

6th March 1930

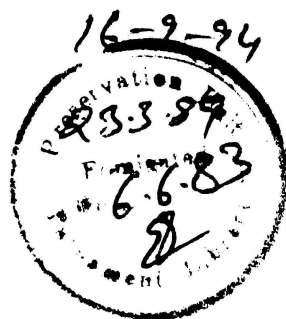
# THE LEGISLATIVE ASSEMBLY DEBATES

(25th February to 20th March, 1930)

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## SIXTH SESSION OF THE THIRD LEGISLATIVE ASSEMBLY, 1930

Chamber Fumigated. 18.10.73.....



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1930

# **Legislative Assembly.**

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**THE HONOURABLE MR. V. J. PATEL.**

## ***Deputy President :***

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## ***Assistant of the Secretary :***

**RAI SAHIB D. DUTT.**

## ***Marshal :***

**CAPTAIN SURAJ SINGH BAHADUR, I.O.M.**

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# LEGISLATIVE ASSEMBLY.

*Thursday, 6th March, 1930.*

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

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## THE INDIAN COMPANIES (AMENDMENT) BILL.

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

**The Honourable Sir George Rainy** (Member for Commerce and Railways): Sir, I present the Report of the Select Committee on the Bill further to amend the Indian Companies Act, 1918, for certain purposes.

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### ELECTION OF THE STANDING FINANCE COMMITTEE.

**The Honourable Sir George Schuster** (Finance Member): Sir, with your permission, I should like to move the Resolution standing in my name, before the House proceeds to the election of Members for the Central Advisory Council for Railways. I explained to you, Sir, that I have to be present in another place this morning. Sir, I beg to move:

"That this Assembly do proceed to the election, for the financial year 1930-31, in such method as may be approved by the Honourable the President, of a Standing Finance Committee of the Assembly not exceeding fourteen in number to which shall be added a Member of the Assembly to be nominated by the Governor General. The Member so nominated shall be the Chairman of the Committee."

The motion was adopted.

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### ELECTION OF THE STANDING COMMITTEE ON ROADS.

**The Honourable Sir Bhupendra Nath Mitra** (Member for Industries and Labour): Sir, I beg to move:

"That this Assembly do proceed to the election, for the financial year 1930-31, in such method as may be approved by the Honourable the President, of six Members to serve on a Standing Committee on Roads which will be appointed by the Governor General in Council and the constitution and functions of which shall be as defined in the Resolution on Road Development adopted by the Assembly on the 4th February, 1930."

The motion was adopted.

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### PROCEDURE FOR THE ELECTION OF MEMBERS TO THE STANDING FINANCE COMMITTEE AND THE STANDING COMMITTEE ON ROADS.

**Mr. President:** I have to inform the Members that, for the purpose of election of Members to the Standing Finance Committee and the Standing Committee on Roads, the Assembly Office will be open to receive nominations up to 12 Noon on Saturday, the 8th March, and Monday, the

[Mr. President.]

10th March, 1930, respectively. The election, if necessary, for the Standing Finance Committee, will take place in this Chamber on Thursday, the 13th March, while the election for the Standing Committee on Roads will be held on Tuesday, the 18th March, 1930. The elections will be conducted in accordance with the principle of proportional representation by means of the single transferable vote.

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### ELECTION OF A PANEL FOR THE CENTRAL ADVISORY COUNCIL FOR RAILWAYS.

**Mr. President:** The House will now proceed to elect a panel of eight Members, from which six Members of the Central Advisory Council for Railways will be nominated. The ballot papers will now be supplied to Honourable Members in the order in which I call them. Out of 13 candidates originally nominated, Mr. Fazal Ibrahim Rahimtulla has since withdrawn his candidature.

(The ballot was then taken.)

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### THE INDIAN TARIFF (AMENDMENT) BILL.

**The Honourable Sir George Rainy** (Member for Commerce and Railways): Sir, I beg to move that the Bill further to amend the Indian Tariff Act, 1894, for certain purposes, as reported by the Select Committee, be taken into consideration.

