

19th September 1929

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

Volume IV

*(2nd September to 17th September, 1929)*

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**FIFTH SESSION**  
OF THE  
**THIRD LEGISLATIVE ASSEMBLY**  
**1929**



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# LEGISLATIVE ASSEMBLY.

*Thursday, 19th September, 1929.*

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

## SHORT NOTICE QUESTIONS AND ANSWERS.

### SIR SAMUEL WILSON'S REPORT ON EAST AFRICA.

**Pandit Hirday Nath Kunzru :** With reference to my short notice question on the 10th September regarding Sir Samuel Wilson's Report on his mission to East Africa, are Government now in a position to give the House any further information on the subject ?

**Sir Frank Noyce :** The Government of India are informed that Sir Samuel Wilson's Report will be published simultaneously in England and in East Africa on October 5 and are arranging its publication in India on the same date.

As to the Hilton-Young Report, the tentative decisions arrived at by the Government of India after consulting the Emigration Committee and the leaders of the various parties in the House were sent to the Secretary of State for India and will be laid on the table of the House. It is now intended to convene a meeting of the Emigration Committee at an early date to see if anything more should be done before Sir Samuel Wilson's Report is published. After the publication of Sir Samuel Wilson's Report, it will be necessary to consult the standing Emigration Committee on the Report soon after the publication of the Report, so that His Majesty's Government may be at once informed of our views on it. It is not possible that His Majesty's Government should defer consideration of the issue until the Legislative Assembly meets next Session, but it is most unlikely that any decision will be reached in Parliament before the Legislative Assembly has had an opportunity to record its views.

**Pandit Hirday Nath Kunzru :** May I know whether this decision has been arrived at after considering the request of the Government of India to give the Assembly time to consider Sir Samuel Wilson's Report ?

**Sir Frank Noyce :** The date of publication of the Report has been fixed by His Majesty's Government. The Government of India's advice was that the Report should be published at a time which would give the Assembly an opportunity to discuss it before a final decision was taken.

**Mr. A. Rangaswami Iyengar :** May I know if the Home Government have given the Government of India an undertaking that they will not come to any final decision on the Hilton-Young Report or Sir Samuel Wilson's Report before the Assembly could express its views upon them in the next Session ?

**Sir Frank Noyce :** I think, Sir, that question is answered in the last part of the reply which I have given, which is that it is most unlikely that any decision will be reached in Parliament before the Legislative Assembly has had an opportunity to record its views.

**Mr. A. Rangaswami Iyengar :** That is only an expression of opinion. I am asking whether as a fact the Government of India have been informed by the Home Government that they will not take any decision before the Assembly has had an opportunity of arriving at a decision ?

**Sir Frank Noyce :** I have given the Honourable Member all the information I am at present in a position to give him.

**Mr. A. Rangaswami Iyengar :** Am I to take it then that no such undertaking is in the possession of Government ?

**Sir Frank Noyce :** As I have said, Sir, I have given the Honourable Member all the information I am in a position to give him.

COMMUNICATION TO THE SECRETARY OF STATE *re* THE HILTON-YOUNG COMMISSION'S REPORT.

**Sir Purshotamdas Thakurdas :** Will Government be pleased to put on the table a copy of their communication to the Secretary of State for India in connection with the recommendations of the Hilton-Young Commission Report regarding the East African problem ?

**Sir Frank Noyce :** I have placed on the table of the House a copy of the telegram which the Government of India despatched to the Secretary of State for India on the subject on the 19th March, 1929.

**Sir Purshotamdas Thakurdas :** May I ask whether that telegram contains the opinion of the Governor General in Council ?

**Sir Frank Noyce :** Certainly, Sir. The Honourable Member will himself see what it contains in the course of the next few minutes.

**Sir Purshotamdas Thakurdas :** I want to make sure now before I see it, because, as the Honourable Member knows, after seeing it there will be no time to put supplementary questions.

TELEGRAM P., TO THE SECRETARY OF STATE FOR INDIA, LONDON, NO. 1124-S., DATED THE 19TH MARCH, 1929.

*Immediate.*—Hilton-Young Report has been examined and we now submit our views on main points. It is an eminently fair document and we earnestly hope that its basic principles will be accepted by His Majesty's Government and that High Commissioner will be deputed to conduct inquiries and consultations in terms suggested by Commission. Our comments are as follows :—

(a) *Closer Union.*—Size and influence of European settlers in Kenya create apprehension that in any scheme of closer union their political ideals will profoundly affect policy of central authority established to co-ordinate administration and policy in matters of common interest. For this reason plan of political coalescence, immediate or future, which would reduce three territories of Kenya, Uganda and Tanganyika to provinces of unified State exercising both executive and legislative powers (*cf.* page 221 of Report) is open to objection from Indian stand-point. But we are not opposed to appointment of Governor General to co-ordinate native policy and administration of services like Customs and Transport, on the understanding that it is recognised that, (1) such step is not prelude to full-fledged political federation ; (2) Indians are adequately represented on General Advisory Council which Commission recommend should be set up in East Africa [(2) (a) page 289 of Report] ; and (3) headquarters of Governor General are located at centre free from racial animosities. Further if Governor General is appointed, his instrument of instruction should lay due emphasis on duty to enforce inter-racial justice in impartial spirit and with firm hand.

It is also suggested that Indian point of view be represented on Advisory Council proposed to be set up in London, and unofficial Indian representatives should be asked to participate in periodical conference, which Commission suggest should be held in London [(5) (a) and (6), page 289 of Report].

(b) *Native Policy.*—We gladly accept principle of paramountcy of native interests subject to condition that in practice principle should not be interpreted and applied to discriminate against immigrants of a particular race.

(c) *Land settlement.*—Indian settlers should be free to share on equal terms with Europeans in any scheme of land settlement that may be inaugurated by Government of Tanganyika after setting apart land to meet requirements of natives. Whatever position may have been in past, in future Indian demand for land settlement in Tanganyika and probably also in lowlands of Kenya is bound to be substantial. It

is not suggested that financial facilities offered by His Majesty's Government to settlers from Great Britain should be extended to Indians.

(d) *Association of immigrant communities in responsibilities and trusteeship of Government.*—We should like to emphasise that such association should not be confined to representatives of European settlers only, but should include representatives of all immigrant communities.

(e) *Kenya Legislative Council.*—Chairman's proposals are not acceptable to us, but we welcome majority report as opening door to satisfactory settlement of vexed question of common *versus* communal electoral roll. Civilisation test is also approved in principle. On question of replacing four officials by four members nominated to represent native interests, stress should, we think, be laid on need for treating Indians as eligible to represent natives. It is, however, suggested that, if extension of experiment of replacing more officials by such representatives at some future date is contemplated, effect of such extension on Indian representation should be carefully examined.

(f) We agree to appointment of High Commissioner for local investigations and discussions, recommended by Commission, but attach great importance to allowing Government of India to send representative to East Africa to assist local Indians presenting their views to High Commissioner.

This is in continuation of our telegram No. 144-0s., dated the 14th ultimo.

## THE HINDU CHILD MARRIAGE BILL.

### PRESENTATION OF THE REPORT OF THE COMMITTEE ON PUBLIC PETITIONS.

**Maulvi Muhammad Yakub** (Chairman, Committee on Public Petitions): Sir, I have the honour to lay a Report of the Committee on Petitions. There are 98 petitions, bearing 46,134 signatures, relating to the Child Marriage Bill. All these petitions are against the Bill.

### BILLS PASSED BY THE COUNCIL OF STATE LAID ON THE TABLE.

**Secretary of the Assembly:** Sir, in accordance with rule 25 of the Indian Legislative Rules, I lay on the table the following Bills which were passed by the Council of State at their meeting held on the 18th September, 1929.:

- (1) A Bill further to amend the Indian Territorial Force Act, 1920, for a certain purpose.
- (2) A Bill further to amend the Indian Cotton Cess Act, 1923, for certain purposes.
- (3) A Bill further to amend the Indian Registration Act, 1908, for a certain purpose.
- (4) A Bill further to amend the Burma Salt Act, 1917, for certain purposes.
- (5) A Bill further to amend the Guardians and Wards Act, 1890, for a certain purpose.
- (6) A Bill further to amend the Indian Succession Act, 1925, for certain purposes.

### STATEMENT LAID ON THE TABLE.

#### PURCHASE OF STORES BY THE HIGH COMMISSIONER FOR INDIA.

**The Honourable Sir Bhupendra Nath Mitra** (Member for Industries and Labour): Sir, I beg to lay on the table a statement furnished by the High Commissioner for India showing all cases in which the lowest tenders have not been accepted by him in purchasing stores for the Government of India during the half year ending the 30th June, 1929.

## HIGH COMMISSION

## INDIA STORES

**ABSTRACT OF CASES** in which tenders for Stores demanded by the Central  
tion of the goods demanded, were accepted on the grounds  
greater facility of inspection,

## HALF-YEAR ENDING

**PART A.**—*Cases in which lower foreign tenders, including British tenders  
British*

Stores ordered.	Contract Number.	Name of Contractor.	Amount of Contract.
			£ s. d.
Copper firebox plates.	H 3899/6449/3-1-29	Linley & Co.	777 10 6
	H. 3900/6449/3-1-29	W. Roberts & Co., Garston (1928), Ltd.	462 10 0
			1,240 0 6 (British).
Paper, unsensitized	H. 4187/7445/28-1-29	Basted Paper Mills Co., Ltd.	38 19 2 (British).
Paper binding	H. 4543/7487/16-2-29	Smith & McLarin, Ltd.	58 15 0 (British).
Wire, electric	K. 512/221/7-5-29	Thomas Bolton & Sons, Ltd.	27 2 10 (British).
Axles, crank	K. 1085/1364/24-6-29	Carters (Merchants), Ltd.	2,091 8 6 (Czecho- Slovakian).
	K. 1086/1364/24-6-29	Steel, Peech & Tozer, Ltd.	2,868 0 0 (British).
			4,959 8 6

**FE FOR INDIA.**

**DEPARTMENT.**

Government, other than the lowest complying with the technical description of superior quality, superior trustworthiness of the firm tendering, quicker delivery, etc.

**30TH JUNE, 1929.**

*for foreign made goods, have been set aside wholly or partially in favour of tenders.*

Lowest Tender not accepted.	Reason for acceptance.
<p>£   s.   d.</p> <p>1,069 14 0 (German).</p>	<p>Some of the plates were required immediately and the balance by March and April 1929. The four lowest tenders offered delivery which did not meet the indent requirements. The order was therefore placed with the two firms who were next lowest.</p>
<p>24 5 0 (German).</p>	<p>The paper was required immediately. The delivery offered by the lowest tenderer was far too long and the next lowest tender was therefore accepted.</p>
<p>45 0 0 (Belgian).</p>	<p>The paper was required in India not later than the end of March 1929. The lowest tenderer offered delivery which would not have met the indent requirements. The order was, therefore, placed with the next lowest tenderer.</p>
<p>26 0 10 (German).</p>	<p>The accepted tender was the better offer, having regard to the cost of inspection abroad.</p>
<p>4,832 16 6 (Czecho-Slovakian).</p>	<p>The axles were required immediately. The four lowest tenderers offered very long delivery. It was therefore decided to divide the order, part being given to the lowest tenderer and the balance to the fifth tenderer, who, out of 16 tenderers, was the lowest offering quick delivery.</p>

## PART B.—Cases in which the discrimina

Stores ordered.	Contract Number.	Name of Contractor.	Amount of Contract.
			£ s. d.
Enamel white .	H. 3886/4374/2-1-29 .	Lewis Berger & Sons .	73 2 6
	H. 3887/4374/2-1-29 .	Denton & Jutsum . .	116 5 0
			189 7 6 (British).
Stands, signalling telescope.	H. 4317/5999/5-2-29 .	W. Ottway & Co., Ltd. .	300 0 0 (British).
Rolling shutters .	H. 4438/5148/11-2-29 .	Arthur L. Gibson & Co., Ltd.	114 6 5 (British).
Chains . .	H. 4456/7728/12-2-29 .	Thomas Perrins .	185 18 3 (British).
Compasses, dividers	H. 4533/7772/15-2-29 .	W. F. Stanley & Co., Ltd. .	108 6 8 (British).
Putties . .	K. 246/8198/17-4-29 .	Fox Bros. & Co., Ltd. .	10,591 5 0
	K. 247/8198/17-4-29 .	Astrachans, Ltd. . .	3,647 7 11
			14,238 12 11 (British).
Slide Rules . .	K. 394/4/29-4-29 . .	W. F. Stanley & Co., Ltd. .	303 6 8
	K. 393/4/29-4-29 . .	Cooke Troughton & Simms, Ltd.	442 3 0
			745 9 8 (British).
Locomotive boilers, cylinders, etc.	K. 1006/4138/17-6-29 .	Nasmyth, Wilson & Co. .	31,119 10 0 (British).

*tion is between British firms only.*

Lowest Tender not accepted.	Reason for acceptance.
£ s. d. 146 5 0 (British).	The Indenting Officer asked for supply of 300 gallons of a proprietary brand of enamel. Tenders were, however, invited, when the samples submitted were found to vary considerably in quality. With the concurrence of the Indenting Officer the order was divided equally between the lowest tenderer and another manufacturer in order that two qualities might be practically tested with a view to determine whether superiority of quality justified the use of the higher priced article.
293 2 6 (British).	The stands were required in India as soon as possible after 1st April, 1929. The lowest tenderer offered delivery which would not have met the indent requirements. The order was, therefore, placed with the next lowest tenderer.
107 2 0 (British).	Accepted on the grounds of the superior design of the shutters offered which represented more than the difference in price between the two quotations.
182 8 9 (British).	Accepted on the ground of earlier delivery, as immediate supply was required by indenter.
94 15 10 (British).	The order was placed with the second lowest tenderer in order to obtain the delivery required.
14,189 13 9 (British).	95,100 pairs of putties were required to reach India from 1st July, 1929 to 31st December, 1929. The delivery offered by the lowest tenderer would not have complied with the indent requirements. It was therefore decided to divide the order, giving the larger portion to the lowest tenderer.
717 12 0 (British).	The order was divided between the two lowest tenderers to secure the required delivery.
81,000 0 0 (British).	The delivery offered by the lowest tenderer was too long to be considered. The order was, therefore, placed with the next lowest tenderer.

PART C.—*Cases in which the discrimina*

Stores ordered.	Contract Number.	Name of Contractor.	Amount of Contract.
Insulators . .	H. 4909/7835/7-3-29 .	Porzellan-Industrie-Aktiengesellschaft Berg- haus.	<p>£ s. d.</p> <p>3,875 0 0 (German).</p>
Copper plates .	K. 275/8079/18-4-29 .	Berg-Heckmann Selve A.G.	<p>1,236 8 0 (German).</p>



## STATEMENT OF BUSINESS.

**The Honourable Sir James Orerar** (Leader of the House) : Sir, with your permission, I should like to make a statement about the probable course of Government business during next week. On Monday, the 23rd instant, motions will be moved to take into consideration and also to pass the Bill further to amend the Indian Income-tax Act, 1922, for certain purposes. The Report of the Select Committee on this Bill was presented to this House last Monday. On Wednesday, the 25th, the House will proceed to deal with the Supplementary Demands for Grants for expenditure of the Central Government (excluding Railways) for 1929-30. Thereafter two Resolutions—one regarding the formation of a Standing Committee for Roads, and the other on the subject of the Draft Convention regarding the machinery for fixing minimum wages in certain trades, of which the Honourable Sir B. N. Mitra has given notice, will be taken up. On the same day motions will be made for taking into consideration and passing the following Bills which were passed by the Council of State :

1. A Bill further to amend the Indian Territorial Force Act, 1920, for a certain purpose.
2. A Bill further to amend the Indian Cotton Cess Act, 1923, for certain purposes.
3. A Bill further to amend the Indian Registration Act, 1908, for a certain purpose.
4. A Bill further to amend the Burma Salt Act, 1917, for certain purposes.
5. A Bill further to amend the Guardians and Wards Act, 1890, for a certain purpose.
6. A Bill further to amend the Indian Succession Act, 1925, for certain purposes.

Copies of all these Bills have been laid on the table of this House today.

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### THE HINDU CHILD MARRIAGE BILL—*contd.*

**Mr. President** : The House will now resume further discussion of the amendment of Pandit Nilakantha Das to clause 11 of the Child Marriage Bill. But I understand that the amendment seeks to add a further clause to this Bill after clause 11. Therefore it is necessary that I should put clause 11 first to the vote and allow further discussion of that amendment afterwards.

The question is :

“ That clause 11 stand part of the Bill.”

The motion was adopted.

Clause 11 was added to the Bill.

**Mr. President** : The House will now take up Pandit Nilakantha Das's amendment.

**Mr. E. L. Price** (Bombay : European) : Sir, I want to oppose this amendment. A number of communications which I got concerning this

Bill asked me to support the age of 16 years. I had to refuse because I think we cannot rely on the support of Government for anything but 14 years ; and the real struggle, which is renewed over this amendment, is between the ages of 14 and 12.

Sir, those who are supporting this Bill look upon the inclusion of the age of 12 under the circumstances as being a stultification of the whole Bill. We kept out 12 from the front door ; they tried to pass it in through the window. We barred the window, and they are now trying to get it in through the back door. But I insist that the supporters of the Bill must guard all points of entry and keep out this fatal 12.

It seems to me, Sir, rather hard on Members who have stuck to their task through numerous divisions that Mr. Iyengar should reproach them for not talking. It seemed to us on this side that we could best serve the interests of the Bill by not adding to the wave of verbiage that proceeded from the obstructionists.

**Mr. A. Rangaswami Iyengar** (Tanjore *cum* Trichinopoly : Non-Muhammadian Rural) : I wanted you to apply your brain to the clauses.

**Mr. E. L. Price** : Thank you ! Sir, there is the difficulty of reasoning with the unreasonable, of placating the implacable, and of trying to remove prejudices that we know are ineradicable and have shown themselves so at every moment of the debate since the Bill was put before us for consideration, at the first meeting. Besides, Sir, how are we to know that the so numerous amendments put up from that side of the House are really serious ? I think I heard you, Sir, describe one of them as "frivolous" ; and I certainly heard a Member yesterday saying "I am really serious this time", which is a pretty clear implication that on other occasions he had not been serious.

**Mr. Gaya Prasad Singh** (Muzaffarpur *cum* Champaran : Non-Muhammadian) : The Chair told you the other day that you were not a free agent ; you must remember that too.

**Mr. E. L. Price** : When the Honourable the Law Member yesterday represented what this amendment really would signify, when at last he spoke, he was assailed, not with argument, but with abuse. He had made it clear what this amendment would mean. Rich people can easily arrange affidavits ; they can hire a senior member of the bar to put those affidavits before the court, and there is every likelihood that that senior member will get attention. But what about the child ? Is the child going to be represented ? Is anybody going to put up an affidavit on her behalf—poor kiddy ? No ! The thing goes *ex parte* by default of the helpless child. The Honourable Pandit Malaviya represented yesterday that the habits as to these juvenile marriages affect the depressed classes also. If they do so, it seems to me it is quite obvious they do so as a result of the bad example set them by the higher castes ; and if you are going to do anything for the depressed classes in this matter, you have got to stop the bad example at the top, not allowing it a new method of carrying on and making, in fact, one law for the rich and another law for the poor. At the present time there is no legal justification for the marriage at 12. It is an evil custom and you want to eradicate it ; but if you permit this addition to the Bill, you actually introduce into the Bill that was ordained to prevent a bad custom, legal sanction for that bad custom.

[Mr. E. L. Price.]

Sir, the Honourable Pandit Motilal Nehru, when he first spoke, told us that the eyes of the world were on this Assembly. Letters and Press cuttings I have received by the air-mail seem to indicate that what the Honourable the Pandit said was perfectly correct. The eyes of the world are on this Assembly over this matter. It can be easily measured actually in terms of money, because newspapers will only pay for the cablegrams that interest their readers—quite obviously their readers are interested : There never was a time when the Press of the world outside India published so many cablegrams on any matter in India as they are doing over the Sarda Marriage Bill. I say this, Sir : adopt this amendment and legalise by the back-door the marriage at 12, and you bring this Assembly into contempt ; you paralyse social reform and you cover the best friends of India with confusion.

**Mr. President :** Before we proceed further, I wish to inform the House that I have just received notice of an amendment which is a very long one, from Mr. Mukhtar Singh on the same question. It has not been possible to distribute copies of the amendment at this late stage ; but if there is a general desire in the House that I should allow the Honourable Member to move his amendment, I shall have no objection.

