill as it stands is a Bill which could hardly be dealt with by a Select Committee in order to produce the results which are desired. The Special Marriage Act, if it were amended in the sense proposed by Sir Hari Singh Gour, would, in so far as one of its main operative provisions is concerned, read as follows:

"Marriages may be celebrated under this Act between persons domiciled in India or between persons, each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion."

Now, Sir, I confess that I have very grave doubts in my own mind as to what that means. I have very grave doubts, which I think will be shared by others more learned in the technicalities than myself, as to what the effect of such a provision would be. The Act as amended in 1923 did a thing which was perfectly specific. It created two categories of persons quite distinct and quite definable, namely, those who do not profess the Christian or Jewish or Hindu or the Muhammadan or the Parsee or the Buddhist or the Sikh or the Jaina religion; and another category of persons each of whom professes the Hindu, Buddhist, Sikh or Jaina religion. Now, Sir, it is important to remember the very important consequences flowing from the question as to which of these categories a person falling within the provisions of this Act belongs. If he or she belonged to the category of those who profess the Hindu, Buddhist, Sikh or Jaina religion, certain very important consequences relating to severance from families, right of adoption and succession to property result—all very important provisions which were deliberately inserted by the Select Committee of 1923. Now, if for one of those perfectly definite categories you substitute the comprehensive category of

[Mr. J. Crerar.]

persons domiciled in India, what precisely the consequence of legislation of that kind would be appear to me extremely doubtful. It is not, *e.g.*, by any means clear that a Hindu marrying a person of any of the other religions would or would not be treated as being within the first category, that is to say, as a person domiciled in India; and it might become a matter for very serious consideration whether the provisions which the Select Committee of 1923 considered necessary would in point of fact be applicable.

However that may be, I do not wish to press that point because I think there will be a general sense in this House—at least I hope there will be—in favour of circulating this Bill. Sir Hari Singh Gour pointed out that when the Bill which he first devised was circulated for opinion a considerable measure of support was obtained. I am not concerned to dispute that or to underestimate it. What I do desire to point out is that when the Bill ultimately came before the Select Committee the grave difference of opinion that arose in the Select Committee was precisely upon the point which Sir Hari Singh Gour now wishes to enact by his present Bill. The Select Committee of 1923, after prolonged discussions—and obviously discussions in which great diversity of opinion emerged—came by a large majority to the conclusion that the scope of the Bill at that time should be limited to the Hindu, Buddhist, Sikh and Jaina communities, in addition to the persons to whom the Act already applied. In short, Sir, the Christian, Muhammadan, Jewish and Parsee communities were expressly excluded from the scope of the Bill. Now, my point is this: I do not wish to express myself or Government as in any degree hostile to the objects which the Honourable Member has in mind. But I do venture to emphasise and to accentuate the great desirability, before this House commits itself to the principle of the Bill by referring it to a Select Committee, of giving these communities who are principally concerned by the Bill or at any rate by the intention of the Bill, an opportunity of expressing their views precisely upon the issue as it now stands. As I see, a large degree of diversity of opinion has already manifested itself in this House; and I do not think the Honourable and learned gentleman would really be wise in taking a course of action which would be calculated to give an impression that he desires to rush this legislation through. At any rate I desire to make my own position and the position of Government perfectly clear. I desire to express no hostility whatever to the enlightened views expressed by the Honourable Member and intended to be promoted by this Bill. I express, however, the gravest doubts as to whether the Bill would effect these objects. I express the gravest doubts as to whether a Select Committee could so amend this Bill without entirely changing its character as to effect those objects; and finally I urge once more that in view of the diversity of opinion which has already manifested itself in this House—a diversity of opinion which is also likely to be felt outside this House—that we should have a more extended consultation of public opinion, particularly in the communities expressly concerned, before we commit ourselves any further.

**Maulvi Muhammad Yakub** (Rohilkund and Kumaon Divisions: Muhammadan Rural): Sir, call me a conservative: call me a man who comes in the way of the progress of the country; but as long as I profess Islam, as

long as I am a Mussalman, I am bound to oppose the provisions of this Bill so far as they relate to Mussalmans.

**Mr. N. M. Joshi** (Nominated: Labour Interests): On a point of order, Sir. May I ask whether it is right to go on with the discussion of the merits of the Bill when a motion has been made that the Bill be circulated? What I want to say is that there are other Bills to be moved . . .

**Mr. President:** The original motion is that the Bill be referred to a Select Committee, to which an amendment has been moved that the Bill be circulated for eliciting public opinion.

**Mr. N. M. Joshi:** My point of order was that when a motion is made that the Bill be circulated, that motion should first be got rid of.