Sir, only two changes have been made in the Bill by the Select Committee. As the Bill stood originally, one item in the Schedule applied the saccharine duty to certain substances of a like nature, but left a wide discretion to Collectors of Customs to decide whether particular substances were of that nature or not. The Committee have altered the Bill, so as to provide that the substances to which saccharine duty will be applied should be notified by the Governor General in Council.

The second change made is as regards the proposed alteration of the rates of duty on radio apparatus of certain kinds. It is explained in the Report of the Select Committee that the failure of the Indian Broadcasting Company and the decision of Government, as a temporary arrangement, to take over the broadcasting, rendered it necessary to reconsider that particular proposal, and it has therefore been omitted from the Schedule.

These are the only two changes made, Sir, and I do not think I need say anything further in support of my motion.

The motion was adopted.

Clause 2 with the Schedule was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

**The Honourable Sir George Rainy:** Sir, I move that the Bill, as amended, be passed

The motion was adopted

## THE STEEL INDUSTRY (PROTECTION) BILL.

**The Honourable Sir George Rainy** (Member for Commerce and Railways): Sir, I beg to move that the Bill to amend the law relating to the fostering and development of the steel industry in British India, for certain purposes, as reported by the Select Committee, be taken into consideration.

I explained the object of the Bill both at the time of its introduction and at the time of moving for a Select Committee, and as the Select Committee has reported the Bill without amendment, I do not think I need add anything further.

The motion was adopted.

Clause 2 and the Schedule were added to the Bill.

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

"That clause 1 stand part of the Bill."

**Mr. B. Das** (Orissa Division: Non-Muhammadan): Sir, I beg to move the amendment standing in my name:

"That for sub-clause (2) of clause 1 of the Bill the following be substituted:

'(2) It shall come into force on the 1st July, 1930.'"

Sir, Honourable Members remember that at the time this Bill was taken into consideration I put forward my views on the floor of this House on behalf of the consumers and also on behalf of the importers. I must explain that I was a Member of the Select Committee, and I did not write a minute of dissent there as I found there was no substantial disagreement between me and the Members of the Committee. But I have nothing to retract from what I submitted on the first day the Bill was taken into consideration. I received a wire from the Bombay Iron Merchants' Association again. Let me, at this stage, make it clear that I have nothing to do with the iron importers in India, and if I have any sympathy, it is with the Tatas, who own a big key industry—the iron and steel industry in India. But one must be fair. This is the telegram received from the Bombay Iron Merchants Association:

"If Steel Protection Bill is passed, same should not come into force before June next, as trade should be given due notice to enable them to arrange accordingly. Orders placed before introduction of Bill should be allowed at old rates."

Sir, I think this is a very reasonable demand. Orders for iron goods have been placed, and it takes two or three months for the goods to be received. My Honourable friend, Sir George Rainy, the other day mentioned that, during last year, 20,000 tons of iron bars were imported. So if this Bill is passed, and these people are not given adequate time, they will be put to heavy loss. Of course, the Bill as drafted says:

"It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint."

If my Honourable friend, Sir George Rainy, intends to notify a date after 1st July, I have no objection. If he assures me of that, I will withdraw my amendment. But if he wants to notify that it will take immediate effect, it will work a great hardship. Although one would like the scope of protection extended to the Tatas, I still maintain what I

[Mr. B. Das.]

observed the other day. The Tatas have not organised their marketing all over India, although we are forced to extend protection to their industry.

**Mr. President:** Order, order. That is not the question.

**Mr. B. Das:** All right, Sir. I will confine myself to my amendment. The Honourable the Commerce Member who is so anxious to extend the scope of protection to the Tatas under the 1927 Steel Protection Act, should see that the importers are not hard hit, and they should be given a sufficient time limit, so that all orders that have already been placed may take effect, and the goods arrive in India without this increased taxation.

**The Honourable Sir George Rainy:** Sir, I regret I am unable to accept the amendment which has been moved by my Honourable friend, Mr. B. Das. He is asking the House to depart from what, I think, has been the uniform practice with the case of all protective duties that have been imposed. The practice has been, that these duties should come into force as soon as the Bill becomes law, and for obvious reasons, because if time is given, then considerable quantities of the protected goods can be imported at the lower rate of duty, and that is to the detriment of the protected industry. I can see no reason whatever for making an exception in this case.