**Maulvi Muhammad Yakub** (Rohilkund and Kamaon Divisions : Muhammadan Rural) : Let us know what this amendment is.

**Mr. President :** It is a lengthy amendment.

**Honourable Members :** Notice.

**Mr. President :** The Honourable Member had a long time before him to give notice of an amendment of this character. How can there be any intelligent discussion on this amendment all at once on the spur of the moment, when Honourable Members have got no copies before them in time to understand what the amendment is ?

**Mr. Mukhtar Singh** (Meerut Division : Non-Muhammadan Rural) : May I be allowed to read it ?

**Mr. President :** Is there a general desire in the House to have this amendment moved ? (*Cries of "No."*)

**Mr. Mukhtar Singh :** Unless the House knows what the amendment is like, how can the House say whether they want it or not ?

**Mr. President :** I shall read the amendment to the House, and the House can then make up its mind whether it wants this amendment to be moved or not. The amendment is :

“ That at the end of the Bill the following new clause be added :

‘ No marriage of a girl above the age of 12 years shall be deemed to be a child marriage within the meaning of this Act, if the parent or guardian solemnising the marriage has, prior to such solemnisation, obtained the sanction of the District Judge of the place where the girl ordinarily resides.

The District Judge, on application being made by the parent or guardian of a girl above the age of 12 years, stating the circumstances under which such parent or guardian deems it essential in the interests of the girl to marry her before the statutory age, shall inquire into the circumstances and, if he comes to the conclusion that the proposed marriage before the statutory age is in the best interests of the girl herself in so far as :

(a) there is no probability of the celebration of the proposed marriage within one year after the girl comes of the statutory age, or

(b) it is likely that the parent or guardian of the girl will not, owing to old age or infirmity, survive till she comes of age and there is none else fit to take care of her, or

(c) there are other unavoidable difficulties of a like nature justifying the grant of such sanction,

the court may grant the sanction, provided the applicant furnishes security to the satisfaction of the court in respect of such conditions as separate living, custody or maintenance of the girl till the statutory age of consent, as the court in its discretion deems fit to impose'."

Honourable Members have heard the amendment. Is it the general desire of the House to have this amendment? (*Cries of "No, no."*) I am afraid I cannot allow this amendment at this stage.

**Pandit Motilal Nehru** (Cities of the United Provinces : Non-Muhammadan Urban) : Sir, I heard the speeches in support of this amendment made from this side of the House yesterday and I went back home satisfied that this amendment need not be made in the original Bill ; but after hearing the speech of the last speaker, Mr. Price, I recalled to mind the community he comes from, and it struck me that there is something in this amendment which may benefit that community though not the other communities who have so far advocated it. I will explain why.

The reasons given yesterday were similar to those that were mentioned in the proposed amendment of Mr. Mukhtar Singh which has just been disallowed. They were want of means, old age of the parents, the possibility of there being no near relation when the girl attains the age of 14. All these reasons did not appeal to me at all, but I have been thinking whether there can conceivably be a case where it would be in the interest of the girl herself to be married under special dispensation. Now, it occurs to me that that would happen in a case where a man misbehaves with a girl of over 12 years of age and not quite 14. Now consider the consequences for a moment. So far as the Hindu law is concerned, of course her marriage is out of the question, and in that case the girl is doomed for ever. But now look at the question from the point of view of others than Hindus. If there has been such a case of misbehaviour, what is the best thing in the interest of the girl to do, if, as might happen, she conceives and bears a child. What will be the best thing in her interest to do in such a case ? She is less than 14 and she is more than 12. Cases of this kind have occurred in England, as we know from the Reports, and will occur in the future in all parts of the world. Now, let us consider the position of the girl herself, the poor kiddy, as Mr. Price styled her. She is of course to be pitied, but is that enough ? Should not the law leave some room for her to come back into decent life and not to remain for ever and ever under the stigma of a disgraceful motherhood, for which probably she was not responsible ? In a case like that, I think, the only course to adopt is to solemnise the marriage technically, to make the couple to go through the form of marriage, provided of course the two parties are consenting, and thus save the bitter consequences of a life of shame for the poor girl. If that is not done, the man who has offended against the rule as to the age of consent, will be tried and sentenced and after serving out the sentence, take no notice of the girl who will be left helpless. If she is a Hindu girl, she will in any case be discarded from society with nobody to look after or care for her. But so far as the non-Hindus are concerned, I

[Pandit Motilal Nehru.]

think that there is a way to save that girl and that is to marry her under special dispensation, but that, I submit, would be impossible unless you have a provision to that effect in the Bill itself. Now, that, Sir, is what has occurred to me as the only possible case in which it may be said that the solemnisation of the marriage of a girl under 14 would be for her own benefit. I would, therefore, submit that as this Act is of general application and is not confined to Hindus, we must not overlook the interests of non-Hindus. I would therefore support the principle of this amendment in the interest of the girl and the girl alone and of no other....

**Mr. President :** Will the Honourable Member move his amendment ?

**Pandit Motilal Nehru :** I don't move any amendment. I simply support the principle of the amendment before the House in the special case I have mentioned.

**The Honourable Sir James Crerar (Home Member) :** Sir, I should like to say a few words at this stage to explain the reasons why, for my own part, I feel it necessary that this amendment must be opposed. It is indeed, as an Honourable Member who preceded me argued, a somewhat veiled attempt to defeat a decision at which this House, after very prolonged debate and mature deliberation, has arrived.

Now, Sir, I think the House would be extremely unwise and would, I think, put themselves in an extremely ambiguous position if they lent their support at this stage to an amendment which completely negatives or defeats their previous decisions, subject only to a qualification which, as I shall endeavour to establish, would make the case even worse. I submit that it is extremely important in the case of any law, more particularly in the case of any penal law, and more particularly still in the case of a penal law newly enacted in a sphere which has hitherto not been the subject of penal law, that that law should be clear, that its application should be precise and the principles on which it is administered should be uniform. Now, what does this amendment propose to do ? It proposes to place in the hands of hundreds of District Judges throughout India the substantial decision in each case as to what the law means, what is the principle behind it, and in what manner it ought to be applied and administered. I say, Sir, that it is an essentially vicious feature of the amendment. It makes the law uncertain, it deprives it of uniformity and it delegates in point of fact to an individual judicial officer what is the duty of the Legislature, namely, to lay down the principle of the Bill. What then would happen ? It might very well happen that, in cases of a similar character, you would obtain the most diverse decisions from the various District Courts throughout India. It might even happen that cases occurring in one district would be dealt with and decided on entirely different principles from similar cases in adjoining districts, according to the prejudices or the idiosyncracies of particular District Judges.

It is alleged, Sir, on behalf of those who supported this amendment, that it would go far to promote the popularity of the Bill. I venture to suggest, on the contrary, that it would have a completely opposite effect. The fact that different views were held by different Judges,

that the law was uncertain, that there was no uniformity, in its application, and that the actual determination of its principles was left to individual judgments would, I think, in course of time, lead to such diversities, such irregularities, such inequalities of operation as would raise a very great measure of unpopularity and discontent on a Bill which otherwise in a very short time, as I venture to hope, would be accommodated to the social system. (*Several Honourable Members on the Swarajist Benches* : "No, no.")

**Mr. A. Rangaswamy Iyengar** : Not as you have framed it.

**The Honourable Sir James Orerar** : So, what I urge is that if my prediction in any way approximates to the fact, then this House will either have to re-call the decisions at which they have already, with so much deliberation, arrived, or if this amendment is enacted, they will have to repeal it.

**Pandit Motilal Nehru** : On a point of explanation, Sir. I did not and had no intention of moving any amendment by a change of the wording. I simply threw out a suggestion to those sides of the House which might probably be affected if the principle of this amendment was not recognised. So far as I am concerned, I do not propose any amendment, nor do I support the amendment as it stands on the paper.

**Mr. M. R. Jayakar** (Bombay City : Non-Muhammadan Urban) : I have very carefully considered the merits of this amendment, and since yesterday evening I have had considerable time to apply my mind from all the points of view which were urged before this House yesterday and this morning by my esteemed friend Pandit Motilal Nehru. From the thought that I have been able to devote to this amendment, and with all the weight of Pandit Motilal Nehru's comments, I am compelled to come to the conclusion that in its present form, even from the point of view that Pandit Motilal Nehru has put forward, this amendment ought to be opposed. I am aware that the considerations which Pandit Motilal Nehru has mentioned are of a very grave character, and I expect that, before this law is put into force, we shall have to provide before long for the beneficial working of this Act a provision of the description that Pandit Motilal Nehru has in view. In fact, such a provision will be in a line with what other countries have provided, especially those where the marriageable age is high like 16 to 21 years and where the marriage is regarded as void if it is solemnised before that age, which this Bill does not do. All these countries, for the proper working of their matrimonial laws like the present Bill, have been compelled to resort to a provision like the one which Pandit Motilal Nehru has mentioned. But I submit with great respect to Pandit Motilal Nehru that the amendment, as it is worded and even with the modification which he has suggested, will not be useful for that purpose. (*An Honourable Member* : "You suggest one.") I am not suggesting one because it is difficult to do so off hand so as to provide for all the complexities of the case. But I do consider that it is a very grave consideration, and my opinion is that, before long, it would be necessary to have a carefully worded amendment so as to secure the object that my Honourable friend has in view.

The wording of the present amendment is far too wide for that purpose. First of all, if we take the analogy of those countries which

[Mr. M. R. Jayakar.]

have got a law like the amendment before us, its most distinguishing feature is that it is generally the supreme Court and sometimes the Crown advised by that court that generally takes measures to legitimatise the marriage,—not an inferior official like the District Judge. The power has always rested in the highest tribunal of the country which takes the necessary measures. I submit that the power given by this amendment to the District Judge is placed far too low for the purpose of any useful working of this amendment. My second objection is that the wording is far too wide, even accepting the modification that Pandit Motilal Nehru has mentioned. The words are : “ the non-performance of which would mean hardship to the girl or her family ”. First, I take the wording of this amendment as it stands. “ Hardship to the girl or her family ”. I can imagine several cases which will fall within these words, which can not be protected. Let us take the words, “ hardship to the family ”. Suppose a case occurs before the District Judge, where the facts are as follows : “ The plea is that an I. C. S. husband is available for the girl at the age of 13. He has recently come from England, he is in a hurry to find a wife and is not going to wait until the girl is 14. He is in a hurry to marry, and it is a very desirable choice, no dowry, the man is intelligent and attractive and in every respect desirable. The father of the girl comes before the District Judge and argues that not to marry the girl in those circumstances is a positive ‘ hardship to the girl or her family ’.” The word in the amendment is “ hardship ”,—though not the kind of hardship that my Honourable friend Pandit Motilal Nehru has in view, it is a different kind of hardship. Take another case. Supposing an orthodox parent came to a District Judge and said : “ My community has decided that if I do not accept their choice of a husband or marry the girl at the age and in the manner the caste *jamat* wants me to do, I shall have to pay a fine of Rs. 500, which my caste *jamat* may impose ”. In such a case, not to perform the marriage is “ a hardship to the family ”. The District Judge will be very often persuaded to grant the application because the matter complained of falls within the meaning of the word “ hardship ”. But the most extravagant case was suggested by my Honourable friend Pandit Nilakantha Das yesterday. He practically gave to the House extreme instances which show in what way, in some cases, this amendment may come to be interpreted. His case was this : a man has three daughters ; he has very short privilege leave. He is allowed short leave to go to his province to solemnise the marriage, and he will not be allowed any extension of leave. In such a case it would be a “ hardship ” not to get all the three girls of 9, 11 and 14 years married together. Look at the absurd lengths to which the meaning of the word “ hardship ” will be taken in the cases cited by Pandit Nilakantha Das. He says that such cases ought to be protected. A father goes from the Punjab to the Deccan to solemnise the marriage of one daughter, he has no time to go there again within the next three years because he won't obtain leave. He has no money to spend for each separate marriage. Therefore it is suggested that, in such a case, protection ought to be given by enabling the father to marry the daughter who is above 14 along with those who are below 14. In other words, to put the matter pointedly before the House, what would be an offence in a single instance should cease to be so when part

of a series ; what is an offence in the case of one marriage ceases to be so in the case of three marriages solemnized together.

These are some of the difficulties which are sure to arise if we allow the word "hardship" to remain. At the same time, from my experience of the Hindu Law and from what I see clearly before me, the point which Pandit Motilal Nehru has put before the House deserves serious consideration, namely, that in certain cases,—an occasion may arise when we may have to make provision to have the marriage performed before the prescribed age limit. That is a very grave consideration, and I think that a proper amendment carefully worded would have to be brought before the House, restricting protection to the specific case that Pandit Motilal has in view. The man who has contact with a girl at the age of 13 is an offender, but the girl may have to be protected by solemnizing the marriage, if certain contingencies arise ; but I do submit that the House should not pass this amendment in a hurry, widely worded as it is. As my Honourable friend Mr. Price pointed out, this amendment tries to take a coach and four through the provisions of this measure and may let in all manner of exceptions by the backdoor. The meritorious purpose of the Bill is likely to be defeated by our accepting the amendment, worded as it is, in a hurry, but I ask the Government to apply their minds seriously to the weighty considerations which Pandit Motilal Nehru has placed before us and bring in a properly worded amendment. I shall certainly support it at the right time.

**Mr. M. K. Acharya** (South Arcot *cum* Chingleput : Non-Muhammadan Rural) : Sir, on behalf of those whose views I have been trying to voice in this House I desire just to make a few observations. I have tried to follow the arguments which have been advanced so far and I must candidly admit that I do not ardently desire the amendment that is now before the House. I do fear that there may be more cases protected by this amendment than deserve to be protected. I am glad my friends begin to perceive the law will work hard on some. I am glad to see that already sanity is returning and I hope that it will completely return sooner than most people expect. But whatever we do, let us do it frankly and candidly. I do not believe that those whose views I represent would care to have an amendment like this, that they would go to the District Judge and beg of him to permit a marriage. I do not think any self-respecting man would care to resort to that course. I am very glad that the Honourable the Leader of the Congress Party has let the cat out of the bag. I know that when this law is passed, in a few years we shall be getting social conditions in India very much like those obtaining in very many "civilised" countries. Parental authority will be disregarded. Girls will begin to make their own choice in their own way. Such cases must come of indiscreet love episodes. That is what you are providing for by this Bill and I believe that a situation will soon come when we shall have to change the law in all seriousness. Suppose a girl of 12 or 13, without the knowledge of her parents, commits some misdemeanour with a boy of 17 or 18, the parents will want to hush it up and get them married and, as the Honourable the Law Member put it, it is not the girl of a poor family that will get the benefit of this. The rich man's daughter will be able to employ a good lawyer to go before the District Judge and plead all sorts of justifications. The poorer children, who may better deserve protection, will not get the benefit of the law.

[Mr. M. K. Acharya.]

They may not even have the necessary means to go before a District Judge ; and so they will not get the protection which they deserve. I therefore feel that the deserving cases that will be protected will be so few and the cases that do not deserve to be protected but will get the protection will be so many that it is very dangerous to have an amendment of this kind. As my friend the President of the Hindu Sabha declared, you are deliberately going in for a new change in the Hindu social order. There will be abductions and seductions and things of that kind. My friend, the Editor of the *Hindu*, has been carried off his feet in trying to make out a case for this amendment. If we are going to penalise marriages before 14, let us do it frankly, knowing all the immoral consequences that will follow and not protect ourselves in a manner which is unworthy of the House and unworthy of the country to which I have the honour to belong.

**Mr. M. Keane** (United Provinces : Nominated Official) : I should like to say a few words by way of supplement to the statement of general principles and difficulties that was enunciated by the Home Member. When the Bill originally came before the House, Honourable Members will remember that there was a proposal that marriages solemnised before the age mentioned in the Bill should be held to be void. That met with so much opposition that the provision had to be dropped. It seems to me that, in dropping that particular provision, a solution was already given to the difficulty which the Honourable Pandit Motilal expressed this morning. In the circumstances referred to, it will be open to the parties still to solemnise the marriage. The amendment provides, that the court should first be approached to give its sanction to such a marriage. If the court is willing, in such circumstances, to give its sanction to the marriage, the same court or any other court, if the marriage did take place, would not be prepared to view with severity the solemnisation of such a marriage, and at the same time it would safeguard us against what I consider would be a dangerous principle that of inserting in the Bill that the court may give its sanction to circumstances which were in themselves reprehensible, circumstances in which the man concerned must have been guilty of the gravest crime which we know. We would safeguard the principle of refusing sanction in such circumstances without preventing the solemnisation of marriage, that is to say, the marriage would not be invalid, but the Act would still remain and the offence would remain. The man would not be punished severely for the performance of a marriage which the court, according to the amendment, would have been ready to condone from the very start. That is a practical consideration which I think we ought to keep before our minds in dealing with this amendment ; and furthermore, Sir, I think that, if we did allow an amendment of this sort to be inserted in the Bill, we should to some extent be condoning, and more, encouraging, reprehensible relations between the different sexes at ages below the age in the Bill. That is a principle that we should resist to the very utmost, so that from the two points of view, the point of view of principle and of practical difficulty, I think it would be far better to let the Bill stand as it is ; solemnisation of the marriage, though due to circumstances which in themselves are worthy of condemnation, will stand valid, and if the case comes before a court, no court will be willing to punish it with

severity. These are the practical considerations, Sir, that I would like to put before Honourable Members before they are carried away by the argument of the Honourable the Pandit. (Cheers.)

**Mr. Amar Nath Dutt** (Burdwan Division : Non-Muhammadan Rural) : Sir, I pity the Mover of this amendment for the way in which his humble efforts to mitigate the evils of vindictive legislation have been interpreted by different Members. I regret the interpretation that has been given to this amendment by bringing in the instance of a certain community who are very few in number in this country, and a very ugly charge has been made against that community to which I do not subscribe. It is, Sir, at all times very undesirable for one community to pick out the dirty spots of another community and hold them up to ridicule by posing as their friend and urging that the amendment should be negatived on that ground. I support Pandit Nilakantha Das's amendment. He, Sir, is not only a social reformer himself, but his province also supports this legislation. In spite of that fact, when a man like Pandit Nilakantha Das comes forward with an amendment like this, it deserves to be considered carefully by this House. Sir, I am very sorry that, in this matter, two gentlemen who happen not only to hail from my province but also happen to belong to the same caste as myself, have put forward arguments against the amendment. The argument of the Honourable the Law Member has been that, by a rich man, the provisions of this salutary amendment can be defeated with the help of astute lawyers. I do not know whether it will please the Honourable Members on the opposite Benches, and especially the Leader of the House, when they hear such remarks against the administration of Justice in this land, namely, that an astute lawyer always diverts the course of justice. If that is the machinery that has been put in this country in the sacred name of law and justice, I beg to observe that the sooner that machinery goes away or, if it does not go away, the sooner it is replaced by something better, the better for this country. But I do not think that the Honourable the Law Member was very serious when he submitted such arguments before this House, for he ought to have been aware, during his pretty long practice at the bar, with his ability, with his forensic skill and advocacy, in how many cases he has been able to divert the course of justice. Probably he was saying something in which he did not believe, but as the Government want to oppose this amendment, some argument, some clever argument and the argument of an astute lawyer was needed, however unacceptable. No sensible man I think will place the least faith upon an argument like that, and I think even the newest member of the judiciary in this land will not be misguided by the arguments of astute lawyers. Another gentleman from Bengal has been very hard upon my poor friend when he attempted to ridicule, without advancing any argument on his behalf, the idea of compulsion, and he wanted to know what compulsion is. It were better if he had not said things like that. Sir, gentlemen marrying their own daughters below ten years of age come and castigate real social reformers like Pandit Nilakantha Das ! These are sights for the Gods to see ; and if I am not disclosing any secret, I may tell you that, when there was a comparison of how each of us had married our own daughters, and when I gave out that I did not marry my own daughter below fourteen (Hear, hear), and when I asked my friend, " Why did you marry your daughter at less than ten years of age ? ", he said, " I was compelled ". Compulsion—and what kind of compulsion ? My

[Mr. Amar Nath Dutt.]