**Mr. President:** Both the motions are before the House.

**Maulvi Muhammad Yakub:** As regards the provisions of this Bill being in conflict directly, not only with the Muhammadan law, that is the *Fiqāh*, but with the express words of the Koran, I will only refer this House to the very book on Muhammadan Law which my friend the Mover of the motion, in charge of the Bill, has referred you to, namely, Muhammadan Law by the Right Honourable Ameer Ali. On page 327 of his book, Mr. Ameer Ali clearly says:

"The fifth relative prohibition springs from *shirk* or polytheism; the observant student of the law of the two principal sects which divide the world of Islam cannot fail to notice the distinctive peculiarity existing between them in respect of their attitude to outside people. The nations who adopted the Shiah doctrines do not seem to have come into contact to any marked extent with the Christian races of the West, while their relations with the Mago-Zoroastrians of the East were both intimate and lasting. The Sunnis, on the other hand, seem always to have been more or less influenced by the western nations. In consequence of the different positions which the followers of the two sects occupied towards non-Moslems, a wide divergence exists between the Shiah and Sunni schools of law regarding intermarriages between Moslems and Non-Moslems.

It has already been pointed out that the Koran, for political reasons, forbade all unions between Mussalmans and idolators. It said in explicit terms 'Marry not a woman of the polytheists (*mushrikīn*) until she embraces Islam'. But it also declared that 'such woman as are muhsinas (of chaste reputation) belonging to the Scriptural texts' or believing in a revealed or moral religion, 'are lawful to Moslems'."

Therefore, Sir, it is quite clear that, according to the Muhammadan law, a Muhammadan man or woman cannot marry a man or woman who is not a Unitarian. Now, I do not contend that Mussalmans can marry only Christians or Jews, but under the Muhammadan law a marriage between a Mussalman and a non-Mussalman whose religion is Unitarian is permissible, and therefore, so far as these marriages go, you do not require to invoke the provisions of the special Act to make it valid. To make myself clear, I may say that under the existing Muhammadan law a marriage between a Mussalman and a member of the Brahmo Samaj is quite valid and therefore you do not . . .

**Mr. M. R. Jayakar** (Bombay City: Non-Muhammadan Urban): Is there any instance on record of such a marriage being held valid?

**Maulvi Muhammad Yakub:** If a marriage of that character had taken place, and if the matter had come before a judicial tribunal, then it would have been held that such a marriage was valid.

**Sir Hari Singh Gour:** What is the machinery for it?

**Maulvi Muhammad Yakub:** The machinery would be Ijab and Kabul, which is necessary according to Muhammadan law. It is a civil contract. The only two fundamental conditions for a marriage according to Muhammadan law are a proposal and acceptance. No other formalities are necessary, though certain formalities are observed as a matter of custom, but the two fundamental conditions necessary for a valid marriage according to Muhammadan law are a proposal and acceptance.

**Khan Bahadur Sarfaraz Hussain Khan:** Are not Muhammadan marriages registered in some of the provinces of India before the Registrar?

**Maulvi Muhammad Yakub:** But the marriage must be performed according to Muhammadan law and between parties who observe the Muhammadan law. For instance, we have got our Kazi who performs the marriage, and after that ceremony is over, the marriage is registered in the Kazi's register. What I mean is, marriages between those who are Muhammadans and those who are Unitarians are permissible and you do not require any special law for them. So far as marriages between Mussalmans and those who are not Unitarians are concerned, they are invalid, and no special law which may be enacted in this House can make such marriages valid in the eye of the Muslim law. Sir, you will be creating many difficulties if you enact such a measure. For instance, you come in direct conflict with the provisions of the Muslim law when you allow the marriage of a Muslim with a man or woman who is not a Unitarian. On the other hand, for the sake of succession and inheritance, you would be administering the Muhammadan law to the children born of such unions. That is to say, you would derive all the benefits of the Muhammadan law so far as succession and inheritance go, while you come in conflict with the provisions of the law when you allow the marriage between a Muslim and one who is not a Unitarian. No special marriage law is enacted by the Legislature for Muhammadans, because they only adhere to the *Shariat* and to their scriptures. They have shown no special desire to modify the divine law through the interference of human agency, and it would be absurd on the part of my friend Sir Hari Singh Gour to thrust a law upon a community which does not want it. Honourable Members will remember that whenever this question was brought up before the Legislature, there was considerable opposition to it from the entire Muslim community. The House will also remember that when the late Sir Bhupendra Nath Basu tried to introduce this Bill in the old Imperial Legislative Council, Maulana Mahommed Ali wrote a series of articles in his paper called the *Comrade* against the measure being applied to Muhammadans. I would therefore warn Government that if they try to interfere in the matter of the religion of Mussalmans in this country, which is very dear to them, they will be confronted with consequences which it will be very difficult for them to foresee just at present. As the present motion is that the Bill be circulated for eliciting public opinion which, I hope, will be carried by the House, I do not think I need detain the House by opposing the motion, because if the Bill again comes before the House, I shall have the opportunity of speaking in greater detail against this measure. With these few observations, Sir, I entirely oppose the provisions of this Bill so far as they relate to the Mussalmans.