As regards what fell from the Honourable Member, about the terms of sub-clause (2) as it stands in the Bill, the intention of the Governor General in Council is, as soon as the Bill is passed, to issue a notification bringing it into effect in about 7 days. The object of this is merely to give proper notice, proper warning, to the Customs authorities, so that they may be ready with their arrangements. But if so long a period as 3½ months were given, then I think it is certain that there would be time to import considerable additional quantities of these bars and tie-bars and the Indian manufacturer would be prejudiced.

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

"That for sub-clause (2) of clause 1 of the Bill the following be substituted:

'(2) It shall come into force on the 1st July, 1930'."

The motion was negatived.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

**The Honourable Sir George Rainy:** Sir, I move that the Bill be passed.

The motion was adopted.

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## THE INDIAN PATENTS AND DESIGNS (AMENDMENT) BILL.

**The Honourable Sir Bhupendra Nath Mitra** (Member for Industries and Labour): Sir, I beg to move that the amendments made by the Council of State in the Bill further to amend the Indian Patents and Designs Act, 1911, for certain purposes, be taken into consideration.

Sir, the amendments made by the other House are wholly of a formal character. They are three in number. In sub-clause (1) of clause 1, they have substituted for the figures "1929" the figures "1930". In sub-clause (b) of clause (9), in sub-section (1A), they have substituted for the word "January" the word "July". They have also re-numbered clause 28A as clause 29 and re-numbered consecutively the subsequent clauses. I am sure that this House will have no hesitation in accepting all these amendments.

The motion was adopted.

The amendments made by the Council of State were agreed to.

### THE SPECIAL MARRIAGE (AMENDMENT) BILL.

**Mr. O. W. Gwynne** (Home Department: Nominated Official): Sir, I beg to move that the Bill further to amend the Special Marriage Act, 1872, for certain purposes, as passed by the Council of State, be taken into consideration.

The purpose of the Bill is fully explained in the Statement of Objects and Reasons. It merely seeks to remove a defect in the Act as regards its administration, as pointed out by the Calcutta High Court. Section 2 of the Act provides that, before a marriage is solemnised, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the Second Schedule to the Act to the effect that either party has completed the age of 21 years. The declaration should also be signed by his or her father or guardian. The declaration at the end of the Second Schedule to the Act contains, in paragraph 6, the form that, if each party has not completed the age of 21 years, the consent of the father or guardian has been given. But the form, as it is at present, does not require the parties to state what their actual age is, and in particular whether or not each party is of the age of 21 years. All that the form requires is that the bridegroom has to state that he has completed 18 years of age, and the bride has to state that she has completed 14 years. This omission is one which is likely to lead to considerable laxity, as the Calcutta High Court has pointed out, as it makes it possible for a minor to get married without obtaining parent or guardian's consent, and in the absence of a specific declaration of age, may lead the Registrar to solemnise marriages without the consent of the father or guardian, even when such consent is necessary under the Act. The present Bill is designed to remedy this omission. This is the main and most important provision of the Bill. In addition, however, in clause 3, sub-clause (2), a few minor provisions of detail have been inserted in order to secure proper identification of the parties and witnesses. Sir, I move.

**Sir Hari Singh Gour** (Central Provinces Hindi Divisions: Non-Muhamadan Rural): Sir, Honourable Members will remember that I had introduced a Bill for the purpose of removing a similar defect in the Special Marriage Act of 1872. The defect that exists in the Act of 1872 is as follows. If Honourable Members will turn to section 2, they will find that in sub-clause (3) it is stated that each party to the marriage must, if he or she has not completed the age of 21 years, have obtained the

[Sir Hari Singh Gour.]