Honourable friend, Mr. Jayakar, with his toleration and liberality of views, has shown his sympathy for those unfortunate kiddies who mis-behave themselves at the age of twelve and would try to find a place for them in society. I sympathise with him. I also believe that derelicts of society, as soon as they make amends, should be taken back into society. But at the same time, when he ridicules the idea that if a father gets an I. C. S. husband for his daughter, it would be a case of hardship if the father is not allowed to marry the girl at an age below fourteen, he is wrong. Mr. Jayakar and his friends who roll in wealth, who have ample resources, who can purchase bridegrooms for several lakhs of rupees for their daughters, fail to remember that everyone is not rolling in wealth, and that, not to speak of lakhs, even a few thousands are too much for poor men like Pandit Nilakantha Das and ourselves ; and he ought to have at least tried to consider, tried by his imagination to place himself in the position of people like ourselves who cannot afford to lose an I. C. S. son-in-law when we can get him, were it not for this rule. As for the former Member from Bengal who said that he was compelled, well, I ask, why was he compelled ? Was it not because he got a rich son-in-law ? Sir, I will not  
 12 NOON.                      reply to the many observations that have been made  
    and the many abuses that have been hurled at the  
 devoted head of Pandit Nilakantha Das, characterising this amendment as  
 frivolous.

**Pandit Nilakantha Das** (Orissa Division : Non-Muhammadian) : No-body characterised it as frivolous.

**Mr. Amar Nath Dutt** : Mr. Price called it frivolous. Sir, I will not use the same language which members of other communities have used towards the members of the Indian communities, both Hindus and Mussalmans. They have called it an evil custom, but before characterising any custom as evil, they ought to have been careful enough to know what custom this amendment wants to do away with and to safeguard against. But they would not apply their minds to the amendment itself. It is because cases of hardship do occur, which compel a man of this world to act, that he has asked the House to consider his amendment. I was also surprised to hear from the Leader of the House that different courts will interpret this section in different lights. I believe my Honourable friend at least sat on the Bench of a District Court for some time. If he did so, I would like to call to his memory how many times he failed to appreciate the true meaning of a law enacted by this Legislature ? Is the wording of the amendment so bad as it has been described to be ? It should be remembered that this amendment has been drafted by a layman. But what about the draft of the original Bill, which has been done by so many lawyers and which shows an unhappy specimen of legislative draftsmanship ? Sir, they ought to have been ashamed of that draftsmanship before blaming my friend, who is, after all, a layman. Be that as it may, the position that has been taken that different courts will take different views of this amended section, is untenable. Is not there a superior court of appeal sitting over them to have the laws enunciated for the guidance of the subordinate courts if they vary in their interpretation ? But I forget that, when it suits them, they become oblivious of all facts and try to say things which are not correct and impose them upon unwary Members

of this House who would not discriminate between right and wrong. Sir, I am sorry also that the Honourable the Leader of the House had no faith in the wisdom and the administration of justice of the subordinate judiciary of this land. I do not know if he has faith even in the High Courts of this country or in the Privy Council ; but because a certain Judge may not be able to appreciate clearly meaning of a certain section, is that any reason why it should be rejected ? He stands self-condemned by condemning his own judiciary and also by condemning their intelligence. Be that as it may, I submit that the reasons advanced by the Honourable the Mover of this amendment are quite cogent and people who are not deaf to all reasoning and are not blind to all sense of decency in this matter will support this amendment.

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

“ That at the end of the Bill the following new clause be added :

‘ Nothing in this Act shall apply to a case of child marriage where the girl married is not below 12 years of age and where any one of the contracting parties or their parents or guardians has obtained the sanction of the principal court of civil jurisdiction upon an application made prior to the solemnisation of the marriage stating the circumstances under which he is compelled to solemnise the marriage the non-performance of which would mean hardship to the girl or her family ’.”

The Assembly divided :

**AYES—24.**

Aney, Mr. M. S.  
Ayyangar, Mr. M. S. Sessa.  
Belvi, Mr. D. V.  
Bhargava, Pandit Thakur Das.  
Das, Pandit Nilakantha.  
Dutt, Mr. Amar Nath.  
Iyengar, Mr. A. Rangaswami.  
Jannadass, Seth.  
Jogiah, Mr. V. V.  
Kelkar, Mr. N. C.  
Lahiri Chaudhury, Mr. D. K.  
Malaviya, Pandit Madan Mohan.

Misra, Mr. Dwarka Prasad.  
Mitra, Mr. S. C.  
Moonje, Dr. B. S.  
Mukhtar Singh, Mr.  
Murtuza Saheb Bahadur, Maulvi Sayyid.  
Naidu, Mr. B. P.  
Neogy, Mr. K. C.  
Rang Behari Lal, Lala.  
Singh, Mr. Gaya Prasad.  
Sinha, Kumar Ganganand.  
Sinha, Mr. Rajivaranjan Prasad.  
Sinha, Mr. Siddheswar Prasad.

**NOES—62.**

Abdul Aziz, Khan Bahadur Mian.  
Acharya, Mr. M. K.  
Anwar-ul-Azim, Mr.  
Ayyangar, Mr. V. K. Aravamudha.  
Bajpai, Mr. R. S.  
Birla, Mr. Ghanashyam Das.  
Booth, Mr. J. R. T.  
Bower, Mr. E. H. M.  
Bray, Sir Denys.  
Chalmers, Mr. T. A.  
Chaman Lall, Diwan.  
Chatterjee, The Revd. J. C.  
Cosgrave, Mr. W. A.  
Covernton, Mr. S. H.  
Crorar, The Honourable Sir James.  
Ferrers, Mr. V. M.  
French, Mr. J. C.  
Ghazanfar Ali Khan, Mr.  
Gidney, Lieut.-Colonel H. A. J.  
Haji, Mr. Sarabhai Nemchand.  
Hans Raj, Lala.  
Hira Singh, Brar, Sardar Bahadur, Honorary Captain.  
Jawahar Singh, Sardar Bahadur Sardar.  
Jayakar, Mr. M. R.

Kartar Singh, Sardar.  
Keane, Mr. M.  
Kunzru, Pandit Hirday Nath.  
Lalchand Navalrai, Mr.  
Lindsay, Sir Darcy.  
Mitra, The Honourable Sir Bhupendra Nath.  
Mitter, The Honourable Sir Brojendra.  
Mody, Mr. H. P.  
Mukharji, Rai Bahadur A. K.  
Nehru, Pandit Motilal.  
Noyce, Sir Frank.  
Pai, Mr. A. Upendra.  
Pandya, Mr. Vidya Sagar.  
Philip, Mr. J. Y.  
Porter, Lieut.-Colonel L. L.  
Price, Mr. E. L.  
Rai, The Honourable Sir George.  
Rao, Mr. G. Sarvotham.  
Rau, Mr. P. R.  
Roy, Mr. K. C.  
Roy, Mr. S. N.  
Sarda, Rai Sahib Harbilas.  
Sarma, Mr. R. S.

NOES—62—contd.

Schuster, The Honourable Sir George.  
 Shah Nawaz, Mian Muhammad.  
 Shervani, Mr. T. A. K.  
 Siddiqi, Mr. Abdul Qadir.  
 Singh, Kumar Rananjaya.  
 Singh, Mr. Narayan Prasad.  
 Singh, Rai Bahadur S. N.  
 Stevenson, Mr. H. L.

Stewart-Smith, Mr. D. C.  
 Sykes, Mr. E. F.  
 Tin Tut, Mr.  
 Tottenham, Mr. G. R. F.  
 Winterbotham, Mr. G. L.  
 Yamin Khan, Mr. Muhammad.  
 Yusuf Imam, Mr.

The motion was negatived.

**Pandit Thakur Das Bhargava** (Ambala Division : Non-Muham-  
 madan) : Sir, I beg to move :

“ That after clause 11 of the Bill the following new clause be added :

- ‘ 12. (1) Whenever any person accused of an offence under sections 3, 4 and 6 of the Act is convicted and the Court is of opinion that it is necessary to prevent the husband from consummating the marriage or cohabiting with the wife before the completion of the statutory age of consent the Court may order him to execute a bond with or without sureties for a sum proportionate to his means.
- (2) The bond to be executed shall bind the person convicted under section 3 or 4 of the Act to abstain from consummating the marriage and cohabiting with his wife till the statutory age of consent, and the person convicted under section 6 to be responsible for such abstention by his son or ward as the case may be and to that end impose such conditions as the Court considers suitable for instance separate living, custody and maintenance of the wife.
- (3) If any person ordered to execute a bond fails to comply with such order, he shall, unless he is already in prison, be committed to prison and kept imprisoned until such time as he complies with the order or the statutory age of consent of the girl-wife is reached.
- (4) Imprisonment for failure to execute a bond shall be simple.
- (5) Sections 122, 126, 126-A and 406-A of the Code of Criminal Procedure shall apply as far as may be to sureties of such bonds ’.”

Sir, in moving the amendment, I have followed the recommendations of the Age of Consent Committee which they have made in this particular at page 182 of the Report. They say :

“ We recommend that the court trying a case of contravention of the marriage law be empowered to require the offender or conviction to execute a bond, with or without sureties, for separate living, custody and maintenance of the girl and for preventing the husband from consummating the marriage before she completes the statutory age of consent, and that the provisions of sections 122, 126, 126A and 406A of the Code of Criminal Procedure be extended so as to make them applicable, as far as may be, to sureties in cases of breach of marriage law. Consequent upon the above recommendation in respect of separate living, custody and maintenance of girls and similar recommendations made elsewhere, we recommend that suitable aid and encouragement be afforded to the establishment of institutions giving protection to girls dealt with under such recommendations ”.

Now, Sir, the reasons for this recommendation of the Age of Consent Committee are obvious. Whatever may be the other effects of early marriage, one effect which appeals to every right minded man is that, in many cases there is early consummation, and the evil effects of early consummation need not be detailed before the House now. If a husband is subsequently convicted under the Age of Consent law, the hardship to himself, to the family and to the girl is obvious. In this connection, with your permission, I will read out from one of the dissenting minutes to the Report of the Age of Consent Committee.

This is from page 247 of the Report :

" Let the reader visualise in his imagination the condition of a devoted and pious girl wife of 15½, pregnant with a child and expecting delivery, while the husband is being hauled up for misbehaviour with the prospect of being sent to jail. Where is a girl who will not be tempted in such circumstances to have recourse to miscarriage to conceal the evidence of her person ? What girl would not prefer suicide to save her lord from the consequences of an act which is supposed to have injured her and in which she participated as a result of the concurrence of the parents of the couple in uniting them before holy fire into indissoluble communion ? It is said that the condition of a mother in her pregnant state affects the whole tenor of the future of the child. If it is true, the reader has to draw on his own imagination to divine how the unfortunate child of such union, the result of which is the incarceration of the father in jail with the mother brooding during her pregnancy over her misfortune and cursing herself and the offspring for it, will be affected."

" What one would expect in the ordinary wife is clear. The period of the stay of the husband in jail will be a period of great torture to the girl wife at home. If the husband is fined, the fine shall come out of the share of her bread and the milk of her young babe. Day in and day out, the mother-in-law and other relations will curse the young lady for having brought trouble on the family. This inauspicious lady will hardly find comfort at her father's. But the death of the husband in jail opens a chapter which few hard-hearted people will be able to read with equanimity."

Now, Sir, it is clear that, so far as offences under the penal law relating to the age of consent are concerned, it is indisputable that such offences are very difficult of detection and of proof. And if this House wants that the evil effects of early consummation should be obviated, then it is necessary to provide that in case of conviction a bond should be taken from the offending accused to postpone the consummation and cohabitation with his wife. An analogous provision is to be found in section 106 of the Code of Criminal Procedure where, on conviction in respect of certain offences, the courts are competent even today to ask for such bonds. Wherever it is the policy of law to prevent recurrence of any offence, it always insists that bonds of this nature should be taken. The Age of Consent Committee in their Report have recommended that as a corollary to the law of the Age of Consent, the courts should be armed with such powers on the occasion of conviction under the Age of Consent law. They further recommended, as I have read out from their Report, that in the case of breach of marriage laws also, the courts should be so armed. It can be said that this provision will involve too much of interference with human liberty and will place certain restrictions on them, which will be very unpleasant to the people in general. But my submission is that, if you are going to have a penal law, then you have to place a certain amount of restriction upon human liberty, and I maintain that the restriction sought to be placed upon human liberty by this provision will be much less than the restriction which would be placed by having recourse to the law relating to the age of consent. Out of two evils the House has to choose which is the smaller evil. To give an illustration, Sir, suppose a girl of ten has been married to a man of 30. In a case like this the husband can be sent to jail and he can be made to undergo simple imprisonment for one month at the most. After that is done the husband and the wife live together and all those difficulties which beset the prosecution in a case under the age of consent law will be there. The offence of marital misbehaviour will be most difficult to prove, because the girl will not give evidence and the relations will not give evidence. The actual fact of consummation will be most difficult to prove, as I have submitted, and therefore girls so circumstanced will not be protected.

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Now, Sir, I do not think that breaches of the law of marriage will be very few, at least in the first years of the operation of this Act. In regard to such breaches, unless and until we have a provision of this nature in the Statute-book, it will be most difficult to insist that husbands will not cohabit with wives below the age of 15. I would therefore submit that, considering the question from all sides, this provision is one which is on the line of least resistance. If the provision of the consent law is enforced in its rigidity, I am quite sure that the measure of dissatisfaction and disaster in the country will be much greater than if this proposed measure is put into practice.

As regards the bonds, Sir, I have taken the phraseology from section 106 of the Criminal Procedure Code. So far as I could, I have followed the very words, because, as you know, these words have been the subject of judicial interpretation. The provision in paragraph 3 may seem to be a bit hard, but I do not know how it could be altered. Under the circumstances I have kept it in the form in which it is found in the amendment. The imprisonment provided is simple, but it is always within the competence of the accused to give a bond of this nature and get his release. In these circumstances I submit that this amendment should be accepted by the House.

**The Honourable Sir Brojendra Mitter** (Law Member) : Sir, I oppose this amendment. The object of the amendment is to prevent consummation or cohabitation before the completion of the statutory age of consent. My first objection is that the amendment is not necessary, because we have already got the law of consent, and therefore no further measure is necessary for that purpose. Sir, the premise or the circumstances under which the court has to act under the amendment is, "When the Court is of opinion that it is necessary to prevent the husband from consummating the marriage or cohabiting with his wife before the completion of the statutory age of consent". If you use the phrase "When the Court is of opinion", you imply that the court has got to judge of the facts and come to a decision. But in this case there is no room for the court to exercise its judgment, because the law has fixed the age of consent and has defined the offence in that behalf. Therefore, the phrase, "When the Court is of opinion", etc., is meaningless.

My first objection to this amendment therefore is that it is unnecessary, and secondly, that it is meaningless. The third objection is this : the court has to order the execution of a bond directing the husband to abstain from consummating the marriage ; it will be absolutely infructuous, because in order to enforce a bond you will have to inquire into matters which are impossible of inquiry, unless by some inquisitorial process you pry into the innermost life of the people, which no Legislature ought to encourage. And since the enforcement of the bond would be infructuous, I object to the proposal on the ground that the Legislature ought not to impose upon the court a duty which the court cannot, in ordinary circumstances, perform. There is a well-known principle, Sir, that courts do not act in vain. If you pass this amendment you will be asking the court to do something which it is impossible for the court to do, and therefore the order will be in vain. My objection therefore is on the grounds that it is unnecessary, secondly that it is meaningless,

thirdly that it is impossible of enforcement, and lastly, that, even if it be possible of enforcement, it will be much too inquisitorial.

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

“ That after clause 11 of the Bill the following new clause be added :

- ‘ 12. (1) Whenever any person accused of an offence under sections 3, 4 and 6 of the Act is convicted and the Court is of opinion that it is necessary to prevent the husband from consummating the marriage or cohabiting with the wife before the completion of the statutory age of consent, the Court may order him to execute a bond with or without sureties for a sum proportionate to his means.
- (2) The bond to be executed shall bind the person convicted under section 3 or 4 of the Act to abstain from consummating the marriage and cohabiting with his wife till the statutory age of consent, and the person convicted under section 6 to be responsible for such abstinence by his son or ward, as the case may be, and to that end impose such conditions as the Court considers suitable for instance separate living, custody and maintenance of the wife.
- (3) If any person ordered to execute a bond fails to comply with such order, he shall, unless he is already in prison, be committed to prison and kept imprisoned until such time as he complies with the order or the statutory age of consent of the girl-wife is reached.
- (4) Imprisonment for failure to execute a bond shall be simple.
- (5) Sections 122, 126, 126A and 406A of the Code of Criminal Procedure shall apply, as far as may be, to sureties of such bonds ’.”

The motion was negatived.

**Pandit Thakur Das Bhargava :** Sir, I beg to move :

“ That after clause 11 of the Bill the following new clause be added :

- ‘ The Government shall, for the proper and efficient working of the provisions of this Act, make rules or authorise the Local Governments to make rules, providing among other matters :
- (a) for the compulsory registration of marriages enjoining upon the contracting parties in case they are not minors and upon parents and guardians if the contracting parties are minors to report within a prescribed time the factum of such marriage,
- (b) for prescribing the form of registers and reports and particulars to be contained in such reports and registers.
- (c) for issue of marriage certificates free of charge or at nominal charge to the person reporting,
- (d) for grant of copies from such registers and reports, and
- (e) for authorizing officers in charge of such registration to make complaints in suitable cases of infraction of such rules and the provisions of this Act ’.”

In making this amendment I have followed the suggestion given by the Age of Consent Committee in paragraph 329 of their Report wherein the subject matter of this amendment has been discussed by them. They recommend as follows :

“ that an accurate marriage register in a prescribed form be kept, through an administrative department of Government, containing details of marriages, including the ages of the couple, and that it be made obligatory by law on parties and guardians of parties to the marriage, either personally or through authorised agents, to report the same to a prescribed local authority :

That the officer keeping the register of marriages be empowered and also be charged with the duty to complain of any breach of the marriage law, or any omission to report a marriage or of a false entry in the details required in the registration of marriages, to the nearest magistrate having jurisdiction to try such cases, after such preliminary inquiry as he thinks fit to make.

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We also recommend that the registers of marriage be permanently retained, and that certificates of marriage be issued to the parties concerned free of cost, when the marriage is reported."

Sir, even before the Report of this Committee saw the light of day, as a Member of the Select Committee I brought it to the attention of the Select Committee that there should be some provision in this Bill for registration of marriages and empowering the Registrars of Marriages to make complaints. But unfortunately that suggestion did not find support and I could only put in my dissenting note. In the Baroda State where this law relating to marriage was perhaps first enacted, there is a system of registration of marriages, and as soon as a report is made to the *Nyayadhish*, he considers such report as a complaint on which he exercises jurisdiction. Automatically, as soon as a report of a marriage is made and it is found out by the Registrar that an offence has been committed in relation to any of the provisions of the Act, he sends a report and the report is treated as a complaint. The way in which this provision has been successful in Baroda has emboldened the Age of Consent Committee to make this suggestion, and I think this is one of the few constructive suggestions that the Committee have made in regard to the proper and efficient working of this Act. Now, in regard to the discussion of this Bill, I have seen that the Mover as well as the Government have taken up an attitude that not a comma is to be changed in the Bill. May I tell them this? That this amendment does not seek to make any change at all, but that it only adds another clause to the Bill. Sir, the amendment moved by Pandit Nilakantha Das was opposed by the Government and other Members of the House on the ground that they are not going to allow any the smallest loophole for any person who is accused of an offence like this and who can be convicted under the law to look askance at the Bill. I am in entire agreement with the principle that every case of infraction of the provisions of this Act should be brought to court and that this Bill should be rigorously enforced. But, Sir, after going through the provisions of the Bill which have been passed by the House, I cannot refrain from remarking that the provisions that we have so far passed do not reflect great credit upon us. Some of them are mutually conflicting. I find a provision that every person is entitled to complain so far as offences under this Act are concerned : and whereas that right is given in one clause, it is practically taken away when great insistence is laid by other provisions of the Bill that every person who comes with a good case should deposit security to the extent of Rs. 100. Now, Sir, I presume that when the entire community is not imbued with sympathy with this Bill, it will sometimes happen—perhaps it will happen in many cases—that it will be the enemy alone who will move the provisions of this Act, because the provision contained in clause 11 will debar many public-spirited men from poking their noses into other people's affairs, when to start with the court shall make an initial presumption that the case which is brought before it is false or frivolous. If an enemy wants to move this law, he will go to a law court and he will try to harass the accused in every possible way ; all the disadvantages which flow from private prosecutions will be found in the operation of this Act....

**Mr. President :** The Honourable Member is now going through the whole Bill.

**Mr. Amar Nath Dutt :** And he did not support us at that time.

**Pandit Thakur Das Bhargava :** I am only submitting, Sir, that unless and until the amendment I have proposed is accepted, there is no provision in the Bill for the automatic working of this Bill. The acceptance of this amendment of mine is the acid test of the sincerity of the Government. If the Government want that a feeling should go abroad that the Government have passed this law, I think the feeling will be ill-founded and I think the Government are not justified in taking the credit of being a party to the passing of this law, unless they accept this amendment. My amendment provides that the Government will make rules for the automatic working of this Act and that a public officer will be entitled to make complaints. Unless and until the Government undertake to have complaints of this sort made by their own officers and to defray the expenses of the prosecution, the Government will not be discharging their duty.