**Rai Sahib Harbilas Sarda** (Ajmer-Merwara: General): Sir, I rise to support the motion of my Honourable friend Sir Hari Singh Gour. The

object of the Bill is to extend the benefits of the Special Marriage Act of 1872 in their entirety to Indians generally. At present these benefits are not applicable in their entirety to those who profess the Hindu, the Muslim, the Jaina or the Sikh faiths, and I think, the time has now come when legislative action should be taken in the matter with which the Bill deals. The marriage law of the Hindus as at present administered by the courts in British India is neither what is laid down in the ancient Hindu texts nor is it in accordance with that practised in ancient times in this country. The present law, even as modified by the Act of 1923, is based partly on recent texts only a few hundred years old but chiefly on custom, and came into existence when Hindu society was in a peculiar state of evolution and was surrounded by peculiar circumstances. The conditions of life have during the last half century greatly changed and are changing so fast that the law has become very irksome in many cases. Owing to the altered circumstances of life in India and the acceptance of new ideals of life and conduct, the marriage law of the Hindus, in its present form and with its present limitations, has begun to operate against the well being and solidarity of the Hindu community. Such a thing occurs at sometime or other in the case of all growing communities. The remedy adopted in other countries was not to take in hand the reform of the institution but to provide legal facilities for escape from its galling conditions. Such, I believe, is the origin of the Civil Marriage Acts in various countries, and such Acts are as a rule permissive in character and not mandatory.

The spread of education, the enormous facilities for travel, the ever increasing intercourse between members of different Hindu castes and constant contact with non-Hindus of education and culture, coupled with the great difficulty, and sometimes impossibility, of finding suitable matches within a limited circle, have made the question of marriage a problem of great importance for the Hindus. The emancipation of the intellect and the will from the fetters imposed by prejudice, due to education and contact with the more advanced peoples of the world, and the pressure of conditions of life now obtaining in the country which is no longer an exclusive, self-sufficing and isolated part of the world, make it a matter of increasing difficulty for Hindus to conform to all the prevailing social customs which mostly originated under political, economic and social conditions which have disappeared or are fast disappearing. The Hindu social fabric of the present day has undergone such a change during the course of its evolution from the time of Manu and Yagnyavalka that it is sheer mockery to accept or reject an important social measure solely on the ground that it does or does not conform to the old Hindu texts.

Leaving aside the law laid down in the old texts, and coming to consider the actual practice of marriage amongst the Hindus in ancient times, we find that great freedom was enjoyed by the people in the matter. I will give three or four historical instances to show what freedom was allowed in ancient India in the matter of marriage. Leaving aside the well known historical instance of the marriage of the Hindu Emperor Chandra Gupta with the daughter of the Greek King Seleucus, so graphically described by Dr. Vincent Smith as having taken place about 303 B. C., the Junagarh inscription of the year 72 Saka era (A. D. 150) quoted in the *Epigraphia Indica*, Vol. 8, describes the marriage of Rudradaman, a Shak, with the daughters of the Hindu King at Swayamvaras. The Kanheri cave inscription records the marriage, performed about 155 A. D., of Raja Vashishti's

[Rai Sahib Harbilas Sarda.]

son, Satkarni of the Andhra family, with the daughter of the Kshtraps, Rudra, a non-Hindu King.

**Mr. M. S. Aney** (Berar Representative): Was he a non-Hindu?

**Rai Sahib Harbilas Sarda**: Well, it is given there in the inscription. The girl perhaps later on became a Hindu.

**Mr. M. S. Aney**: Is it written there that the girl later on became a Hindu? I would like you to quote the passage.

**Rai Sahib Harbilas Sarda**: The 6th century A. D. inscription of the cave of Culvada near Ajanta mentions also a similar instance of inter-marriage. The celebrated Atpur inscription of Shaktikumar of 977 A. D. mentions the marriage of Shaktikumar's ancestor Allata with Hariyadevi, a Hun princess. It is mentioned that the princess belonged to the Hun race. History records that the mother of Bappa, the great King of Chitor, was of Mauriya family. The 12th century inscription of the Kalachuri King Yashkarandeva mentions that Yashkarandeva's father Karandeva had married Avaladevi, a Hun princess. Many other instances of marriages between Hindus and non-Hindus in ancient times can be cited. I would cite an instance of a very recent date. On the 17th of March this year, Miss Miller was married to the Maharaja Holkar according to the orthodox Hindu rites, which fact goes to show that marriages between Hindus and non-Hindus are in accordance with the tenets of Hinduism.

**Sir Walter Wilson**: But she is a Hindu now.

**Rai Sahib Harbilas Sarda**: I think in the interests of the Indians generally and the solidarity of the Hindu community this matter should be taken into consideration by the House and the principle of the Bill accepted.

**Mr. N. M. Joshi**: I move, Sir, that the question be now put.

The motion was adopted.

**Sir Hari Singh Gour**: Sir, I propose to detain this House for a very few minutes. So far as the Honourable the Home Member's remarks are concerned, I thank him at any rate for small mercies. He says that the attitude of the Government is not hostile to this measure. I wish he had permitted himself to say that it was one of benevolent neutrality, and that, I submit, would have been more in consonance with the declared policy of the Government of India. But I will assume, Sir, that that is what he implied. Now his motion is a dilatory motion for circulation of the Bill. As I pointed out, Sir, this Bill in various forms has been under circulation from 1868 down to 1921 and within the last 60 years it has held the ground so far as this country is concerned. In 1921 this precise measure which I have the honour to sponsor to-day was sent out for circulation to the provinces and I have already referred, Sir, in my opening speech to the opinions then elicited. I venture to submit that the opinions of the country have since strengthened in favour of my measure and the Muhammadans and Parsis and Jews and Christians and others who would be directly or indirectly affected by this Bill are now more in favour of my measure than they were at any time past. It is for this reason that I have ventured to ask this House to commit this Bill to a Select Committee. The Honourable Mr. Crerar has criticised some of the provisions of it. It does not

become me, Sir, to reply in detail to the criticisms of the specific clauses of the Bill because, as I understand the Standing Orders, if my motion is accepted, this House would only stand committed to the broad principle of the Bill and leave the Select Committee to put it into proper and legal shape, and it is for this reason, Sir, that I do not wish to go into the details of the various clauses of this Bill. I may, however, make one suggestion to the Honourable the Home Member if he wishes that this Bill be circulated for the purpose of eliciting public opinion thereon. He may be at any rate good enough to expedite the circulation of the Bill so that it may come on during the Simla Session. I know, Sir, the delay consequent upon such motions. The last time in 1921 when I had made a similar motion, it took about 2½ years before opinions could be collected and it was only towards the end of 1923 that we were able to place a much attenuated measure on the Statute-book. I hope, therefore, Sir, that the Honourable the Home Member will be good enough to expedite the collection of opinions which he can by fixing a certain time by which opinions should be received. I have another suggestion for the favourable consideration of the Honourable the Home Member. You will remember, Sir, that, when I moved for the consideration of my Children's Protection Bill, the Honourable the Home Member suggested the formation of a committee that should collect opinions and draw up a report. I wish to ask whether the provisions of this Bill may not be more conveniently entrusted to this Committee. Both these measures are measures of social reform and, while they will be touring in the country, they will be collecting opinions on the Age of Consent Bill, and they might also collect opinions on the provisions of the present Bill. All I am anxious about, Sir, is that the term of office of the Members of this Assembly may not expire before the opinions from the provinces are returned. With these remarks, Sir, I feel that I should be not fair to myself and to the Bill if I acceded to the motion of the Honourable the Home Member unless he is prepared to give me an assurance that the opinions will be so expedited that the Bill would be likely to come up during the autumn Session of the Legislative Assembly, and I further ask, and ask in all earnestness, the Honourable the Home Member to consider the desirability of entrusting the inquiry to a committee, the committee which he has promised to form on my Children's Protection Bill.

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

"That the Bill further to amend the Special Marriage Act, 1872, be referred to a Select Committee."

Since which the following amendment has been moved :

"That the Bill be circulated for the purpose of eliciting opinions thereon."

The question is that that amendment be made.

The motion was adopted.

## THE HINDU INHERITANCE (REMOVAL OF DISABILITIES) BILL.

**Sir Hari Singh Gour** (Central Provinces Hindi Divisions: Non-Muhammadan): This is a non-controversial Bill, Sir. I beg to move that the Bill to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts, be taken into consideration.

As Honourable Members will see from the Statement of Objects and Reasons this Bill was introduced in the first Assembly by the late Mr. Seshagiri Ayyar. It was passed by this Assembly without a division.

[Sir Hari Singh Gour.]