**Mr. K. Ahmed** (Rajshahi Division : Muhammadan Rural) : What about your personal income at the profession ? Will you not be a loser thereby ?

**Pandit Thakur Das Bhargava :** I am generally very happy when interruptions come from my friend, Mr. K. Ahmed, because they generally tend to amuse some of my friends ; but if, in a matter of this importance, my friend has got such a light heart, I have nothing but pity for him. Sir, I might clear the ground at this stage as to what I mean by registration.

Let not some of my friends think that I am in favour of civil registration of marriages of Hindus and Mussalmans. The registrations which is mentioned in my amendment only means reporting after the marriage has taken place just as the births and deaths are reported. ....

**Mr. K. Ahmed :** You have got the Kazi's Act.

**Pandit Thakur Das Bhargava :** Unfortunately the Kazi's Act does not extend to the whole of India, nor does it enjoin upon every person to have compulsory registration. The suggestions contained in my amendment is that, in every case, there should be a registration after the marriage has taken place, and as soon as the registration has taken place, the Registrar should compare that report with the entry in the Birth Register and see for himself if the law has been broken. If he finds that the law has been broken, it will be easy for him to find out what the age of the girl is and then he shall lay the complaint before a competent officer, and the case will run its course.

Now, Sir, clause 8 of the Bill provides for preliminary investigation. What will be the preliminary investigation without a Marriage Register or a good Birth Register ? I know that, so far as the accuracy of these registers goes, it differs in different provinces. The Age of Consent Committee took great care and trouble in finding out the accuracy of Birth and Death Registers in the various parts of India, and they came to the conclusion that at present they are not regularly kept. They have made recommendations in this behalf more for the efficient working of the marriage law than for the efficient working of the consent law, and my own submission is that, unless and until you have this Register and also this provision for automatic complaints to

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come before the courts, this law will not work well and in many cases malefide complaints against accused will come to courts to the harassment of the accused, in spite of the provisions contained in clauses 8 and 11. After all, if I go to a court of law and submit to the court that the age of the girl is 13 instead of being 14, the court cannot make me liable for a statement of that nature, because after all I can plead that this is my information and I have no means of finding out the age of the girl. It is therefore necessary, in the interest of the efficient working of this Act, that my amendment should be accepted and that the Government should make rules in relation to matters which are mentioned herein. If however the Government cannot make rules for the whole of India on a uniform basis, then they should delegate their powers of rule-making to the Local Governments who will make rules in consonance with their own requirements and the facilities which they at present have for the registration of births and deaths.

Then, again, Sir, even if this principle of automatic working of the Act is not accepted by the Government, I would humbly ask them as to how they visualise, the prosecutions will succeed in the absence of the registration of marriages and the accurate registration of births? How will they help the courts to come to a correct finding on the question of the age of the girl or of the boy unless upon the basis that there is a marriage report and an entry in the Birth Register. In a case of the breach of the marriage law also, under this Bill the relations of the accused will not be disposed to go against the accused. It will be those people who will have the fullest information about the age of the girl, and a stranger cannot be expected to be accurate in this matter.

**Mr. K. Ahmed :** Why did not all your colleagues agree with you in the Committee in this matter?

**Pandit Thakur Das Bhargava :** My friend is sadly mistaken in thinking that my colleagues did not agree with me in this matter. He is perhaps more mistaken in other matters, because I do not think he has taken the trouble of reading this Report, otherwise he would have found that, so far as the main recommendations are concerned, not a single Member dissented, and I cannot congratulate the Government when they accept the recommendations of this Committee when it suits them and do not care for other recommendations which would really help the efficient working of this Act.

Now, Sir, I know what the objection of the Mover to this amendment is. He is of opinion that, after this Act has worked for a year or two, there will be time enough to see how this Act is to be worked in future. With great humility and with great deference to him, I beg to submit that when you want to enact a penal law, you must be absolutely clear in your minds how the law is going to work. It would not do to say that, as you had no time you could not accept the amendment. If you have no time now, I do not think you will ever find the time to accept an amendment of this character. If the Government is really anxious that every case of infraction should come before the courts, then this is the really only way which the Committee, after 10 or 11 months of labour, have been able to find out. I therefore submit, Sir, that this amendment should be accepted by the House even if the Government do not accept it.

**The Honourable Sir James Crerar :** Sir, I fully appreciate the excellent intensions which have inspired the Honourable Member in moving this amendment, but I regret that I find it necessary to oppose it. The reasons why I do so are that I consider it premature and unnecessary and also, if I may say so, somewhat misplaced and misconceived. In the first place, a measure of this character is not an appropriate place for provisions relating mainly to the administrative question of registration. I do not deny for a moment that if we had a complete compulsory system of registration of births, deaths and marriages throughout India, it would be very valuable for many purposes,—it would be valuable incidently for purposes of this Bill. But there are very strong practical reasons against it. In the first instance, the question of registration is, as Honourable Members are aware, not only a provincial subject, but a transferred provincial subject, which is under the control of Ministers. It is certainly true that it is subject to legislation by this House, but only under certain restrictions. It is subject to legislation by the Indian Legislature in respect of such classes as the Indian Legislature may determine. Now, that particular provision which gives jurisdiction to the Indian Legislature to legislate in respect of certain classes, doubtless has reference to certain Acts already on the Statute-book which provide for the registration of marriages of Parsis, Indian Christians and Brahma Samajists, but my Honourable friend's proposal would extend this legislation or statutory orders to all classes. There is, therefore, to my mind, some preliminary doubt whether this House could legally legislate in the matter at all. But there are even stronger reasons why they could not properly legislate. The Honourable Member has referred to the recommendations of the Committee of which he was an important Member. I venture to say that the colleagues of my Honourable friend on the Committee seem to me to have grasped the administrative aspects of the question somewhat more fully than the Honourable Member himself. They say, for instance :

“ The question what agency should undertake the work of registering marriages has been discussed by several witnesses. We have not however the material before us to make specific recommendations on the subject. It is possible that it may vary in different provinces and that some existing department of a local Government may be empowered to discharge this duty.”

If we were now to impose upon the provinces, without consultation with them and without giving them any opportunity of considering the matter in all its bearings, we should, I think, whether we have got the legislative authority or not, be invading very unduly what is a provincial subject, which is subject to provincial conditions which we here are not fully in a position to take account of. It would necessarily involve a great deal of expenditure and a very great extension of the existing establishments. Further, as the Committee themselves have recognised, it may very well be that, in some provinces, the particular machinery to be adopted may be different in some respects from the machinery in other provinces. In short, I submit that we have not before us, as the Committee themselves have admitted that they had not, sufficient material to enable us to come to a conclusion. Furthermore, even if we had that material, we should be acting very unwisely if, at this stage, we took any final determination in the matter when the whole question, along with other questions, has already been referred to Local Governments for their opinion and for their careful consideration. I think, for the present, the House will be well advised to leave it at that, and it will be extremely unwise now to endeavour to come to any conclusions

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at this stage which would necessarily be uninformed and which would necessarily fail to take account of important provincial conditions which are really essential to a proper and effective disposal of the question.

**Mr. M. S. Aney** (Berar. Representative) : My Honourable friend Pandit Thakur Das Bhargava has rightly laid stress on this point of the registration of marriages in moving his amendment. In urging the House to accept the amendment, he has particularly drawn attention to the recommendations of the Age of Consent Committee. They are contained in paragraphs 325 to 329 of the Report. The Honourable Sir James Crerar has tried to show that the Committee themselves did not think that there were sufficient materials before them to make any definite recommendations. If the amendment of my Honourable friend is properly read by the Honourable the Leader of the House he will find that the points on which the Committee felt doubtful have been left out by him to be covered by the rules to be framed by the Government of India (*Pandit Thakur Das Bhargava* : "Or by the Local Governments.") or by the Local Governments. On those points as regards which the Committee could not make any definite recommendations my Honourable friend also does not want this House to commit itself to any particular position. He only wants this House to commit itself to one particular thing, namely, that a register of marriages should be kept. On that point there has been no difference of opinion so far as I can see from the Report among the members of the Committee, and if my Honourable friend the Home Member agrees that such registration is an indispensable condition for the proper working of the Act about which he is so anxious, and if he agrees that it is also the opinion of this Committee, then I think that there is no option left to him but to accept this amendment. I also want my Honourable friend Pandit Thakur Das Bhargava to note that this Bill is not being supported by the Government on seeking inspiration from the Report of the Age of Consent Committee. On the other hand, the Age of Consent Committee has taken its inspiration from the Report of the Select Committee on the Bill. Only on those points which the Select Committee had already recommended, we find that the Government are very enthusiastic about the Report of the Age of Consent Committee, and they hold it up before the House and say, "Here is a practically unanimous Report and the Honourable Members of this House must accept it." But in matters which the Select Committee have not considered, the Government think this Report to be only a document which requires to be seriously considered by themselves before they can come to any conclusions whatever. It means this, that, on points which the Select Committee of this House have considered and have come to conclusions and the Government find a corroboration of those conclusions in this Report, they are prepared to accept the recommendations of the Age of Consent Committee, but in other matters they think that the Members of the Age of Consent Committee had not sufficient materials before them, and therefore the Government can not accept their recommendations and must come to independent conclusions after making independent inquiries. That is the meaning of the attitude of the Honourable the Leader of the House. I want that to be brought to the notice of the Members of the Age of Consent Committee who have been very enthusiastic and vociferous in asking this House to accept their

recommendations *in toto*. I support the amendment of my Honourable friend.

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

“ That after clause 11 of the Bill the following new clause be added :

‘ The Government shall for the proper and efficient working of the provisions of this Act make rules or authorise the Local Governments to make rules providing among other matters :

- (a) for the compulsory registration of marriages enjoining upon the contracting parties in case they are not minors and upon parents and guardians if the contracting parties are minors to report within a prescribed time the factum of such marriage,
- (b) for prescribing the form of registers and reports and particulars to be contained in such reports and registers,
- (c) for issue of marriage certificates free of charge or at nominal charge to the person reporting,
- (d) for grant of copies from such registers and reports, and
- (e) for authorizing officers in charge of such registration to make complaints in suitable cases of infraction of such rules and the provisions of this Act ’.”

The motion was negatived.

**Pandit Thakur Das Bhargava :** I beg to move :

“ That in section 60 of the Indian Christians’ Marriage Act (XV of 1872) for the word ‘ thirteen ’ the word ‘ fourteen ’ be substituted.”

I need not make any speech in support of this amendment. It is sufficient to point out that at present in section 60 the word “ thirteen ” appears, and as soon as this Bill is passed by this House, unless a change is made, there will be a conflict between this law and the Indian Christians’ Marriage Act. For this purpose I move, in accordance with the recommendations of the Age of Consent Committee, that this amendment be accepted.

**Mr. M. S. Aney :** Where is this to come ? I do not know what my Honourable friend wants the House to do.

**The Honourable Sir James Crerar :** I have only one or two observations to make upon this amendment. It has already been decided to take up matters consequential to the Bill if it is passed, and I think that it would be more convenient to take them up separately. The present amendment is hardly appropriate to the context of the Bill. I may point out further that the Act fixes the age at sixteen for males, and it is a matter for consideration whether the section should not be amended in both cases, namely, the ages of 18 and 14 respectively in place of sixteen and thirteen, whereas the Honourable Member has concentrated on only one age. In view of the fact that it is intended to take up the matter separately, I hope the Honourable Member will not press his amendment.

**Pandit Thakur Das Bhargava :** I do not press this amendment.

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

“ That leave be given to Pandit Thakur Das Bhargava to withdraw his amendment.”

The amendment was, by leave of the Assembly withdrawn.

**Mr President :** The question is :

“ That clause 1 stand part of the Bill.”

**Mr. M. S. Soosa Ayyangar** (Madura and Ramnad *cum* Tinnevely : Non-Muhammadan Rural) : I beg to move :

“ That after sub-clause (2) of clause 1 the following be inserted :

‘ It does not apply to Brahmans and such other communities in which post-puberty marriages are forbidden by their religion or custom or both ’.”

In moving this amendment, I may submit to the House, after a close scrutiny of the scriptures that we Hindus consider to be sacred, that pre-puberty marriages are compulsory according to the religious law at least in the case of the Brahmans. In the scheme of life of the Brahmans, marriage plays an important part, because it is only family life that can give the necessary physical environment for the birth of saints, sages and seers ; and I would reiterate my honest conviction that we Members of this House, who live from day to day and do not ordinarily see beyond our noses, cannot possibly ignore or reject such a time-honoured, sanctified and religious attitude towards life. This amendment of mine has been necessitated by two or three important facts which I cannot help recounting. The first is unfortunately our hereditary talent for inner dissensions, giving the world a babel of voices, so far as Hindus are concerned. The second is the grim determination of the Government, which they shewed, in voting down every one of the amendments moved in this House. To me it appears the tyranny of the State has become really intolerable. It is imponderable, it is intangible, it is invincible, it is invulnerable, and it has become intolerable. Another fact which has necessitated this amendment is this. Unfortunately most Honourable Members, including our theatrical leaders always look to the plaudits of the Press, and they look upon the Press as their God and the Editor, as their Prophet. Now these three things have really necessitated my moving this amendment. I would also submit to the House that, in moving my amendment, I have got some support from the Age of Consent Committee's Report. I would refer the House to paragraph 128 : Talking of cases in the Madras Presidency, the Committee say :

“ If girls between 5 and 12 are taken into consideration, we find that among the Kapus 338 out of 1,000 are married, while 200 among the Telugu Brahmans, 62 among Tamil Brahmans and 177 among the Komatis are in the married state. The population of Tamil Brahmans is 500,000, of Telugu Brahmans 520,000 and of Komatis about 400,000. The Mala (depressed class Telugu) has 107 of his girls in a married state between the 5th and the 12th years, while his brother in the South, Pariyan (Adi Dravida) marries only 38 of them. The former has a population of 1½ millions and the latter 2¼ millions.”

From this the House will understand the extent of the prevalence of the custom of early marriage and the reasons for its prevalence. The Committee further say :

“ It may be stated as a general proposition that, except among the Brahmans and the Komatis, there is no argument based on religious injunctions or *Shastras* which can be advanced to justify pre-puberty marriages in other castes. They are merely in the clutches of inexorable custom which operates as rigorously among them as religious sanctions elsewhere.”

That is why I have put in this amendment, the words “ forbidden by their religion or custom or both ” ; and in this connection I would only quote the pathetic and sincere and most earnest appeal made by a leader of my Brahmin community in Madras :

“ It is the part of wisdom to think well and choose a middle course. The other communities in India, nay, the nations of the world, stand to gain and not to lose by

intensifying the Brahmins in their ideals of Brahmacharya, Grāhastya and Yoga. 'Otherwise a fine type built up in the course of millenia will soon be as dead as the dod. Enter the new law—Exit the ancient type.'

"It will be a very sad day when the mass mind of India is led to believe that, after all, their religion is going to be determined and can be interfered with by the votes of this Assembly."

The motion was negatived.

**Maulvi Mohammad Shafee Daoodi :** (Tirhut Division ; Muhammadan) : I beg to move :

"That after sub-clause (2) of clause 1 of the Bill the following be added :

'(3) It shall not apply to the Mussalmans'."

I know in what mood the House now is. Still I wish to say what I have got to say on this subject. The Bill affects, and I say vitally affects, the personal law of the Muslims. I take it that every Member knows that the marriage institution of the Muslims comes within the category of personal law, and we have got to see whether this law affects the Mussalmans and their marriage institution. For that purpose we have got to go into the marriage law of the Muslims. The House knows that the Muslims have codified law and all that relates to marriage has been enunciated in a manner which no one can doubt. The law of Islam is a rule of life which is given in unequivocal terms by the Creator himself for the Universe. A Muslim carries that rule of life wherever he goes. It may be India, China or any other place. It is a rule of life conveyed to mankind in a manner which cannot be doubted by even the worst enemy of Islam. It has come down to us in the most sacred manner all these 1,400 years almost. The marriage laws of the Muslims are definite and unequivocal. Marriage under the Muhammadan law is not only a civil contract but a sacrament and an act of piety, a meritorious act for which people are to be rewarded in the next life. The general law on that question is that every Muslim of sound mind who has attained puberty may enter into a contract of marriage (Hear, hear.), but minors who have not attained puberty may be validly contracted in marriage by their respective guardians. Puberty in India is presumed, in the absence of evidence, on the completion of the age of fifteen years. As to the various kinds of guardians, the laws are different. When the marriage of a minor is contracted by the father or father's father, the contract is valid and binding except where the father or father's father had acted negligently or wickedly, that is to say, the contract had been to the manifest disadvantage of the minor. (Hear, hear.) In the latter case the contract is voidable at the option of the minor on attaining puberty. While in the case of marriages of minors brought about by other guardians, the minor has the option of repudiating the marriage on attaining puberty. This right of repudiating the marriage is lost only when, after attaining puberty and after being informed of her right of repudiation, she does not repudiate without unreasonable delay. In the case of the male the right continues until he has ratified the marriage either expressly or impliedly or by payment of dower or by cohabitation. From what I have said just now it is I think clear to Honourable Members who are willing to understand my point that sufficient safeguards have been provided when a marriage by a guardian has been contracted wickedly. I need not dwell on this part of the case in more detail because my Honourable friends might have read the Honourable Maulvi Muhammad Yakub's Note in the Report of the Age of Consent Committee. He has quoted chapter and verse for

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the purpose of showing how the present marriage legislation interferes with the law of Islam. At page 278, paragraph 15, the Honourable Members says : (*An Honourable Member* : " What about paragraph 14 ? ") I am reading paragraph 15 on that page :

" Nevertheless the fact remains that under the Muhammadan law the marriage of minor girls can be contracted by the father and grandfather as well as by other guardians, and by fixing an age of marriage by legislation they will be deprived of that right. There can be little doubt that under certain special circumstances the exercise of such a right serves also the best interests of the girls concerned."

He has given only one particular case in his note, that of a father on his death-bed. That is an extreme case that he has quoted, but my experience of Muslim society is that about 50 per cent. of the marriages of girls have to be contracted in the special circumstances under the age of fourteen, and this is the class to which most of the Honourable Members of this Assembly belong. The special circumstances of course are due to many reasons. I think every family which has got a tradition behind it knows how difficult it is to get a suitable bridegroom. (*An Honourable Member* : " Is that the tradition ? ") For that reason and for many others about fifty per cent. of the marriages are contracted earlier. (*Mr. K. Ahmed* : " Is that a virtue ? ") But there is one thing which is strictly guarded against, and that is consummation at an early age. Among Mussalmans, so far as my knowledge goes, the consummation never takes place before the girls attain mature age,—in my part of the country I know it is after fifteen. I do not know other parts of the country so well and I have not been on the Age of Consent Committee, but so far as I know from the communications from the different parts of India by now it appears that their sole objection is to the fixation of the marriage age, and I find that my Honourable friends here in this House are not going to make any distinction between the age of marriage and the age of consummation. Muslim society, as far as I am aware, has got sufficient safeguards for not allowing consummation to take place till the girl has undoubtedly attained the age of puberty. I do not think that Honourable Members here would contend that *Nikah* itself causes deterioration of the health of the girl or the boy. I have heard it said that this *Nikah* ceremony is performed with so much publicity that it is easier to catch people there than to catch them when consummation takes place. I have read the reasons given in the Report, as to why they have recommended the fixation of the age for marriage. I am not convinced at all by the arguments which have been advanced by the members of the Age of Consent Committee in that behalf.

**The Revd. J. C. Chatterjee** (Nominated : Indian Christians) : May I ask the Honourable Member whether that is the experience of the poorer classes of Muhammadans also ? Can he honestly say that these safeguards and provisions are operative among them in actual fact ?

**Maulvi Muhammad Shafee Daoodi** : I do say that the poor class amongst Mussalmans also, although they marry their girls at an early age, take care that their girls do not leave their house unless they have attained a certain age. Of course, age differs amongst different societies. Among the lower classes they allow the girls to leave their house at an earlier age than is the case with the educated persons who know when girls should be allowed to go from the house of their parents. That is my reply to my friend.

**The Revd. J. C. Chatterjee :** Is it not the case that in many cases they marry their girls long before their puberty ?

**Several Honourable Members :** Never.

**Maulvi Muhammad Shafee Daoodi :** I should say that there are fewer cases of consummation before puberty amongst the Mussalmans.