Then it went to the Council of State and it was entrusted in that House to a non-Hindu Member. An objection was taken that an amendment of the Hindu law should have been sponsored by a Hindu Member of that House, and the consideration of the Bill in that House was postponed with the result that the Bill never came on in that House at all. I wish to revive this measure because it is a measure of first-rate importance, a measure upon which I have the support of public opinion and of all Hindu lawyers that have given their opinion on the subject. The question was sent to the provinces and opinions have been collected which are before me in a book form. I would, however, for the benefit of my Honourable friends who may not have had an opportunity of glancing through the opinions, briefly point out the genesis and rationale of the Bill which I wish this House to pass. In the ancient Indian law it was provided that a person who was suffering from mental or physical incapacity, want of a limb or an organ, was incapable of acquiring any right in property, of either becoming a coparcener or an heir to the estate. Now, Sir, this archaic law has been responsible for the exclusion from inheritance of a very large number of people and in a Full Bench of the Madras High Court decided only about 4½ years ago the learned Judges pointed out that this was a very hard law and that the Legislature must try to remedy it. The evil is this. Suppose a Hindu family consists of two brothers, and one brother goes to a war to fight for his country or is employed in a factory as a wage earner, and suppose on account of some accident or on account of his fighting well in the war he loses his arm or his limb, he becomes disinherited and totally incapable of acquiring any right in property. He then becomes what is known to the law as a disqualified coparcener or a disqualified heir. Now, I submit, this is a very hard law, a law which the courts are trying to struggle against. But while they have been trying to evade the law, there are a very large number of decisions in which that law has been given effect to, and I submit that in the case of uterine brothers perhaps this disability is overlooked, but when they happen to be step-brothers or cousins or nephews and what is more, when the property passed out of the family to a *bona fide* alienee for value from one of these incapacitated persons, then the full force of the law is brought to the forefront and the cousins or nephews and the alienees are dispossessed with reference to the law. I submit the law is abundantly clear that so far as these incapacitated persons are concerned they should not lose their vested right in property. As I have pointed out this House without a division passed this Bill on the 27th March, 1923, and it is only by an accident that it has not become law. I ask this House, Sir, without any hesitation once more to ratify its decision of March, 1923, and give this Bill its *imprimatur* with the hope that it will also be passed in the other House.

I move, Sir.

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

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

The motion was adopted.



## THE INDIAN MERCHANT SHIPPING (AMENDMENT) BILL.

**Maulvi Abdul Matin Chaudhury** (Assam: Muhammadan): Sir, I move that the Bill to amend the Indian Merchant Shipping Act, 1923, for certain purposes, be circulated for the purpose of eliciting opinions thereon.

In moving this motion, Sir, I have no desire of making any long speech. I shall explain very briefly my reasons in support of my motion. I think, Sir, I can say without the least exaggeration that the Indian seamen are the most exploited body of workers in India. It may come to Honourable Members as a surprise to know that when a seaman is engaged for a voyage for a year he is required to pay three months' salary as a bribe to the intermediary, when he is engaged for three months, he is required to pay one month's salary as a bribe, and the Government knows it. In the year 1922 Government appointed a Committee—the Indian Seamen's Recruitment Committee. Mr. Clow was its Chairman and it included on it a shipowner representative like Sir Frank Carter and a labour leader like my friend Mr. Joshi. That Committee, Sir, condemned the present system of recruitment as systematized extortion and they were unanimously of the opinion that:

"this system has led to grave abuses which no mere amendment of detail would satisfactorily remove."

They have come to the conclusion that:

"it is imperative to introduce an entirely new system which does not involve the employment of intermediaries. It is clear that if the brokers and ghat serangs are no longer to be employed, arrangement must be made to carry out the duties at present entrusted to them. The Committee point out that this can only be effected by the organisation of employment bureaux."

My Bill, Sir, simply aims at giving effect to that recommendation of the Committee. I expected that instead of my moving this Bill, Government would come forward with their own Bill to give effect to the recommendations of a Committee appointed by them. But for reasons, Sir, which are best known to Government they are keeping silent over it and this has compelled me to introduce this Bill.

Sir, I move.

**The Honourable Sir George Rainy** (Member for Commerce and Railways): I wish to speak very briefly as regards the Bill the circulation of which has been proposed by the Honourable the Mover. Government have no objection whatever to the circulation of the Bill, and they think it will serve a useful purpose because we hope that it will elicit what the real facts are with which we have to deal. We have been trying, without legislation, in Calcutta during the last three or four years to bring about an improvement in the state of affairs disclosed by the report of the Committee over which Mr. Clow presided. The latest information we have from the Local Government is that there has been a distinct improvement, and that the abuses of which complaint was made do not prevail to anything like the same extent as they did formerly. I am aware that that view is challenged by some Members of this House, and I think it will serve a very useful purpose if we obtain full reports as to the state of affairs both in Calcutta and in Bombay, for it is only in these two ports that the

[Sir George Rainy.]

recruitment of Indian seamen is carried out on a large scale. When the opinions of the Local Governments and others who are interested in the subject are received, then it will be time to consider whether legislation ought to be undertaken on the lines of this Bill. All I should like to say by way of a warning is that I am a little afraid that there may be great practical difficulties in working an employment bureau of the kind suggested. I will not weary the House with details of that, because the House is not asked at the moment to pronounce any opinion about it, but I should like, in order to make plain the attitude of the Government, to say only this much that there are serious practical difficulties and I am not prepared to say at the moment that they could be overcome.

**Mr. President:** The question is :

"That the Bill to amend the Indian Merchant Shipping Act, 1923, for certain purposes, be circulated for the purpose of eliciting opinions thereon."

The motion was adopted.

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### THE INDIAN DIVORCE (AMENDMENT) BILL.

**Sir Hari Singh Gour** (Central Provinces Hindi Divisions: Non-Muhammadan): I beg to move that the Bill further to amend the Indian Divorce Act be circulated for the purpose of eliciting opinions thereon.

Sir, I shall add a very few words to what I have written in the Statement of Objects and Reasons in justification of the measure. My Bill is almost a verbatim copy of Lord Buckmaster's Bill which has been twice passed in England by the House of Lords but which for want of time has not yet come up before the House of Commons. The short history of this measure is that a Royal Commission was appointed in England for the purpose of bringing the English law of divorce in line with the Continental law. The Royal Commission by an overwhelming majority reported that the English law was an anachronism and entirely out of date when compared with the law on the Continent of Europe and in America. In consequence of this report of the Royal Commission Lord Buckmaster, an ex-Lord Chancellor of England, introduced a Bill in the House of Lords and it twice received the consent of the House of Lords by an overwhelming majority, but when it came to the House of Commons. Mr. Baldwin, to a deputation headed by Lord Buckmaster, said that it was a controversial measure and the time of the House of Commons was otherwise engaged, and that, therefore, it was not possible to allot any Government day for the consideration of that measure. The position, therefore, is this, that the law of divorce all over Europe and America excluding only England is the law which my Bill deals with. In all the Colonies of England the law is exactly the same as that which my Bill, if passed into law, would make it. I may also add that Lord Birkenhead in a series of articles published in the English journals from which I have quoted in the Statement of Objects and Reasons, has strongly supported a measure of this kind. I, therefore, feel that I have very strong support of high legal luminaries in England, and fortified as I am by the report of the Royal Commission and by the verdict of several Lord Chancellors of England, I have not the slightest doubt that the public opinion in this country will

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rally to the support of my Bill which is intended to make the Indian law of divorce identical with the law of divorce prevailing in the British Colonies and the Continent of Europe and other civilised parts of the world.

Sir, I move.

**The Honourable Mr. J. Oserar** (Home Member): Mr. President, I do not wish to detain the House at any great length on this motion, and I shall content myself with stating in a very few words the attitude of the Government of India towards Sir Hari Singh Gour's motion. We do not intend to oppose the motion for circulation. Those who have followed the course of the measure to which Sir Hari Singh Gour has referred, will have observed that while a very large measure of support was received to that Bill in England there was at the same time a very considerable amount of opposition. I must enter one caveat with regard to the possible consequences of this motion. Sir Hari Singh Gour has intimated that one of his objects is to bring the law of divorce in India into conformity with the law prevailing in the British dominions and on the Continent of Europe. But there is an existing provision of the present Indian Divorce Act which must be taken into very careful consideration—I refer to section 7 which prescribes as follows:

"Subject to the provisions contained in this Act, the High Court and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said Courts, are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief."

In other words, the whole structure of the Indian Divorce Act and of the procedure under that Act is based upon the conception that the law relating to divorce, so far as persons subject to this particular Act are concerned, shall be administered in India in the closest conformity with the principles, practices and rules observed in England. If the measure which my Honourable friend Sir Hari Singh Gour has drawn up were given effect to as it stands, we should have, in point of fact, very great differences set up between the law of divorce in England and the law of divorce in India. I am, however, and the Government of India are, in no way averse to public opinion in this country being consulted on that important matter. If Sir Hari Singh Gour's anticipations are correct and if a large body of opinion in this country is found favourable to the measure, I should hope that note will be taken of that in England.

While this particular motion for circulation is not opposed by the Government of India, I must make it clear that any possible consequences of further legislation in that matter at a larger stage, possibly in another form, would have to be treated and regarded by the Government of India with strict regard to the merits of the case as it may then stand.

**Sir Hari Singh Gour:** May I just add one word by way of reply? It is this. Section 7 of the Indian Divorce Act to which the Honourable the Home Member referred was enacted as far back as 1872, some 50 odd years ago when India used to borrow its law *en bloc* from England. That was exactly the position with regard to the British Colonies, but the British Colonies have altered their law and they have made divorce laws independent of the law of England. If my Bill comes before this House for enactment, this House will feel equally justified in following the precedents of

[Sir Hari Singh Gour !

the British Colonies in bringing its law into conformity with the modern usage of all civilised nations and modify section 7 so as to make the Indian law the real law as it obtains all over the civilised world and not make it contingent on the rules and practice of the English law.