**Mr. T. A. K. Shervani** (Cities of the United Provinces : Muhammadan Urban) : And what is your source of knowledge ?

**The Revd. J. C. Chatterjee :** Do you deny that there are cases of marriage before puberty ?

**Maulvi Muhammad Shafee Daoodi :** I do not say that there are absolutely no cases of marriage before puberty, for, after all, they are also human.

**The Revd. J. C. Chatterjee :** When you say "there are fewer cases", where is the comparison ? With whom are you comparing in numbers ?

**Maulvi Muhammad Shafee Daoodi :** What I cannot understand is this. Whether the Honourable Members sitting with comfort on cushioned chairs are more solicitous of the health of the girls than their father or father's father and other relations. That is really very surprising to me. (*Mian Mohammad Shah Nawaz* : "What is the custom ?") I am coming to custom also. My friend Mr. Shah Nawaz told us the other day that in September, 1928, he was not aware that such an evil custom was also prevalent amongst the Mussalmans and therefore he signed the document asking the Honourable the Home Member not to proceed with this legislation. It was, only during the course of a year that the experience of my Honourable friend taught him that the evil custom existed to such an appreciable degree that there ought to be legislation, that there must be a penal clause and that such delicate relations of human life should be encroached upon by the courts. I cannot understand that he has been so innocent a year before and has become so wise a year after. However, that is not my experience. I have read this Report which has been in our hands for some time. It was very difficult to read the whole of it and to digest it during the short period especially when we have got many other things to do. I have been however, able to go through the Report. It says that the marriages are performed between the ages of 10 and 15 at the latest. Between these ages, the Report says, the marriages are the largest in number. I believe that that is true, but they ought to know that the statistics give us the number of marriages between the ages of 10 and 15 and marriages among the Mussalmans are generally performed between the ages of 13 and 15—mostly at the ages of 14 and 15 and rarely at the age of 13. The consummation is not allowed by any parent, if he can help it, earlier than the age of puberty, which is generally known to be between 13 and 14. I can understand that the age of consent or the age of consummation can be raised to any limit that the doctors may advise or that the experienced people may declare.

**Pandit Thakur Das Bhargava :** Will that not go against the Muhammadan law ?

**Maulvi Muhammad Shafee Daoodi :** If you find that the girl is molested, and that she might have to undergo physical injury on

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account of this consummation, then certainly the State has got a right to enter into that question and find out the best way of protecting the girl from the physical injury.

**Mr. T. A. K. Shervani :** So the State has got the right to interfere.

**Maulvi Muhammad Shafee Daoodi :** I do not think it is a very astonishing proposition. The State has certainly got the right to interfere when it finds that some physical injury has been done to the body of a girl either in the name of religion or social custom. (Hear, hear.) But you have got to come to the definite conclusion that there is physical injury perpetrated on account of a certain custom. I submit that it is for this reason that, whenever the question of the age of consent has been raised on the floor of the House, no Mussalman Member raised his voice against it. The State has certainly got the right to see that girls should not be molested even by their husbands before a certain age if there is overwhelming evidence as to that age.

**Mr. K. Ahmed :** Have you ever applied for an injunction under section 144 before a Magistrate ?

**Maulvi Muhammad Shafee Daoodi :** No such occasion has come to me. I want to make it quite clear that my objection to this law is that it provides a penalty for the marriage of girls and boys under a particular age. I would not object to another Bill being brought before the House by means of which the age of consent might be raised to any limit which might be considered necessary in the interests of the girls.

What I find, Sir, is this, that when Rai Sahib Harbilas Sarda felt for these unfortunate girls who, according to him, were "tortured", he tabled a Bill in 1927. This is what he said in the Statement of Objects and Reasons :

"The object of the Bill is twofold. The main object, by declaring invalid the marriages of girls below 12 years of age, is to put a stop to such girls becoming widows. The second object, by laying down the minimum marriageable ages of boys and girls, is to prevent, so far as may be, their physical and moral deterioration by removing a principal obstacle to their physical and mental development."

Now, this Bill received the sanction of the Governor General before its introduction. When a Governor General hears from a Hindu that there is no widow marriage in that community, that thousands and thousands of young children are widowed in that community and are not allowed to remarry, I can well understand that the Governor General would agree to give his sanction to the introduction of such a measure. This was how my Honourable friend Mr. Sarda got the sanction of the Governor General. I would also surmise that in his community post-puberty consummation is not rare. (Interruption.) Perhaps I may be mistaken. My idea however, is that Mr. Sarda must have pointed out to the Governor General that there is physical and moral deterioration amongst the boys and girls of his community because soon after marriage they are entitled to have consummation and they cannot prevent consummation. A simple marriage ceremony would not deteriorate physically either a boy or a girl. It is consummation at an early age which goes to deteriorate the physical well-being of the children. Whatever that may be, it is under these two conditions that

Mr. Sarda obtained the sanction of the Governor General. He said very clearly in his first Bill that, "It shall apply to Jains, Sikhs, Brahmos, Arya Samajists and the Buddhists." But when this Bill emerged from the Select Committee it was made applicable to Mussalmans also. The way in which it was made applicable to Mussalmans is to be found in the first Select Committee's Report. It is said there :

"The Bill, as introduced, applied to Hindus, Jains, Sikhs, Brahmos, Arya Samajists and Buddhists and was a measure relating to the validity of marriage. As we propose to amend the Bill by making it a measure imposing criminal penalties on participants in a child marriage, it seems invidious that it should be restricted to these particular communities, since child marriages do occur, though not so frequently in other communities. We propose, therefore, that the amended Bill should be general in its scope and apply to all classes and communities in British India."

**Mr. President :** How long does the Honourable Member propose to take ? I should like to continue for ten minutes, if the Honourable Member is prepared to finish his speech by that time.

**Maulvi Mohammad Shafee Daoodi :** I will take more, Sir.

The Assembly then adjourned for Lunch till a Quarter to Three of the Clock.

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

**Maulvi Muhammad Shafee Daoodi :** Sir, I have told you how the Mussalmans were dragged into this Bill and how it was made applicable to them. There is a provision in the Government of India Act in regard to such questions and that is this :

"It shall not be lawful without the previous sanction of the Governor General to introduce at any meeting of either chamber of the Indian Legislature any measure affecting

(c) the religion or religious rites and usages of any class of British subjects in India."

I think it is very clear that the power of allowing questions like this to be introduced in the Assembly is vested in the Governor General ; and in this particular case when Rai Sahib Harbilas Sarda got his sanction, it was expressly on the understanding that the Bill related to Hindus which included Sikhs, Jains, Brahmos, Arya Samajists, etc. I do not think this Bill could by any stretch of imagination be made applicable to the Mussalmans as well, because the Select Committee have made a recommendation to this House in that behalf. I find that during the debates in this House in January 1929, this question came up incidentally and at that time the Honourable the Home Member was pleased to say that the original Bill which was introduced by Rai Sahib Harbilas Sarda had received the sanction of the Governor General. So far so good. Later on he says :

"The House interpreted the general intention of that Bill to be to regulate child marriage and it was I think with that intention that the Bill was submitted for the sanction of the Governor General."

The words speak for themselves, and I need not comment on such an obvious error of judgment which has been committed by the Honourable Home Member in that connection. He says further :

"I infer" mark the word 'infer' "and I think that it is with that intention that the Governor General granted sanction. My own view therefore would be that no further sanction is necessary and that the point of order regarding absence of sanction of the Governor General is not at this stage tenable."

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I need hardly say that this opinion of the Honourable the Home Member will not make lawful what is unlawful in itself, and no amount of argument adduced in support of this contention can be considered sufficient if it contravened the express provision of the Government of India Act. My contention is that the interpretation put by the Honourable the Home Member does not make the provisions of this Bill applicable to the Mussalmans even if it is passed by this Assembly. I think the real defect in the Bill will remain and certainly advantage will be taken of it.

Now, Sir, I find that there has been legislation in several provinces of India which makes the marriage institution sacred to the Mussalmans, and that legislation can not interfere with it. Here I will quote Act XII of 1887, for Bengal, the United Provinces and Assam, where this is laid down in section 37 :

"The civil courts of these provinces shall decide all questions relating to succession, inheritance, *marriage* or any religious usage or institution by the *Muhammadan law* in cases where the parties are Muhammadans except in so far as such law has by legislative enactment been altered or abolished."

Then again for Madras you find the Madras Civil Courts Act, III of 1873, which says in section 16 :

"All questions regarding succession, inheritance, *marriage* or any religious usage or institution shall be decided, in cases where the parties are Muhammadans, by the Muhammadan law or by custom having the force of law, and in cases where no express rule exists, the court shall act according to justice, equity and good conscience."

Then again I find for the Punjab as well as the North West Frontier Province, there is a provision enacted by the Punjab Laws Act IV of 1872, section 5, and the North Western Frontier Regulation 7 of 1901. This provision is as follows (I will not quote the whole thing but only the material portion) :

"In questions regarding succession, *marriage*, etc., the rule of decision shall be the Muhammadan law in cases where the parties are Muhammadans, except in so far as such law has been altered or abolished by legislative enactment."

In the case of Ajmer-Merwara, Regulation III of 1877 lays down almost the same thing. In the province of Oudh the provisions of the Oudh Laws Act XVIII of 1876, section 3 are the same as in the Punjab. In the Central Provinces again it is enacted in the Central Provinces Laws Act XX of 1875, that in questions regarding inheritance, *marriage*, etc., the rule of decision shall be the Muhammadan law where the parties are Muhammadans. It appears to me that the Muhammadan law of marriage has been held to be sacred by all these laws of the different provinces in India from time to time....

**Mr. President :** Every law is sacred.

**Maulvi Mohammad Shafee Daoodi :** Yes, it is if it has got the force of law, Sir. It is for this reason, I submit, that even when this very important Committee, the Age of Consent Committee, was appointed, the Government were anxious not to make its scope very wide, but to limit it and confine it to questions which really were within the domain of the State, that is the Government of India. The terms of reference of this Committee related only to the age of consent and to nothing else, not to the age of marriage. They have transgressed the scope of their terms. I should think, and have thereby come to the conclusion that there

should be a penalty for marriage at a certain age. The reasons given by the Members of that Committee have been read by me with close attention in order to find out whether there is anything which can convince me of the soundness of their conclusions. I find that the only thing which strikes one is that they say that this age of consent, or section 375, applying to marital relations has been in existence for so many years and has not improved the position very much in India. But a reply to this has been given by an Honourable esteemed member of that Committee itself—Mrs. Brijlal Nehru. She has endeavoured in her note to make it clear as to how this evil, wherever it exists, can be remedied, and what would be the effective method of doing it. I would quote this from page 242 of the Report, where she says :

“ That work of this kind is essentially that of social reform and can best be done by non-official bodies. These, it is presumed, will consist of the leading social reformers of the locality. In the towns at any rate, there should be no dearth of them. The example of the towns will spread inevitably into the villages.”

Later on at page 244, paragraph 31, she says :

“ The fate of men is in their own hands. It is the men and women who can make or mar the destiny of their own country. If they are not ready to work, to put up a fight against the evil, to spare no pains to achieve the desired reform, they cannot get it by passing a thousand laws.”

**Mr. President :** This applies to all communities.

**Maulvi Mohammad Shafee Daoodi :** Certainly, Sir. I made my position clear the other day ; but if my friends go wrong I am not bound to go wrong ; that is my position ; I made it very clear the other day that my fellow countrymen are absolutely wrong in invoking the aid of the Government Benches for passing a law on their own countrymen in regard to social reform. I would quote one more passage from her note.....

**Mr. President :** The only question now before the House is why the Muslim community should be excluded from the operation of this law.

**Maulvi Mohammad Shafee Daoodi :** I am replying to that part. My friends have accused me that I did not want to eradicate this evil of child marriage from the Muslims. I am showing them that this evil can be removed in other ways more effectively than the way they are suggesting, and I am further showing them that, because the method suggested interferes with my liberty and with my personal law, therefore I do not like that this law should apply to my community, thereby proving that I am not against the eradication of the evil but only against the method which is being adopted in this House. I hope, therefore, Sir, that you will allow me to quote the very useful suggestion made by the same esteemed lady at page 232, paragraph 1, of this Report where she says :

“ We have also given ample reasons to show that there are certain inherent difficulties on account of which it is nearly impossible for this law to be as effective as other penal laws. If any drastic measures are devised—(These, Sir, are the words of a lady of motherly affection for the girls more than we can presume ourselves to be)—to make it effective, the harassment caused will be so great, in the present conditions of India, where there is a marked disparity between the legal status of men and women and the latter's condition is so helpless, that the remedy will be worse than the disease itself.”

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I know my friends have the Report very well, more often than I have, but I have realised the importance of the pronouncement of this eminent lady, while I should say that my friends in their zeal in supporting the motion, which is the fashion of the day, are forgetting the real significance of this question. I feel, and very strongly feel, that a very great mistake is being committed to-day; the result of it of course will be out some time after; here we seem to be actuated by some motive or other, and finding that there is the solid support of the Official Benches, we join with them and shut out all that is put forward to improve the nature of the Bill. I submit, Sir, one other aspect of it. My friends had not realised the consequences of the penal clauses of this Bill; and it was for this reason that they wanted so many loopholes. I would submit very plainly that the Official Benches were perfectly right in ignoring all that they put forward by way of amendment, because, after all the mentality of the Officials in this respect, I should say, is absolutely different from ours. When you make the action penal, you must make it as plain as possible.....

**Mr. President :** These are not reasons for the exclusion of the Muslim community. I would ask the Honourable Member to be more relevant.

**Maulvi Mohammad Shafee Daoodi :** I think that this applies equally to the Muslim community and therefore I was going to suggest that it appears to me that my Hindu friends have willingly—I do not know whether by a majority of their own or by the help of the Government Benches—consented to the enactment of this piece of legislation. Therefore, Sir, I submit that they have not realised the consequences.....

**Mr. President :** Never mind about it. The Honourable Member had better speak of the Muslim community.

**Maulvi Mohammad Shafee Daoodi :** Mussulmans, after all, are human beings just as the Hindus are. There is no distinction whatever between Hindus and Muslims so far as the general question is concerned.....

**Mr. President :** The amendment seeks to make a distinction.

**Maulvi Mohammad Shafee Daoodi :** The amendment does not make any distinction. If I fail to convince my Hindu friends that they should not have a law of this kind and I am not here to impose my will upon my friends, what else can I do? If they are willing to have this legislation for their own community, how can I convince them that they should not have it? I am afraid, Sir, if you are under the impression that I am seeking to make a distinction between Hindus and Mussulmans, I do not know what others will think of me. I have on the very first day made it absolutely clear that I am not against the eradication of this evil if and where it exists. I have been doing it and will continue to do it as long as I am alive. But I must protest against the method which my friends are adopting in eradicating this evil.....

**Mr. President :** I would ask the Honourable Member to leave them alone and talk on the amendment.

**Maulvi Mohammad Shafee Daoodi :** I was going to say, Sir, that the mentality of the Officials is absolutely correct on this point, that

whenever we pass a penal law we must know that law is law, it will not differentiate between this case and that case. When you pass it you are bound to apply it as rigorously as possible. I have heard some of my friends saying, "Why are you afraid? This law is simply for the education of the community; it will be a sort of propaganda; people will not be harassed by it; not so many cases will come up before the courts", and things of that kind. But I do not hold that view. I believe that if we once say that this is the law, we must apply it to every case. I would not leave anybody, be he a *Rajah* or a *Praja*. That is the mentality of the Officials, and it is for this reason that they are opposing all the amendments, although they appear to be reasonable to many of us.

You will probably remember, Sir, that in a matter of this kind I told this House some time before that the social customs and the religious practices of the Hindus and Mussalmans differ in many respects so widely that it is not proper for a Muslim to interfere with the social customs and religious practices of the Hindus, and likewise, I expected that my Hindu fellow countrymen would not interfere with the social customs and religious practices of the Muslims. The Muslims are more in need of this convention; because we in this House are only 30 or 32 in number, and any measure which is brought in by a Member of this House which consists of 145 Members might be passed in spite of the protest of all the 32 Muslim Members put together. That is the reason, Sir, why I made this suggestion some time before, and I have been reiterating it all the time. Now, in this particular matter when I found the Official Block was solid in its support of this Bill, I thought there was no help unless I approached them and justified my ground by appealing to them for non-intervention. Then I put in an application which was signed by 15 Members of the Assembly—one was absent that day although he had agreed with our view—so there are 16 Members out of 32 who have agreed on the point as far as my knowledge goes. This is what we said in our application:

"The marriage institution of the Muslims is within the category of their personal law, and legislation on any aspect of this institution is an invasion thereof. Sarda's Bill as at present before the Assembly aims at making an offence of what is permissible according to *Shariat*, that is the Islamic law. This is obviously an unwarranted encroachment on the personal rights of a Muslim. It is therefore clear that the Bill should not apply to Mussalmans. Since the Bill is before the Assembly, they have received numerous communications from recognised Muslim Associations and well known theologians calling upon us to oppose the passage of this Bill. The resentment and the agitation amongst the Muslims is very great. As representatives of the Muslim community in this House we desire to acquaint you with the real situation. In the circumstances we request the Government to adhere to their time-honoured policy of non-intervention in this matter."

I have not received any reply to this. I do not know what has been the result of this application by 16 Muslim Members.....

**Mian Mohammad Shah Nawaz** (West Central Punjab : Muhammadan) : Some have retracted from the position they then took up.

**Maulvi Mohammad Shafee Daoodi** : I did not like to give the names in the first instance, but since my friend is interrupting me by saying that some have retracted from the position they had taken up, then, I feel bound to give the names now :

(1) Mr. Abdul Latif Sahib Farookhi, (2) Maulvi Sayyid Murtuza Saheb Bahadur (An Honourable Member : "Have you retracted?")

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(Maulvi Sayyid Murtuza Saheb Bahadur : "No, certainly not.") (3) Haji Abdulla Haji Kasim, (4) Myself, (5) Haji Abdoola Haroon, (6) Khan Bahadur W. M. P. Ghulam Kadir Khan Dakhan, (7) Mr. Muhammad Rafique, (8) Mr. A. H. Ghuznavi, (9) Haji Chaudhury Mohammad Ismail Khan, (10) Mr. Anwar-ul-Azim, (11) Mr. Muhammad Ismail Khan, (12) Maulvi Muhammad Yakub, (13) Sayyed Hussain Shah, (14) Maulvi Badi-uz-Zaman, (15) Mr. Abdul Matin Choudhry (*An Honourable Member* : "He has retracted.") (16) Mr. Abdul Haye. (*An Honourable Member* : "No, no. He is a supporter.")

The last gentleman agreed with us but was not present at the time of the signature, and as we were afraid that the Bill would be passed very soon, we sent up the application to the Honourable the Home Member without waiting for the gentleman who was absent. So, Sir, we gave our application to the Honourable the Home Member three or four days ago. Thereafter it transpired that there were several other gentlemen wanting to join us when we made the formula slightly different.....

**Mr. Rafi Ahmad Kidwai** : Who drafted it ?

**Maulvi Mohammad Shafee Daoodi** : And that formula is :

"We, the Muslim Members of the Assembly, are of opinion that any change in the personal law of Muslims of India should depend on the Muslim votes only of the Legislature, and that Government should start the convention of not voting for or against a change unless it is sure that the side on which it is voting represents the view of a majority of the Muslims of that Legislature."

This was also signed by many of the Muslim Members of the Assembly. But as I was busy here I could not know the result of it.

**Khan Bahadur Mian Abdul Aziz** (Punjab : Nominated Official) : Do Muslim elected Members represent the Muslim women's point of view ?

**An Honourable Member** : Not the nominated Members.

**Another Honourable Member** : Whose draft is it ?

**Mr. President** : Order, order.

**Maulvi Mohammad Shafee Daoodi** : I think those who are putting this question from that side are those who did not want to sign any of these, and if I give out their names, I think they will be satisfied that they are not to blame for it. They are Mr. Abdul Qadir Siddiqi and Mian Mohammad Shah Nawaz. My submission at the end is that this amendment of mine should not be decided by the votes of the majority of this House.....

**Mr. President** : That is not the rule.

**Maulvi Mohammad Shafee Daoodi** : That is not the rule, but I have appealed to the Government Benches, by means of that written application, three or four days ago, and they had by now sufficient time to make up their minds. I appealed to my esteemed friends, the Leaders here of the Hindu community also, Pandit Madan Mohan Malaviya, Mr. Kelkar, Dr. Moonje, gentlemen whom I considered to be responsible leaders of the Hindu community. I appeal to them here again as I have appealed to them as well as to others outside the House—I have appealed to them not to interfere with a matter which concerns the personal law of the

Muslims. I shall recapitulate in a few words my submissions. It is permissible for a Mussalman to give away his daughter under 14 in *Nikah*, i.e., in marriage. It is permissible, and no law should make it not permissible. To lay down a law against it, to punish a man who does a permissible act is certainly going against the *Shariat* of Islam. Secondly, if you are afraid of the physical deterioration of the girls, I should say I am as solicitous, of the physical well-being of girls as any other Member of this House. I hope you will give me that much credit. But I believe that the *Nikah* ceremony, which is quite distinct from consummation, is not a thing which deteriorates the physical well-being of either the girl or the boy. Therefore I say that the evil which you say has compelled you to legislate on this question does not arise by marriage alone. Thirdly, the evil of early consummation, if it does exist, and I know it does exist in India to a certain extent, can be eradicated more by the device which has been recommended by Mrs. Nehru in her report than by this sort of legislation. Further, I may state that this legislation is halting, because so many amendments have come from my Hindu friends showing that they are not whole-heartedly in favour of the Bill as it stands. If it is so halting, I think you will not get the support of the country when it is passed. It will remain, I am afraid, a dead letter as other laws are said to remain a dead letter on the Statute-book. I am, of course, convinced that you can eradicate the evil by methods of propaganda, education and that sort of thing and I would join hands with my Honourable friends in eradicating the evil by such methods. It must be very clear that the Muslim community as a community is not going to lag behind in the matter of eradicating that evil. But this is not the way of doing it. I therefore hope that my Honourable friends will accede to my request and allow this motion of mine to be decided by the votes of the Muslim Members alone.

**Maulvi Muhammad Yakub** (Rohilkund and Kumaon Divisions : Muhambadan Rural) : Sir, in rising to speak on this amendment, I wish to explain my attitude towards this Bill. I wish to make it quite clear that Islam does not only, not enjoin child marriages, but Islam definitely is in favour of marriages after puberty or at an advanced age. I wish also to make it clear that, neither myself nor other Muslim Members of this House, who are not supporting this Bill, as it stands at present, are in favour of early marriages. In fact, I myself, and those who think with me, do not consider that the age of 14, as is proposed by this Bill, is quite an appropriate and proper age for marriage and consummation.

When this Bill was first introduced in this House by the Honourable Rai Sahib Harbilas Sardar, I lent my humble support to it, considering the horrible conditions of the Hindu girl widows depicted by the Honourable Mover of the Bill and other speakers. I had also the honour of sitting on the Select Committee on the Bill, and in the Select Committee when the Honourable the Home Member, on behalf of the Government, brought out the draft of quite a new Bill in the form in which it stands now, I must confess that I never had any idea of the religious point of view, and I raised no objection to the Bill assuming the form given to it by the Honourable the Home Member. I supported it in its present form on the floor of this House and on that occasion I definitely stated :

“ Mussalmans are not in any way behind any community in the matter of social reforms, so long as they do not interfere with their religion.”

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I also made it quite clear at the time, when I said :

“ I do not want Government to interfere in any religion in India.”

(Interruptions from Honourable Members.)

Interruptions like these would not do. I am speaking in my strain. I had not the slightest idea on that occasion that the persons who are in a position to speak on the religious point of view would be opposed to it. A man who has respect and reverence for the theologians of his religion is entitled to more honour and respect at the hands of Honourable Members of this House than those who make a mockery of religion and have no respect for their religious leaders. When the proceedings of the Assembly were published, the first Mussalman, who raised objection against the Bill from the Muslim point of view, was no less a gentleman than Maulana Muhammad Ali, a graduate of the Oxford University, a gentleman under whose banner my friend Mr. Shervani had the honour of working for several years. Subsequently prominent theologians and ulemas, with one or two exceptions, raised their voice against the provisions of this Bill being applied to the Mussalmans. I then tried to study the question more thoroughly, and after giving it my full consideration, I have come to the definite conclusion that Muslim religious opinion is against the Bill, and those who are in a position to speak on Muslim law consider it an interference in religion. In my note appended to the Report of the Age of Consent Committee I have tried my best to explain their point of view, which, put in a nutshell, runs as follows :

“ Islam is a self-contained and self-sufficient religion. We have got a complete set of our own codified laws and in socio-religious matters, like marriage, divorce, succession and religious family trusts, we want to be governed by our own personal laws.”

This Muslim point of view, as explained by me, is also supported by another Muslim member of the Committee, namely, Khan Bahadur M. I. Kadiri, retired District Judge of the Bombay Presidency, and now the Chief Judicial Officer of the Junaghad State. This is what he says :

“ I have had the advantage of going over the notes put up by my learned colleague Maulvi Muhammad Yakub. I agree in the main with the opinion expressed by the Maulvi Sahib regarding the religious aspect of the question connected with the proposed marriage and consent legislation.”

**Mr. Rafi Ahmad Kidwai :** Very good certificate !

**Maulvi Muhammad Yakub :** Perhaps better than yours. It will thus be seen that two out of the three Muslim members of the Age of Consent Committee held the same view as regards the Muslim religious point of view. I have no quarrel with those who admit that they cannot speak on this Bill from the religious point of view of Hindus and Muslims, but certainly it is highly objectionable on the part of Muslims on the floor of this House to discard and denounce the considered and weighty opinions of the ulemas and theologians of their faith. I was really surprised to see that some of my friends here have lightly brushed aside the weighty and sound pronouncement of ulemas like Molana Mufti Kifayat-ullah Saheb, President of the Jamiat-ul-Ulema, Maulvi Ahmad Saied Saheb, and Molana Moulvi Husain Ahmad Saheb, President of the Theological Academy at Deoband, whose opinions they held in the greatest respect only a few years ago, and at whose *fatwa* some of them suspended their practice. (*An Honourable Member :* “ Did you also suspend ? ”) I did not. And I should like, on this

occasion, to congratulate my Honourable friend Mr. Keane for having taken his Muhammadan law from my friend Mr. Shervani, and I hope the day will come soon when he will take his political ideas also from him on the floor of this House.

Now, Sir, only as recently as the 11th August last, Maulana Husain Ahmed delivered his presidential address at Moradabad, from the platform of the United Provinces Jamiat-ul-Ulema, and he announced in clear and definite terms that the provisions of this Bill were an interference with the *Shariat* or the Muslim law.

**Mr. Yusuf Imam :** You walked out on that occasion.

**Maulvi Muhammad Yakub :** I was not present in Moradabad at that time. I was on the Public Accounts Committee in Simla. My Honourable friend should ascertain his facts before interjecting. Since this Bill was taken up in this House, we have been receiving a large number of telegrams, letters and proceedings of Muslim meetings denouncing the Bill and asking us to vote against its application to the Mussalmans. I will refer to the most important ones. One is from Maulvi Kifayat-ullah, President of the Jamiat-ul-Ulema, in which he says that the present marriage bill is an interference with the Muslim law, and he calls upon the Muslim Members of this Assembly to oppose it. There is another weighty telegram which I received only last night. The telegram runs as follows :

The following Resolution was passed under my Presidentship and I am authorised to communicate the same to you. Resolution moved by Maulana Kutb-ud-din Mohammad Abdul Wali supported by Shamsul-ulama Maulana Nasir Hussain Saheb Mujtahid, Maulana Inayat-ullah, Farangimahel, Shamsul-ulama Maulana Ibn-i-Hasan, Mujtahid and Shamsul-ulama, Maulana Sibte Hasan. (Laughter.) It is not a matter for laughter. I have not sold my community for a few pice. (Hear, hear.) I have never sold my community.

**An Honourable Member :** But some have sold their country.

**Mr. T. A. K. Shervani :** Will the Honourable Member utter those words outside the House ?

**Maulvi Muhammad Yakub :** If the occasion comes, I will. I do not mean any insinuation against any particular gentleman. What I meant to say is that there are certain people in this country, who have sold their country and community. This is the Resolution :

“ Resolved that this meeting of the Sunni and Shia Ulemas and Muftis is strongly of opinion that the Bill to fix the age of marriage and consummation is against the Islamic law and constitutes a direct interference with religion and asks the Mussalman Members of the Assembly to oppose the passing of the Bill and also expects that, if this Bill be passed into law with the support of the majority, Government would not give their assent and allow it to be put into effect against Mussalmans because the Mussalmans will under no circumstances accept a law which interferes with their *Shariat*. Najmul Hasan, Shamsul-ulama, Mujtahid.”

These are weighty opinions and they are from prominent persons. They are not children, they are not fame-hunters, and it would be a cursed day in the British history if the Government of India lightly brushed

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away the opinions of gentlemen like these. This is another telegram from Rangoon. It says :

“ Muslim mass meeting presided over by grand Mufti unanimously disapprove the Sarda Marriage Bill as it contravenes the Muhammadan law and the Victorian declaration. Requested Government to exempt from the Bill if passed.”

Then there is another telegram from Madras, which says :

“ Anjuman Islamia, Madras, highly appreciate your strong protest against Sarda Bill. Spare no pains to exempt Mussalmans.”

Then this is a telegram from the Mussalmans of Benares :

“ We, the Mussalmans of Benares, emphatically disapprove of the Sarda Bill. We believe that the Bill is a clear interference with the religious freedom of the Mussalmans and therefore strongly condemn it.”

There are also other telegrams from Benares and other places in which similar feelings have been expressed. In the face of this opposition, Sir, as a humble follower of the faith of Islam, I feel it my bounden duty to give expression to the views of the Mussalman public in this country, and as a representative of the Mussalmans in this House, I feel it my duty to give emphatic expression to their views. Sir, I wish also to take this opportunity to join in offering my humble quota of tribute to the eloquent, forceful and powerful speech which the Honourable the Home Member delivered the other day in support of this Bill. How much do I wish that he would have shown the same power of eloquence, force and determination on other occasions, when his advocacy was so much needed by the Government of India as their representative in this House. (Hear, hear.) But I feel it my duty to submit, with all the determination and earnestness at my command, that, in making that pronouncement, he was deviating from the time-honoured policy of the Government of India, namely, non-interference in religious matters and the personal laws of the people of this country.

**Mr. M. K. Acharya :** Hear, hear.

**Maulvi Muhammad Yakub :** This policy of the Government of India has been repeatedly given expression to on the floor of this House. As far back as 1922, when Sir Hari Singh Gour wanted to create an innovation in the marriage law of this country, the distinguished predecessor of my Honourable friend, the Home Member here, Sir William Vincent, said :

“ The Government of India, fully realising the danger of weighing down either one side of the balance or the other, by the official vote, have decided to follow the policy, which I understand is approved by the last speaker, and to be absolutely neutral in a matter which really affects the non-official Members of this Assembly more directly than it does the Members of the Government. The fact is that in a matter of this kind by which religious sentiment is largely affected Government cannot be too careful of its attitude.”

Then, again, Sir, in 1925 when this Bill was first introduced by my Honourable friend, Rai Sahib Harbilas Sarda, the late lamented Sir Alexander Muddiman, the then Home Member of the Government of India, said :

“ But the desire to go forward, at any rate of the Home Member, must be restricted by the caution which is necessary in dealing with a measure like this affecting the social life of the people.”

The Honourable Sir James Crerar himself, when speaking on this very Bill in 1927, said :

“ But one of the responsibilities, and a very heavy one, on the Government of India, is to ensure that where measures, undoubtedly impinge very deeply upon the religious ideas and social customs of very considerable sections of the population, all legitimate interests and all legitimate opinion should be carefully, fully and fairly ascertained. Another part of the responsibility which rests upon the Government of India is to see, as far as in them lies, that such measures as are proposed are readily conducive to the end to which they are directed.”

Proceeding, the Honourable Sir James Crerar said :

“ I confess that a note of caution seems to me to be a wise counsel. I think that, before the House proceeds to consider this Bill in greater detail, it ought to pass the motion which I moved for further eliciting further opinions thereon. Legislation, however well-intentioned, if it is hasty, is not likely in the end to promote the purpose for which it is intended. Legislation which is passed without due consideration may have consequences very remote from those which are intended.”

These are words of wise counsel which were uttered, by three successive Home Members of the Government of India, on a measure like this. In making such a bold departure from this policy, I am afraid the Government of India are adopting a very hazardous and dangerous course, the disastrous consequences of which cannot be expressed in too strong language. Sir, the Government of India seemed to be so very nervous of a handful of communists in India that they twice, unsuccessfully, attempted to legislate Bill like the Public Safety Bill, and the hunger-strikers Bill, but it is wonderful that they do not seem to pay any heed to the general and strong opposition which this Bill has evoked in the country. Hundreds of petitions, containing hundreds of thousands of signatures, opposing this Bill have been placed on the table of this House and a majority of the Mussalman Members of this House have tried to convey the opinion of their co-religionists to the Government. Only the other day a memorandum, signed by 15 Mussalman Members of this House, was placed in the hands of the Honourable the Home Member but it had no effect. Recently the Honourable the Home Member declared, on the floor of this House, in connection with the hunger-strikers Bill, that, in deference to the views, so forcibly put forward in this House, he agreed to the circulation of a Bill which the Government of India considered so urgent and so necessary. I fail to understand why he has turned a deaf ear to the opinions so forcibly expressed in this House about this Bill.

At this late stage of the Bill I wish to make another fervent appeal to the Government and warn them against the consequences which may arise as a result of the passing of this Bill, against the wishes of the masses. (Loud applause from Members against the Bill.) And once the masses of the country come to realise that Government have deviated from their policy of non-interference in the personal laws of the people, the resentment and disaffection will be so great that all the resources of the country, and all the forces, that are at the command of the Government of India, will hardly help them to keep the peace of the country. The upheaval in Afghanistan must be a lesson to the Government of India. (Hear, hear.) Blessed is the man who takes a lesson from the mistakes and misfortunes of others. Sir, even if this Assembly does rush to pass this Bill into law, I still hope that an experienced Viceroy like Lord Goschen will never accord his consent to the Bill and will not allow the future historian of India to say that the first Act of intervention in the personal laws of the

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country was adopted in his short régime, which would certainly shake the very foundations of British rule in India.

**Pandit Nilakantha Das :** Can the name of the Viceroy be mentioned in this connection, Sir ?

**Maulvi Muhammad Yakub :** If the names of heretics, and martyrs like Jatindra Nath Das can be mentioned in this House, I do not see any reason why the name of the Viceroy cannot be mentioned in this House.

With these words, Sir, I make another appeal to the Government of India. As I have said already, I am not in favour of early marriages. We do not want early marriages. But I warn the Government that they should not turn a deaf ear to the united and strong opinion of the religious heads of this country, of both the communities. I warn them to be very cautious and think twice and thrice before they go into the lobbies to vote on the last reading of this Bill. (Applause.)

**Mr. T. A. K. Shervani :** Sir, I rise to oppose the amendment put forward by my erstwhile colleague Maulvi Mohammad Shafee Daoodi and I do so in spite of the fact that the opinion of my erstwhile leader has been quoted in the House. I revere and respect Maulana Muhammad Ali still as my elder brother.

**Maulvi Muhammad Yakub :** But not as your leader ?

**Mr. T. A. K. Shervani :** I followed him in politics so long as I considered his politics to be correct politics ; but I never recognised him as my religious head.

**Maulvi Muhammad Yakub :** But Government think that his policy even then was wrong. And this is why you did not follow him and preferred to follow the Government.

**Mr. T. A. K. Shervani :** While opposing the amendment, Sir, I do not propose to start with vituperations like my friend over there and finish with quotations and assumptions. I will try to put before the House the true rules of Muhammadan law and the condition of Muhammadan society as it exists here and elsewhere. I think that is the attitude which ought to have been adopted by the Honourable Members who spoke before me. Sir, in my previous speech I tried to show to the House what is true Muhammadan law on the point. (*An Honourable Member* : "As you understand it.") Certainly as I understand it, and as everybody else ought to understand it, and I will quote, if necessity arises, the text from the Hadises and from Koran, and will show that the law is that which I assert is the law. But before doing so, I must say that I was really astonished when I listened to the arguments advanced by my friend Maulvi Muhammad Shafee Daoodi. He admitted in so many words, on the floor of this House, that an early marriage is an evil and it must be eradicated. My learned friend said he was prepared to eradicate that evil but he says that he is ready to eradicate the evil, but as that evil is sanctioned by Islam, therefore that evil must continue for the time being without any interference by this House ; but I respectfully differ from my friend because, according to my belief, Islam can never sanction an evil. That is my reading of Islam. (*A Voice* : "He never said that.") He admitted it in so many words, and the report of his speech will be there. He may strike off this passage now, but my friend Maulvi Mohammad Shafee Daoodi did say, that early marriage is an evil.

**Maulvi Mohammad Shafee Daoodi :** I said that early consummation is an evil.

**Mr. T. A. K. Shervani :** I knew that correction would be made but that would be an after-thought. However, let us see what Islam says in the matter. I have heard two learned speakers on the amendment, but they have quoted no authority except the authorities of certain telegrams.

**Maulvi Muhammad Yakub :** The Mussalmans themselves are the authority on the Islamic law.

**Mr. T. A. K. Shervani :** The same Mussalmans who called western education *kufir*. As regards following the Fatwas, it is a question of choice between myself and Maulvi Muhammad Yakub. I followed the Fatwas of ulemas when the Fatwas tried to eradicate an evil, but I do not follow the Fatwas of the ulemas of my learned friend when they instigate us to perpetuate an evil. That is the difference between my learned friend and myself.

(At this stage Mr. President vacated the Chair, which was taken by Mr. Deputy President.) (Loud Applause on Mr. Deputy President taking the Chair.)

I followed ulemas, Sir, when to follow ulemas entailed some sacrifice. But certain gentlemen—I will not refer to you, Sir, out of respect for the Chair—but say certain gentlemen follow the ulemas when following them does not demand anything but, on the other hand, secures elections. However, I do not want to waste the time of the House and will come directly to the question in issue.

(At this stage there was loud conversation going on among all the Members.)

**Mr. Deputy President :** I hope Honourable Members are not in a holiday mood.

**Mr. T. A. K. Shervani :** Sir, I will do my best to convince the House about my point of view by quoting yourself. So far as Koran is concerned, I quoted the other day the only verse about *nikah*. So far as *hadis* is concerned, I would quote yourself.

**Mr. Deputy President :** Then follow me.

**Mr. T. A. K. Shervani :** Sir, I would have followed you gladly if you had given the right lead. If you had stuck to your real conscientious opinion, I would have implicitly followed you.

**Mr. Deputy President :** The Chair never gives a wrong ruling.

**Mr. T. A. K. Shervani :** It is not your rulings but that of others. You do not rule, Sir, but follow. Sir, you quoted in your note of dissent :

“ *la tankehol bikra hatta tastammar wala tunkah-us-sayyab hatta tastazana.* ”

That is the *hadis* which has been quoted by you. When translated, it means, do not marry a virgin unless she gives her consent to you by inclination. The word used is *tasta ammara* and not *tastazza*. *Tasta ammara* means not only consent, but consent with inclination. These are the words quoted by you, Sir, in your note of dissent. In the face of this *hadis*, I ask my Mussalman friends whether they can oppose this Bill and ask for the exemption of Muhammadans. If you cannot find another *hadis* which recommends pre-puberty marriage, you must follow this *hadis* which does

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not make exception in favour of anybody. In the absence of any other *hadis* to the contrary, it is incumbent upon you to follow it.

So far as the opinions of the ulemas are concerned, I also received a telegram from the President of *Jamaiyat Ulema*, and in reply I addressed a long letter to him. I told him why I support this Bill. I told him that, as I was a lawyer, I presumed that I knew Muhammadan law and that I was going to follow it until I was convinced that my opinion was against Muhammadan law. I also mentioned the authorities on which I based my opinion. I reminded him again to send me a reply. My letter must have reached him on the 8th, and today is the 19th and still I have not got any reply. I have got the acknowledgment of my letter with me and it was intimated in that letter that after two or three days they were going to send me a detailed reply but none has come up till now.

**Mr. K. Ahmed :** Then get an adjournment of the House.

**Mr. T. A. K. Shervani :** Several of my Honourable friends got together certain Maulvis and brought them to me. I discussed the entire point with them and they had to agree....

**An Honourable Member :** No, no.

**Mr. T. A. K. Shervani :** Listen to me. They did agree that there was not a single verse in Koran, there was not a single *hadis bilqual*, which recommended pre-puberty marriage. The Maulvis themselves admitted that before my Honourable friend Maulvi Mohammad Shafee. I will  
 4 P. M. repeat again, there is not a single *hadis*, there is no verse in the Koran, which directly sanctions pre-puberty marriage. What did those Maulvis say ? They said that this is the existing law and, therefore, this existing law must not be interfered with.