**Mr. President:** The question is:

"That the Bill further to amend the Indian Divorce Act be circulated for the purpose of eliciting opinions thereon."

The motion was adopted.

## THE INDIAN PENAL CODE (AMENDMENT) BILL.

### IMMUNITY OF MEMBERS OF UNREGISTERED TRADE UNIONS, ETC., FROM THE CONSEQUENCES OF THE CONSPIRACY LAW.

**Mr. N. M. Joshi** (Nominated: Labour Interests): I move that the Bill further to amend the Indian Penal Code be circulated for the purpose of eliciting opinions thereon.

The objects of the Bill are fully explained in the Statement of Objects and Reasons appended to the Bill. It is not therefore necessary for me to make a long speech to explain the provisions of the Bill, but it is necessary just to say why the Bill is necessary. My Bill seeks to give to unregistered trade unions and to any group of workers who are engaged in a trade dispute an immunity which the Indian Trade Union Act gives to the members and officers of a registered trade union. Section 17 of the Indian Trade Union Act is as follows:

"No officer or member of a registered trade union shall be liable to punishment under sub-section (2) of section 120B of the Indian Penal Code in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as is specified in section 15 unless the agreement is an agreement to commit an offence."

This section gives immunity to the members and officers of registered trade unions from the operation of the law of conspiracy in India. My Bill proposes that the same immunity should be extended to members of unregistered trade unions and to any group of workers who are engaged in a trade dispute. The object of my Bill is to bring the law on this question into line with the English law. In England there used to be a law of conspiracy by which workmen who combine for the sake of a trade dispute were punished under the law of conspiracy, but in the year 1875 the law was changed so that immunity was given to all workers who combine together for a trade dispute. The English law as it stands to-day is this:

"An agreement or combination by two or more persons to do or to procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such an act committed by one person would not be punishable as a crime."

The English law does not give immunity only to the members of registered trade unions although there is a law in England to register trade unions. Nor does the English law give immunity only to the members of a trade

union. The English law gives immunity to all persons who are engaged in a trade dispute and my Bill proposes that similar immunity should be given to Indian workers also. Sir, the Government of India does not or cannot now dispute the utility of giving immunity to organised workers because they themselves have now given immunity to the members and officers of registered trade unions in the Indian Trade Unions Act. I need not therefore explain. . . . .

**Mr. President:** The Honourable Member stated on a previous motion that the principle should not be discussed at length on a motion of this kind.

**Mr. N. M. Joshi:** I have no intention to discuss the principle if that ruling is to apply to all persons. I am quite willing to bring my speech to a close as soon as possible.

**Mr. President:** What is the Honourable Member's suggestion in his remarks "if it is to apply to all persons"?

**Mr. N. M. Joshi:** Up to this time peoples were making speeches and so I thought that I might also. . . . .

**Mr. President:** The Honourable Member knows that the motion then before the House was that the Bill be referred to a Select Committee, to which an amendment was moved that the Bill be circulated for the purpose of eliciting opinions. The Chair having ruled that both motions were before the House, Honourable Members were entitled to discuss the principles of that Bill. It is otherwise with this motion.

**Mr. N. M. Joshi:** Then I do not wish to take any more time in discussing. . . . .

**Mr. President:** I was merely reminding the Honourable Member of his own objection to the procedure he now follows.

**Mr. N. M. Joshi:** In the present industrial conditions of India there are very few unions and only very few of them are registered and the workers will not be able therefore to get the benefit of the Trade Unions Act. If the immunity is to be of use to the workers in India, the immunity must be extended not only to the members of the registered trade unions but to all trade unions and also to all unorganised workers. It is only then that the immunity will be of some use. As the Government may not oppose my motion, I do not wish to make any more remarks.

**The Honourable Sir Bhupendra Nath Mitra** (Member for Industries and Labour): Sir, it is the present opinion of the Government of India that the Bill whose circulation for eliciting opinions thereon has been moved by my Honourable friend Mr. Joshi is open to serious objections, and that the Bill if it becomes law may have the effect of defeating the purpose with which Mr. Joshi proposes to get it placed on the Statute-book. There is no reason why people generally should receive direct encouragement to do illegal acts. In the case of a certain class of workmen, the Legislature agreed to a concession in the Trade Unions Act passed in 1926, because they felt that by taking that action they would encourage the growth of trade unions in this country on proper lines. That is one thing, but to give the same concession to a body of irresponsible people improperly organised or not organised at all is a different matter. I therefore want at this stage to put in a clear caveat that in the opinion of the Government

[Sir Bhupendra Nath Mitra.]

as they understand the position at present, this Bill is open to serious objection and they may have to oppose it very definitely at later stages. At the same time they have no desire to oppose the particular motion which has been made by my friend Mr. Joshi at the present stage.