(At this stage Mr. President resumed the Chair.)

Well, Sir, my answer to my Honourable friends is that the existing law in the Punjab amongst Mussalmans is that women do not inherit land which is against Shariat. If that law is to be brought in accordance with the Shariat, the Punjabis can put forward the same argument and say, "Do not interfere with this practice ; this is our personal law." Amongst the Cutchi Memons and among the Khojas, Hindu law still prevails.

**An Honourable Member :** No, no.

**Mr. T. A. K. Shervani :** Why ? It does amongst a section of Memons. I can quote rulings to that effect to satisfy my Honourable friend. Hindu law does still prevail among them. They can come forward and say in the same way : "Although it is against the tenets of Islam, although it is an evil, so far as the Shariat is concerned, yet we must continue the evil, because this is our personal law." I am against the prevailing custom of child marriage because the custom which is in vogue now is not an Islamic custom, it is an evil which we have borrowed from others and it is against the very spirit of Islamic law. I beg of the Mussalman Members to eradicate the evil which cannot be countenanced by the Islamic law.

**Mr. K. Ahmed :** What is the law in Turkey ?

**Mr. T. A. K. Shervani :** I am coming to that. My Honourable friend Maulvi Muhammad Yakub quoted some opinions—I do give him credit for collecting them—His thoughts are generally other people's opinions. I do not follow other people's opinions and form my own when I can do so.

**Maulvi Muhammad Yakub :** I am the spokesman of my constituency.

**Mr. T. A. K. Shervani :** My Honourable friend quoted the opinions of certain Maulvis. He got hold of certain Maulvis to support him, and surely that support does count, especially when the elections are coming nearer.

**Maulvi Muhammad Yakub :** Well, do not run to the Maulvis when your election comes.

**Mr. T. A. K. Shervani :** My Maulvis are above petty politics. I did never trouble them, nor will trouble them for my election. But on this question I count on the support of bigger people, large minded people, thinking people of all Islamic countries in the world.

**Maulvi Muhammad Yakub :** That we know.

**Mr. T. A. K. Shervani :** I am supported by Turkey, not by the Turkey of Mustapha Kemal, but by the Turkey of a hundred years back when the Khalif ruled over it. I am supported in my opinion by Egypt, not by the Egypt of today but by Egypt when Sheikh-ul-Islam ruled so far as Shariat was concerned.

**Maulvi Muhammad Yakub :** They are all Islamic countries. They can do so, but not here in India which is not an Islamic Government.

**Mr. T. A. K. Shervani :** Why do you go to their courts to get decisions on Islamic law. I am supported in my view by practically the entire Muslim world. Go to Afghanistan, go to Persia, go to Arabia itself and you will not find pre-puberty marriages there.

**An Honourable Member :** Is there a law there like this ?

**Mr. T. A. K. Shervani :** Because no necessity ever arose for it. There would have been no necessity for any law here in India if you had not gone against the principles of Islamic law. Sir, I oppose this amendment because Muslims of India have gone against the practice of Mussalmans and against the tenets of Islam. A cry is raised that this law militates against the principles of Islam and the tenets of Islam. I respectfully submit that it does not. It does not in any way interfere with the institution of marriage as such. It does not declare that a marriage will be void ; it keeps the marriage intact.

**Maulvi Mohammad Shafee Daoodi :** It is a State interference in the institution of marriage.

**Mr. T. A. K. Shervani :** It does not lie in the mouth of my Honourable friend now to say so, especially after he had admitted and confirmed and reiterated it when I interrupted him that the State could interfere and that it had every right to remove the evils. I support this Bill because, whatever the existing law allows, Islam does not allow it. What does *Fiqā* say ? *Fiqā* puts the person of minor persons under the guardianship of *Wali* in the same way as *Fiqā* puts the property of minors under the supervision of guardians.

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If a guardian misbehaves and abuses his trust with regards to property the State has got the right, and no system of law can go on even for a day if the State has not got the right to put the guardians straight. I say protect the person of minors in the same way. Instances have been quoted in the Report of the abuse of power by guardians. There are 2,64,000 girls under ten years of age who have been married by these guardians. What more proof do you want of the misbehaviour of these guardians and of the fact that they are not discharging their trust honestly and according to Shariat? When the state of affairs is such that 2,64,000 parents act against the tenets of Islam, I feel justified in supporting the Bill and I ask every right-thinking Muhammadan to support it. The Honourable Member from Rohilkund says that the public opinion is against it, but when you analyse the public opinion, you find that, when the Honourable Member says public opinion, he means himself. Some gentlemen have come forward and said on previous occasions also that there were millions of people behind them; the whole Muslim world was behind them and these assertions were not made once or twice but many times, and always the lie had been given to them. But habit is habit and still they come forward and assert the same thing that the entire Muslim world is behind them. Although I do not agree with the views held by my friend Mr. Neogy on the Bill, still I do agree with him on the principle enunciated by him that when you are a representative either you must follow the opinion of your constituency, or if it is against your conscience, you must resign your seat. But none of the Muslim constituencies as such have so far expressed their opinion and although ample opportunity was given to them to express their opinions they have not done so. I may acknowledge, in fairness, that I have received yesterday and today about six telegrams from Benares but the telegrams tell their own tale. There was not a difference of a comma or a full-stop in all those telegrams although they were sent by different people. (Laughter.) Exactly the same words in all the six.

Sir, it is asked, why are the Muhammadans dragged in? I myself like that dragging in and I congratulate my friend Mr. Yakub for it. It was not the Government, not the Hindus, but he himself who dragged in the Mussalmans.

**Maulvi Muhammad Yakub :** I never did, and I emphatically deny it.

**Mr. T. A. K. Shervani :** Sir, while this Bill was put before the House for the first time, my Honourable friend Mr. Yakub got up and said that, when there was a question of social reform, the Muhammadans were always neglected. These were the exact words, if my memory does not fail me, uttered by my friend on the floor of this House.

**Maulvi Muhammad Yakub :** But I never said that religion should be interfered with.

**Mr. T. A. K. Shervani :** Probably then it was not the season of religion. Those persons who hold seasoned views can very well change them according to the exigencies of weather, but it is difficult for those persons who hold opinions according to their convictions to change them to suit even an election propaganda. Personally, I do not care for elections. Election or no election, mandate or no mandate, I must stick to

my opinion and do whatever I think best for my constituency—especially when my constituency does not give me any mandate.

Now, Sir, let me take up the question of State interference. So far as interference by the State is concerned, I can answer both my friends Mr. Yakub and Mr. Shafee Daoodi by words not mine but of my friend Mr. Yakub himself. He says in his Report :

“ I will venture to say that in the eyes of every reasonable man or woman the pledges contained in the Queen's Proclamation must be read with a two-fold reservation.”

(A Voice : “ That is Lord Lansdowne ”.)

**Maulvi Muhammad Yakub** : Is that my view ? Please don't misquote me. I never wrote that.

**Mr. T. A. K. Shervani** : Yes, I am sorry, (Laughter), but you quote it as an authority. I leave it at that. Maulvi Muhammad Yakub has accepted the Report in its entirety. He does not say that the Muhammadans should be excluded. He says that the law should be passed but it should be left to the different Local Governments to proclaim this law in those provinces. This is what he says :

“ My second and chief recommendation is that in case the Marriage Bill is passed into law by the Assembly it should not apply automatically to the Mussalmans but power should be given to the Provincial Governments to apply the Act to the Mussalmans ”, etc.

Thus he is not against the law and the principle of the law, but he cannot give his whole-hearted support because of the fear of some Maulvies. That is his chief fear, and that is the chief reason why he is not to-day in favour of the Bill.

Sir, my Honourable friend Mr. Shafee Daoodi's chief argument was that Muhammadan law is a codified law. I do not know what he means by “ codified law ”. I have not seen any code so far. He further says that there is a codified law and a perfect law, and therefore no interference should be allowed or tolerated in that law. My respectful submission is that the reason why I support this Bill is that the Muhammadan law has certain restrictions. If guardians misbehave we have got a remedy under our law, but we have got no authority at present to set the misbehaving guardians right so far as marriages of innocent minors are concerned.

I ask my Honourable friend, have you ever interfered in undesirable marriages or can you interfere ? My grievance is that, while there are provisions in Muhammadan law to check guardians, we have got no machinery to enforce those provisions ; and unless we have got the power of the Legislature behind us, we cannot enforce them, and that is why I want this law. If guardians misbehave and marry these children to their disadvantage the law must provide for intervention. If the guardians are wicked, if they are profligate, if they are spendthrift, and give their daughters or sons in marriage, it will not be binding on the children according to the Shariat. In the name of the custom of the country, you have tied ropes round the neck of the children, the rope of custom, the rope of seclusion, the rope of bondage, in which you keep the children. Remove these ropes from round their necks, and I will then say that you do not require any law of the kind by this Legislature. But what is the state of affairs ? If my friends who support the amendment

[Mr. T. A. K. Shervani.]

honestly make efforts and try to find out cases, they will find out a considerable number of cases where the marriages are not happy marriages. Poor women suffer in seclusion and they cannot come out; they are not allowed to come out to proclaim their rights and get redress from the courts, under the present custom of the community.....

**Maulvi Mohammad Shafee Daoodi** : If I may interrupt, I would say this : My Honourable friend knows that there have been attempts on the part of Mussalmans to adopt the institution of *kazi* for the purpose of settling these marriage questions.

**Mr. T. A. K. Shervani** : We have had very bad experiences of these *Kazis* so far as *Nika* registers are concerned, and I am not prepared to have any more experiment of that kind. I do not mind Muhammadan judges learned in law, but no more *Kazis* of this type. How they behaved is well known to everybody and I for one am not going to be a party to the reinstatement of those *Kazis*.

**Maulvi Mohammad Shafee Daoodi** : You seem to have contempt for yourself ?

**Mr. T. A. K. Shervani** : My friend can use all my phrases against me whenever he likes, and I know he is going to do it, still I say that I am not going to entrust my personal law into the hands of the type of *Kazis* who misbehaved themselves in the past when they had certain powers. You may call it contempt or anything you like. However the fact remains that the law which should have been available to these poor children, especially the girls, is not made available, and it will not be available until there is a Statute behind them.

In short, I support this Bill because the present custom of early marriage is against the tenets of Islam, because the evil is prevalent here in India, and because that evil cannot be stopped out unless we have the force of legislation behind us. So far as the principle about the State interference enunciated by my learned friends Maulvi Mohammad Shafee and Maulvi Muhammad Yakub is concerned, I entirely agree with that principle and I have said so in my previous speech and I say again that no Government, this or any other future Government, has any right to impose its will upon any community, especially as regards its personal law and religion, without the consent of that community; but I for one give my consent to this measure, for I do think that this present legislation is in accordance with the Muhammadan Law and this is why I support the Bill and oppose the motion of my friend, Maulvi Mohammad Shafee Daoodi.

Sir, an Honourable Member of this House the other day stigmatised another Honourable Member of this House by saying that he was a Muhammadan in name. I do not like the Honourable Member pretend to know anything about the beliefs and faiths of other people. I am not concerned with his pretensions, but I will not allow him to deny the facts. Facts are facts. Mr. Ghuznavi says that the evil of early marriage is not to be found amongst the Mussalmans. I presume that when he made that statement he had not read even the Report of the Age of Consent Committee. The Report gives him the lie.

**Mr. A. H. Ghuznavi** (Dacca Division : Muhammadan Rural) : I have and I can prove it.

**Mr. T. A. K. Shervani :** I assure my learned friend that the evil is there rather worse in Bengal.....

**Mr. K. Ahmed :** What do you know about Bengal ?

**Mr. Amar Nath Dutt :** Don't you talk of Bengal here.

**Mr. T. A. K. Shervani :** I do not know whether my learned friend has got any special licence to talk about Bengal to the exclusion of others.

Now, one of the objections raised by Maulvi Yakub is the competency of this Legislature. On this point again I seek support from my learned friend, Maulvi Muhammad Yakub. Koran says "La takulurriba" "Do not take interest." But my learned friend sought an amendment of the law, that divine law, by saying "Take interest, but not more than the amount of the principal." And he put forward a Bill to that effect.

**Maulvi Muhammad Yakub :** That is not correct ; I never did anything of the kind.

**Mr. President :** The Honourable Member should not make repeated interruptions in that way.

**Maulvi Muhammad Yakub :** But he is misquoting and misrepresenting me, Sir.

**Mr. T. A. K. Shervani :** There was a Bill about interest in which he said that interest should not accumulate more than the principal. That was his suggestion and I am quoting him correctly. Not only that, Sir, Islam says that there should be no hindrance so far as the performance of *farz* is concerned. There are certain things which are enjoined upon Muhammadans and one of them is *Haj* on those who are capable. This Government brought forward a measure under which every *Haji* had to deposit a certain amount of money and travel through a certain company and my friend supported it. Is that not interference in the way of *Haj* ?.....

(Maulvi Muhammad Yakub rose to interrupt.)

**Mr. President :** The Honourable Member ought to know that he should not constantly interrupt the speaker in that way.

**Maulvi Muhammad Yakub :** But my friend is misrepresenting me, Sir.

**Mr. T. A. K. Shervani :** These are some of the instances, Sir, in which my learned friend not only tolerated the interference of this Legislature in the religion and religious observances, but he put forward measures and supported measures which do interfere in religion.

**Maulvi Muhammad Yakub :** On a point of personal explanation, Sir.....

**Mr. President :** The Honourable Member cannot make a personal explanation unless the Honourable Member speaking gives way.

**Mr. T. A. K. Shervani :** I always tolerate the interruptions of my friends, Maulvi Muhammad Yakub and Mr. Amar Nath Dutt, and I do rather enjoy them. The truth is bitter. But when my friends say that I have no right to talk about Bengal, or religion, there I demur. Their attitude throughout has been that nobody except themselves has got a right to speak as if one had monopolised entire Bengal to himself and

[Mr. T. A. K. Shervani.]

the other the entire religion. But what does Bengal say ? I have here a document.....

**Mr. Amar Nath Dutt :** It is a manufactured document.

**Mr. President :** Order, order. The Honourable Member is not entitled to talk in that way ; if he wants to give any personal explanation, he must wait till the Honourable Member finishes.

**Mr. T. A. K. Shervani :** I have a resolution placed in my hands just now in which Mr. Amar Nath Dutt has been disowned.

**Mr. K. Ahmed :** Disowned by whom ?

**Mr. Amar Nath Dutt :** It is a forgery and a fabricated document.

**Mr. President :** Order, order ; if the Honourable Member wants to make any explanation, he is entitled to do so after the Honourable Member who is speaking resumes his seat.

**Mr. T. A. K. Shervani :** Now, Sir, there remains one more point. My friend Maulvi Mohammad Shafee Daoodi said that he had no objection to State interference, and his only objection was that the Legislature makes it penal what the Shariat has permitted. Well, I would have agreed with him if he had used the word Feka instead of Shariat, because Shariat, I may say for the information of my Honourable and learned friend, has got a different meaning. Shariat and Feka are not one and the same thing. If my friend had used the word Feka, I would have agreed with him, but if by the word " Shariat ", he means Shariat, I may again tell my friend that this legislation does not interfere with Shariat. Now, with regard to Feka, when the evil exists, and my friend admits that it does exist, then Fikah must change and it has been changed before. If it must change then it can be only by this Legislature. The Legislature had to choose one of the two courses, either to enact civil legislation as was originally proposed, or penal legislation. Well, in the case of civil legislation, there would have been greater interference according to the beliefs and ideas of my learned friends. Therefore, naturally the Government have chosen the lesser evil.

My Honourable and learned friend further says that the State has got a right to interfere. When the State has got a right to interfere, if it has such right, it is exercising this right in protecting the young innocent children from the hands of unscrupulous and cruel guardians, including fathers and grandfathers. That is the only thing which the Legislature is doing. It is not interfering with the marriage law at all ; it leaves the marriage law absolutely intact. It only punishes the miscreants. It simply says, " Do not marry your young children because you are not enjoined by your personal law to do so."

My Honourable and learned friend Maulvi Muhammad Yakub has quoted certain Maulvis, but he forgot to quote one of the Maulvis, a very learned and eminent Maulvi, although my friend has mentioned him in very reverential terms in his Report, but he does not quote him here. This is what my friend says on page 281 of the Report :

" Maulana Sayed Sulaiman, an eminent and learned theologian and historian of the day, who could not appear before the Committee, owing to certain pressing engagements, has written to me saying that in his opinion the weight of Muslim authorities is in favour of performing the *Nikah* (nuptial contract) after the boy and the girl have reached an age of discretion."

Another grievance of my friend Maulvi Mohammad Shafee Daoodi is as he says that, so far as consummation is concerned, he is not against the restriction, but he is against the interference in *Nikah*. But the rule of Muhammadan law is that *Nikah* is a personal contract between man and woman. He read out to the House the law on the point. The quotations which he put forward were from Amir Ali's book, but my friend left out the very cogent sentence of Amir Ali that *Nikah* is a purely personal contract under Muhammadan Law and I want this measure on the Statute-book because the parents and guardians deprive 2,64,000 minds of the right which has been given to them by Islam, i.e., to choose their own mates. They usurp the right which is given to every Mussalman by Islam, and it is the duty of the State to relieve those persons from this tyranny by which the guardians tie them for ever with a person whom they did not choose for themselves and which is in contravention of "*Faukahoo-ma Tale hokum*." Look at the question from an ethical point of view, view it from a religious point of view, view it from a social or biological point of view, or from any point of view (*An Honourable Member* : "Common sense point of view")—yes ; the common sense point of view, but not from a nonsensical, or shall I say, the bigoted point of view, and you will find that this measure is a most salutary measure. Be whatever you please, but do not be a bigot. Well, my friends here may differ from me, but my own idea is that bigotry in religion is a degradation of a lofty ideal. (Hear, Hear.) Sir, I oppose the amendment.

**Mr. A. H. Ghuznavi :** Sir, I am thankful to you for giving me an opportunity of expressing once more my view on this important matter. Sir, I oppose the Bill, but support the amendment which has been so ably moved by my friend Honourable Maulvi Mohammad Shafee Daoodi. That amendment says that the measure shall not apply to Mussulmans, and I shall presently show to the House that no case has been made out that Mussulmans should be included in this Bill. I will demonstrate fully that absolutely no case has been made out that Mussulmans should be included in this Bill. Sir, as I said the other day, neither the Hindus nor the Mussulmans want this Bill. They do not want this Bill, and I will prove from the opinions that have been received that no province has accepted this Bill as a good Bill.

I believe, Sir, that my friend Mr. Shervani, who is not here just now, will agree that my friend the Honourable Mr. Yakub rightly said that in Islam the performance of *Nikah* or nuptial ceremony is considered meritorious and an act of piety in the eyes of the Shariat, and any limitation placed on its performance is considered a violation of the sacred injunctions of the Islamic law. I hope that my friend Mr. Shervani will accept that principle. Interference with the tenets of religion, or furthering limitations where not one is placed by religion, cannot be allowed to pass under cover of the progressive nature of Islam. But, Sir, for those who consider religion a mockery, it is very difficult to understand a religious man's attitude towards religious beliefs and sentiments. Sir, the life of the Mussalman from the cradle to the grave is a series of religious performances, and, therefore, any foreign element which interrupts or puts limitations on these performances cannot be tolerated from the Muslim point of view. No doubt, there are certain laws and enactments which somewhat involve a violation of the canons of Islamic law, but, Sir, that does not create in any way an estoppel against the Muslim objection to further interference:

[Mr. A. H. Ghuznavi.]

Sir, two wrongs do not make one right. Islam is a self-contained and self-sufficient religion. As my Honourable friend said, we have got a complete set of our codified laws and in socio-religious matters like marriage, divorce, succession and religious and family trusts we want to be governed by our own personal laws. Sir, the treaty by which Shah Alam, the Emperor of India, delegated to the East India Company the civil administration of this country reserved the right of the Mussulmans to be governed according to the law of their religion, and the British Government as the successor of the East India Company is bound by that treaty and undertakings of the East India Company.

Sir, I will demonstrate conclusively on the floor of this House that no case has been made out to include the Mussalmans, as I said the other day, in this pernicious Bill.

**Mr. T. A. K. Shervani :** That is only an assumption, not proof.

**Mr. A. H. Ghuznavi :** I am coming to that. But before I proceed further, I should like to make a few observations in regard to the statement of my Honourable friend Mian Mohammad Shah Nawaz which he made the other day. According to the *Hindustan Times* of the 14th instant, my Honourable friend is reported to have said :

“ Mr. Shah Nawaz amused the House by pointing out that he was persuaded by Mr. Ghuznavi last year to sign that precious document of 29 Members against the Bill by telling him that the child marriage evil did not exist in Bengal.”

Well, Sir, I am very sorry that he made this statement. I never induced him to sign.....

**Mian Mohammad Shah Nawaz :** Both you and Sir Zulfiqar Ali Khan,

**Mr. A. H. Ghuznavi :** I will demonstrate that that is not true from the document that you signed.

**Mian Mohammad Shah Nawaz :** You know perfectly well that I signed it the last of all. The document will show that. You still say that the evil does not exist in Bengal.

**Mr. A. H. Ghuznavi :** Will my Honourable friend allow me to proceed ? I want to show that you were not induced to sign that document by my saying that that evil did not exist in Bengal, because you were not a Member of the Age of Consent Committee.....

**An Honourable Member :** Members can be induced.

(There were several other interruptions also.)

**Mr. President :** Order, order.

**Mr. A. H. Ghuznavi :** Let us see what the document that he signed says. It says :

“ We, the undersigned Members of the Legislative Assembly, are strongly opposed to Rai Sahib Harbilas Sarda's Child Marriage Bill as it strikes at the root of the most cherished and sacred institution of Hindus and Mussalmans and penalises what is lawful under the personal law of the Hindus and the Mussalmans.”

You are a counsel and an eminent lawyer of the Punjab. You must have signed this after reading the document. You say there that it touches the Muslim personal law and the Hindu personal law. Where is the statement there that you thought that Bengal had not that evil ?

**Mr. President :** Order, order.

**An Honourable Member :** You must address the Chair.

(At this stage Mian Mohammad Shah Nawaz tried to interrupt the Honourable Member.)

**Mr. A. H. Ghuznavi :** This is becoming too personal. I will leave the matter at that.

Now, Sir, as I have said, no case has been made out to include the Mussalmans. In support of that I will read to you a few passages from the Age of Consent Committee's Report. My Honourable friend Maulvi Muhammad Yakub in his note of dissent at page 278, said :

" .... Under the Muhammadan law the marriage of minor girls can be contracted by the father and grandfather as well as by other guardians, and by fixing an age of marriage by legislation they will be deprived of that right."

Then he says at page 279 :

" Moreover marriage under the Muhammadan law is not only a civil contract but also a sacrament and an act of piety, the performance of which is considered as meritorious deserving of *Sawab* or reward in the next world."

At page 280 he says :

" It is therefore evident that mere performance of *Nikah* or nuptial ceremony is meritorious and an act of piety in the eyes of Shariat and any limitation placed on its performance may be considered as a violation of the sacred injunctions of Islam and therefore of the treaty between Shah Alam and the East India Company."

This is important at page 281 :

" Maulana Mufti Kifayatullah (who also could not give evidence) and Maulana Ahmad Said, President and Secretary respectively of the Jamit-ul-Ulma-i-Hind, hold a contrary view. They consider any enactment, which interferes with the rights of the parents and other guardians to contract marriages of minor children, as an interference with the Islamic law and unacceptable to the Mussalmans generally. They are of opinion that it would be undesirable to enact a law fixing an age for marriage. The Ulmas of Deoband, who have got a big following in India, also hold the same opinion ; and a large majority of other Muslim theologians, who appeared before the Committee as witnesses, also considered the enactment of such a law as opposed to the Shariat."

Sir, I now come to page 282, which is very important :

" The Muslim opinion being so meagre on the record, it does not justify us to draw any conclusion on its basis. Only 166 Mussalmans, throughout the whole country, have taken any part in the inquiry ; out of them 104 sent in their written statements but they were not examined orally. Only 36 presented themselves for oral examination. The number of Mussalman witnesses who did not send in any written statement but were examined only orally is 26. The Committee is certainly not responsible for this paucity of Muslim evidence. Every effort was made to secure the opinions of prominent Mussalmans, including some of the well-known theologians, but unfortunately they were not available at the time to give the benefit of their views to the Committee. The fact remains that the Muslim point of view is not sufficiently represented ; and I do not think it would be proper and safe to introduce a measure of vast social and religious importance, until additional Muslim opinion, especially that of distinguished theologians, is placed on record."

Then he says :

" It may be pointed out here that the figures, showing the prevalence of early marriage amongst the Mussalmans, are not conclusive enough. They roughly indicate the age of married girls between 10 and 15."

**An Honourable Member :** That is only an opinion.

**Mr. A. H. Ghuznavi :** He has given that opinion after the evidence he has heard. I hope my Honourable friend Mr. Shervani will take this down. Then he says :

" No authentic figures however are available to show those numbers. It cannot be concluded therefore on the basis of the statistics available that the evil of early marriage is extensive and widespread amongst the Mussalmans."

**Mr. T. A. K. Shervani :** Read page 65 of the Report.

**Mr. A. H. Ghuznavi :** That is for you to read. Then he says :

“ In any case I am strongly of opinion that a marriage law would entail great hardship on the public unless exemptions are provided to suit special cases.”

Then he goes on to say :

“ My first recommendation is that additional Muslim evidence should be brought on record before the Marriage Bill comes up before the House for final disposal. My second and chief recommendation is that, in case the Marriage Bill is passed into law by the Assembly, it should not apply automatically to the Mussalmans, but power should be given to the Provincial Governments to apply the Act to the Mussalmans in a province where the Local Council by a three-fourths majority of its Muslim Members passes a Resolution to that effect. This procedure is not a novel one ; a similar method was adopted as regards the law relating to the filing of accounts of Muslim charitable properties.”

So far as the Islamic law is concerned which touches their personal laws, we will accept what the Ulemas tell us, and we will not listen to the Muslim lawyers, however eminent they may be, who make religion a mockery.

Sir, protests are pouring in from my constituency, and the public bodies are asking us to fight to the end to demolish this offensive Bill, and if proof is wanted, I would throw this challenge to my reformer friends. Postpone this Bill till the Delhi Session ; bring motions in the Provincial Councils ; and I shall accept this Bill if three-fourths of the Mussulman Members in the Local Councils are in favour of this Bill. I am sure the Mussulman Members in the Local Councils do not want this Bill.

The Bill was not wanted by us, and I shall demonstrate before this House, province by province, what has been said by Muslims in the provinces.

Now, Sir, the European Group seems to be jubilant over this legislation because it does not touch them in the least. My Honourable friend Mr. Price in his maiden speech, which was full of pathos and assurances, spoke of his whole-hearted sympathy for this measure. My friend Mr. Stewart-Smith went a step further. According to the *Hindustan Times*, he assured the Mover that the Bill had evoked the keenest interest amongst the European community in Calcutta. I will just show what that keenest interest was. For the edification of my friend I shall read what the European Association of Calcutta have said.

**Mr. President :** Will the Honourable Member go on.

**Mr. A. H. Ghuznavi :** Yes, Sir. The European Association says :

**Mr. President :** Has that anything to do with the question of the exclusion of Muhammadans ?

**Mr. A. H. Ghuznavi :** Yes, Sir, from this I will show you that, even when they were giving their opinion....

**Mr. President :** The question is whether the Muhammadans should be excluded or not.

**Mr. A. H. Ghuznavi :** I want to make out, Sir.....

**Mr. President :** Order, order. Whatever the Honourable Member will say regarding the exclusion of Muhammadans will be relevant, but he is not entitled on this amendment to offer general criticism of the Bill as a whole.

**Mr. A. H. Ghumavi :** I accept your decision, Sir. I will not now take province by province—I will leave that for the next occasion. All I would say is that from the reports that I have quoted I think I have made out a case that the Mussalmans should not be included in this Bill. With these words, Sir, I support the amendment which my Honourable friend has moved.

**Mr. Abdul Qadir Siddiqi (Central Provinces: Muhammadan):** Sir, I oppose the amendment moved by my Honourable friend, Mr. Shafee. (Cheers.) Sir, the Honourable Member admits that if the Consent Bill is passed and the limit is enhanced for the consummation of marriage, my friend will have no objection. May I ask my friend, is it not a fact that the consummation of marriage is regulated by religion and is it not a right conferred by the Koran and Shariats? If a right which is conferred by religion and which is based on *Nikah*, which is a religious ceremony and a very important one, if a right conferred under it can be interfered with by this Legislature, why is this Legislature not competent to postpone the conferring of that particular right?

**Maulvi Mohammad Shafee Daoodi :** Better ask yourself that question.

**Mr. President :** Order, order. The Honourable Member must know that Mr. Siddiqi is making his maiden speech. Mr. Siddiqi.

**Mr. Abdul Qadir Siddiqi :** What I say is that if the Legislature merely says that acquisition of a particular religious right should be postponed till a particular age, that amounts to this, that the conferment of the right should be postponed till a particular limit of age is reached. If after the conferment of the right it can be suspended, I do not know why the conferment of the right should not be postponed by this Legislature; and I therefore think that, according to my friend, Mr. Shafee, this Legislature is entitled to pass this Bill. Sir, the greatest stress, that was laid on the ground of religion by the previous speakers, was on the fact that the Ulemas are against it. I have also the same respect for the Ulemas as my other friends claim to have, but I would say this. When any question is a mixed question of religion, social rules or politics, then we are not so much bound by the opinion of the Ulemas. This question is not a pure question of religious fact. It is based on certain facts, social as well as political, and in such matters, it has been the practice of my Honourable friends, who are against the Bill, and also of other Mussalmans, not to follow the Fatwa of the Ulemas. I would remind my Honourable friend, Mr. Shafee, of the Resolution passed by the Ulemas at Gaya in 1922 laying down that no Muhammadan should go to the Councils and the Assembly.

**Mr. K. Ahmed :** But they have come all the same.

**Mr. Abdul Qadir Siddiqi :** I am perfectly sure my friends have disregarded such Fatwa; not only the Honourable Mr. Shafee but all other friends, who are opposing the Bill today, disobeyed the Fatwas of the Jami'at Ulema, a body which was much larger than those whose telegrams were received or who met at Moradabad. I am not blaming my friends for disobeying the Fatwa, but I conclude from their action that,

[Mr. Abdul Qadir Siddiqi.]

when the question is a mixed question of religion, politics and social rules, as it is here, then we can disregard the Fatwa of the Ulemas. My opinion

5 P.M.

is that this Bill does not at all interfere with religion. Had it been interfering with the vital principles of my religion, Sir, I do not think I would have hesitated to oppose it, but as my Honourable friend Mr. Shervani has already stated, it is not a question of interference with religion; on the contrary it is quite in accord with the tenets of our religion, and I, Sir, whole-heartedly support the Bill. The last speaker read out extracts from the note of Maulvi Muhammad Yakub and stated that there are fewer cases of early marriage amongst Muhammadans. I would ask my friend to read the Report again; there he will find that no less than 2,60,000 marriages of girls were performed before they attained the age of ten. This sacrifice of 2,60,000 girls is sufficient proof that the evil exists, and the remedy must be found for it. My Honourable friend, Mr. Shafee, tries to prove that all these marriages do not mean that consummation necessarily follows. But if he will read the Report, he will find that many cases have come to light of consummation before puberty; and he must know that there are many other cases which never come to light. If that is the state of affairs, is it not a proper thing, as a precautionary measure, to stop such marriages so that there may be no occasion for that evil which he admits is an evil? My friend stated that in some parts there is a habit of having only *nikah* which is followed by another ceremony called the *Rukhsati*, when the consummation is made. But I would remind my friend that this custom is confined only to some of the upper classes in Upper India. It may also prevail among some classes in Madras. But the classes for whose benefit this law is specially to be enacted are the poor or illiterate masses who do not observe that custom.

They have their marriage and everything at the same time if both are of sufficient age. At the same time, if the marriage is of children, there is no restriction among the poorer classes of not sending the girl to the house of the husband before she attains the age of puberty. Therefore, this measure is very necessary to safeguard against the possible early consummation.

Sir, I was also a signatory to the famous document which was quoted by Mr. Ghuznavi in his last speech and also to-day. I at that time really believed that the custom of early marriage did not exist among the Mussalmans in the Central Provinces and especially in the place from which I come. I hardly then knew that early marriages were performed among the Mussalmans. I was therefore of opinion that this measure should not be applied to the Mussalmans. But after reading the report of the Age of Consent Committee which has been before all of us and seeing that this custom prevails in nearly all the provinces, although it is much more prevalent in Bengal, I have come to the conclusion that there is no reason why my community should not have the benefit of this measure by putting it on the Statute-book of the country. I therefore oppose the amendment proposed by my Honourable friend Maulvi Mohammad Shafee Daoodi. (Applause.)

**Mr. K. Ahmed :** I move that the question be now put.

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

The Assembly divided :

**AYES—63.**

Abdul Aziz, Khan Bahadur Mian.  
Ahmed, Mr. K.  
Ayangar, Mr. V. K. Aravamudha.  
Bajpai, Mr. R. S.  
Bhargava, Pandit Thakur Das.  
Birla, Mr. Ghanshyam Das.  
Booth, Mr. J. R. T.  
Bower, Mr. E. H. M.  
Chalmers, Mr. T. A.  
Chatterjee, The Revd. J. C.  
Chunder, Mr. N. C.  
Cosgrave, Mr. W. A.  
Crerar, The Honourable Sir James.  
Ferrers, Mr. V. M.  
French, Mr. J. C.  
Ghazanfar Ali Khan, Mr.  
Gidney, Lieut.-Colonel H. A. J.  
Haji, Mr. Sarubhai Nemchand.  
Hans Raj, Lala.  
Hira Singh, Brar, Sardar Bahadur,  
Honorary Captain.  
Jamnadass, Seth.  
Jawahar Singh, Sardar Bahadur Sardar.  
Jaynkar, Mr. M. R.  
Keane, Mr. M.  
Kelkar, Mr. N. C.  
Lalchand Navarai, Mr.  
Lindsay, Sir Darcy.  
Misra, Mr. Dwarka Prasad.  
Mitru, The Honourable Sir Bhupendra  
Nath.  
Mitter, The Honourable Sir Brojendra.  
Mody, Mr. H. P.  
Mukharji, Rai Bahadur A. K.  
Mukhtar Singh, Mr.  
Nehru, Pandit Motilal.

Noyce, Sir Frank.  
Pai, Mr. A. Upendra.  
Pandya, Mr. Vidya Sagar.  
Philip, Mr. J. Y.  
Porter, Lieut.-Colonel L. L.  
Price, Mr. E. L.  
Purshotamdas Thakurdas, Sir.  
Rainy, The Honourable Sir George.  
Rang Behari Lal, Lala.  
Rao, Mr. G. Sarvatham.  
Rau, Mr. P. R.  
Roy, Mr. K. C.  
Roy, Mr. S. N.  
Sarda, Rai Sahib Harbilas.  
Sarma, Mr. R. S.  
Schuster, The Honourable Sir George-  
Siddiqi, Mr. Abdul Qadir.  
Singh, Kumar Rananjaya.  
Singh, Mr. Narayan Prasad.  
Singh, Rai Bahadur S. N.  
Sinha, Kumar Ganganand.  
Sinha, Mr. Siddheswar Prasad.  
Stevenson, Mr. H. L.  
Stewart-Smith, Mr. D. C.  
Sykes, Mr. E. F.  
Tin Tut, Mr.  
Tottenham, Mr. G. R. F.  
Winterbotham, Mr. G. L.  
Yusuf Imam, Mr.

**NOES—23.**

Abdoola Haroon, Haji.  
Abdul Matin Chaudhury, Maulvi.  
Abdul Qaiyum, Nawab Sir Sahibzada.  
Abdullah Haji Kasim, Khan Bahadur  
Haji.  
Acharya, Mr. M. K.  
Ayyangar, Mr. K. V. Rangaswami.  
Badi-uz-Zaman, Maulvi.  
Belvi, Mr. D. V.  
Dutt, Mr. Amar Nath.  
Farookhi, Mr. Abdul Latif Saheb.  
Ghuznavi, Mr. A. H.  
Ismail Khan, Mr. Muhammad.

Kidwai, Mr. Rafi Ahmad.  
Malaviya, Pandit Madan Mohan.  
Mehta, Mr. Jamnadas M.  
Mohammad Ismail Khan, Haji Chaudhury.  
Moonje, Dr. B. S.  
Murtuza Saheb Bahadur, Maulvi Sayyid.  
Rafique, Mr. Muhammad.  
Shafee Daoodi, Maulvi Mohammad.  
Sinhā, Mr. Rajivaranjan Prasad.  
Yakub, Maulvi Muhammad.  
Yamin Khan, Mr. Muhammad.

The motion was adopted.

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

“ That after sub-clause (2) of clause 1 of the Bill the following be added :

‘ (3) It shall not apply to the Mussalmans ’.”

The Assembly divided :

AYES—16.

Abdoola Haroon, Haji.  
Abdul Matin Chaudhury, Maulvi.  
Abdullah Haji Kasim, Khan Bahadur  
Haji.  
Acharya, Mr. M. K.  
Ayyangur, Mr. K. V. Rangaswami.  
Badi-uz-Zaman, Maulvi.  
Belvi, Mr. D. V.  
Dutt, Mr. Amar Nath.

Farookhi, Mr. Abdul Latif Saheb.  
Ghuznavi, Mr. A. H.  
Ismail Khan, Mr. Muhammad.  
Mohammad Ismail Khan, Haji Chaudhury.  
Murtuza Saheb Bahadur, Maulvi Sayyid.  
Rafique, Mr. Muhammad.  
Shafee Daoodi, Maulvi Mohammad.  
Yakub, Maulvi Muhammad.

NOES—71.

Abdul Aziz, Khan Bahadur Mian.  
Ayangar, Mr. V. K. Aravamudha.  
Bajpai, Mr. R. S.  
Bhargava, Pandit Thakur Das.  
Birla, Mr. Ghanshyam Das.  
Booth, Mr. J. R. T.  
Bower, Mr. E. H. M.  
Chalmers, Mr. T. A.  
Chatterjee, The Revd. J. C.  
Chunder, Mr. N. C.  
Cosgrave, Mr. W. A.  
Covernton, Mr. S. H.  
Crerar, The Honourable Sir James.  
Ferrers, Mr. V. M.  
French, Mr. J. C.  
Ghazanfar Ali Khan, Mr.  
Gidney, Lieut.-Colonel H. A. J.  
Haji, Mr. Sarabhai Nemchand.  
Hans Raj, Lala.  
Hira Singh, Brar, Fardar Bahadur, Honorary Captain.  
Iyengar, Mr. A. Rangaswami.  
Jamnadas, Seth.  
Jawahur Singh, Sardar Bahadur Sardar.  
Jayakar, Mr. M. R.  
Keane, Mr. M.  
Kidwai, Mr. Rafi Ahmad.  
Kunzru, Pandit Hirday Nath.  
Lalehand Navalrai, Mr.  
Lindsay, Sir Darcy.  
Mehta, Mr. Jamnadas M.  
Misra, Mr. Dwarka Prasad.  
Mitra, Mr. S. C.  
Mitra, The Honourable Sir Bhupendra Nath.  
Mitter, The Honourable Sir Brojendra.  
Mody, Mr. H. P.

Moonje, Dr. B. S.  
Mukharji, Rai Bahadur A. K.  
Mukhtar Singh, Mr.  
Munshi, Mr. Jehangir R.  
Nehru, Pandit Motilal.  
Noyce, Sir Frank.  
Pai, Mr. A. Upendra.  
Pandya, Mr. Vidya Sagar.  
Philip, Mr. J. Y.  
Porter, Lieut.-Colonel L. L.  
Price, Mr. E. L.  
Purshotamdas Thakurdas, Sir.  
Rai, The Honourable Sir George.  
Rang Behari Lal, Lala.  
Rao, Mr. G. Sarvotham.  
Rau, Mr. P. R.  
Roy, Mr. K. C.  
Roy, Mr. S. N.  
Sarda, Rai Sahib Harbilas.  
Sarma, Mr. R. S.  
Schuster, The Honourable Sir George.  
Shah Nawaz, Mian Mohammad.  
Shervani, Mr. T. A. K.  
Siddiqi, Mr. Abdul Qadir.  
Singh, Kumar Rananjaya.  
Singh, Mr. Narayan Prasad.  
Singh, Rai Bahadur S. N.  
Sinha, Kumar Ganganand.  
Sinha, Mr. Siddheswar Prasad.  
Stevenson, Mr. H. L.  
Stewart-Smith, Mr. D. C.  
Sykes, Mr. E. F.  
Tin Tut, Mr.  
Tottenham, Mr. G. R. F.  
Winterbotham, Mr. G. L.  
Yusuf Imam, Mr.

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Monday, the 23rd September, 1929.