**Mr. President:** The question is:

"That the Bill further to amend the Indian Penal Code be circulated for the purpose of eliciting opinions thereon."

The motion was adopted.

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### THE HINDU MARRIAGES DISSOLUTION BILL.

**Sir Hari Singh Gour** (Central Provinces Hindi Divisions: Non-Muhamadan): Sir, I beg to move for leave to introduce a Bill to remove certain doubts regarding the dissolution of marriages of persons professing the Hindu religion.

One word will suffice to convince this House why this Bill is necessary. I have cited *Narad* and *Vashisth*, whose Smritis are of the most revered authorities on Hindu law, in support of my measure, but the municipal courts, that is the civil courts, have in a large number of cases decided that they do not possess any jurisdiction to decide questions of marital law arising between Hindus and my Bill will give the courts that power. If the House gives me leave later on, I intend to add one clause to this Bill, to give civil courts jurisdiction to declare a dissolution of marriage in such cases. For the present I will rest content to ask leave to introduce the Bill.

The motion was adopted.

**Sir Hari Singh Gour:** Sir, I introduce the Bill.

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### THE HINDU LAW OF INHERITANCE (AMENDMENT) BILL.

**Sir Hari Singh Gour** (Central Provinces Hindi Divisions: Non-Muhamadan): Sir, I beg to move for leave to introduce a Bill to alter the order in which certain heirs of a deceased Hindu dying intestate are entitled to succeed to his estate.

I need scarcely say that this is a companion Bill to that which this House just now passed. The object of that Bill was to enact a law to remedy the exclusion of certain persons from inheritance. The object of this Bill is to let in relations of a person as heirs. Both these Bills were circulated in 1921 and passed by this House without a division, but they met the fate to which I have referred, in another place. This is a revival of the Bill of 1923, and I ask this House to concur in its introduction.

The motion was adopted.

**Sir Hari Singh Gour:** Sir, I introduce the Bill.

## THE INDIAN LIFE ASSURANCE COMPANIES (AMENDMENT) BILL.

**Mr. N. C. Kelkar** (Bombay Central Division: Non-Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill to provide for putting certain foreign Life Insurance Companies doing business in India, on a footing of equality with others, in certain respects, by withdrawing certain special facilities now given to the former.

The object is sufficiently stated in the Statement of Objects and Reasons.

Sir, I move.

The motion was adopted.

**Mr. N. C. Kelkar**: Sir, I introduce the Bill.

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## THE HINDU MARRIAGES DISSOLUTION BILL.

**Sir Hari Singh Gour** (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I move that the Bill to remove certain doubts regarding the dissolution of marriages of persons professing the Hindu religion, be circulated for the purpose of eliciting opinions thereon.

The House has already heard from me the reason why I introduced this Bill to remove certain doubts regarding the dissolution of marriages, and I hope the House will concur in the motion I now make.

Sir, I move.

The motion was adopted.

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## THE HINDU LAW OF INHERITANCE (AMENDMENT) BILL.

**Sir Hari Singh Gour** (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I move that the Bill to alter the order in which certain heirs of a deceased Hindu dying intestate are entitled to succeed to his estate be taken into consideration.

I have already given reasons for this Bill. It was passed by this Assembly in 1923, and for reasons which I have stated was not passed by the other House. I ask that this House should reaffirm its decision of 1923.

**The Honourable Mr. J. Ozerar** (Home Member): Sir, I have only a few observations to make on this motion. The Government are prepared to leave it to the sense of the House. In their own opinion the matter involved in this Bill has in the past been one of considerable controversy. They themselves considered that legislation on these lines should be enacted in the provinces. So far as the presidency towns are concerned, I admit that probably it is *ultra vires* of provincial Councils to enact legislation of this kind so far as the area subject to the original jurisdiction of the High Courts are concerned. If such a case arose the Government of India would be prepared to consider the desirability of any necessary validating

[Mr. J. Crerar.]

legislation. However, if the House wish to proceed to the consideration of this Bill as a measure of the Indian Legislature, subject to the remarks I have made, Government are prepared to leave it to the general sense of the House.

**Mr. President:** The question is:

"That the Bill to alter the order in which certain heirs of a deceased Hindu dying intestate are entitled to succeed to his estate be taken into consideration."

The motion was adopted.

Clauses 2, 3 and 4 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

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

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Monday, the 26th March, 1928.

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