consent of his or her father or guardian to the marriage. Now, this Act was passed, as Honourable Members will remember, in 1872. It was introduced by Sir Henry Maine in 1868. Neither in 1868 nor in 1872 was there any statutory law of majority for this country. The first statutory law of majority was passed three years later. It was passed as Act IX of 1875, and it was there laid down for the first time that a person shall be deemed to have attained his majority, except in the very special circumstances mentioned in section 8, on the completion of 18 years. Prior to 1875 we followed the English law, the English law being that a person completed his minority and attained his majority on the completion of 21 years, and because we had no statutory provision in this country in respect of the age of majority, the authors of the Act of 1872 provided for the consent of the father or guardian in the case of persons below the age of 21, as they were treated as minors. But look at the discrepancy between the two statutes of the Indian Legislature. In the case of a person who is above the age of 18 and below 21, under the Indian Majority Act, except under the special provisions of section 3, with which I am not concerned, he is a major; consequently he cannot have a guardian. He wants to get married, and yet this section 2 provides and makes the Registrar say, "I cannot permit you to marry, unless you have obtained the consent of your father or guardian". Now, assuming that he has no father, and he has no guardian either; the result is that he cannot marry at all. He is a man of age; he cannot obtain the consent of his guardian because, under the Indian Majority Act and the Guardians and Wards Act, a guardian cannot be appointed to look after a major; and yet he wants to be married; he cannot marry under the law. This was the defect which I draw the attention of this House to by providing for an amendment of the Special Marriage Act of 1872, by substituting "the completion of 18 years" for "18 and 21 years". But at that time I was opposed both by the Government and some of my more orthodox friends, and they said, "You are further loosening the law, and we will not allow you to remove the defect". The result was that my Bill was defeated.

Now, Sir, my Bill was defeated, but look at the result of it. If this Bill becomes law, the position would be this. Under the present law, as it is administered by the High Courts, if Honourable Members will turn to section 5, they will see that, under this section, every party has to say, "I have obtained the consent of my father or guardian". Under the law, as administered by the High Courts, the Registrar cannot insist upon a declaration to the effect that the person has obtained the consent of his father or his guardian. But if you are to tighten the law, as Government propose to do, you would be disqualifying a person between the ages of 18 and 21 from marrying at all if he has no father alive, and he obviously cannot have a guardian whose consent he can obtain. I therefore submit that, when the Government decided to bring forward this Bill, they should have gone into the whole question, particularly in view of the Bill which I had myself introduced for the purpose of rectifying this defect in the statute law. Now, Sir, instead of following on the lines of my own Bill, what Government are trying now to do, is to disqualify those persons from marrying under the Act of 1872. In the Statement of Objects and Reasons it is very clearly stated:

"The result is that the Registrar of Marriages cannot enforce the provision about consent if the parties refrain from filling in paragraph 5 of the declarations."

- Paragraph 5 is this. To those of my friends who have not got a copy of the Act before them, I shall quote:

"The consent of my father or guardian, as the case may be, has been given to a marriage between myself and C D and has not been revoked."

Up to now a man between the ages of 18 and 21 need not subscribe to this paragraph 5 at all. But under this Bill, if it is passed, such person will be disqualified because he will be compelled to subscribe to this paragraph 5. The result of that would be that persons between 18 and 21 would be disqualified from marrying at all. I submit, Sir, that that is a defect which can only be removed in the manner I have indicated, namely, by the amendment of section 2, sub-clause (3), by substituting the words, "and each party must, if he or she has not completed the age of 18 years", thereby bringing the Special Marriage Act into conformity with the provisions of the Indian Majority Act, adding a provision to the effect that he has attained the age of majority as provided in Act IX of 1875. That, I submit, is the obvious way of proceeding in the matter; otherwise you will be making the whole thing thoroughly absurd. You ask a major to go before a Registrar, and the Registrar solemnly asks him, "What is your age?"; he says, "20 years and 11 months". The Registrar asks, "Have you obtained the consent of your guardian?"; he says "No, I have not. I cannot have a guardian under the law, and therefore I cannot get anybody's consent". "Have you got your father?"—"No, he is dead". Then the Registrar says "Very well, you cannot marry". That is the position which this Bill will land us in. Now, I ask Honourable Members, can anybody conceive of such an absurdity as this Bill seeks to introduce into the law of the land? (*An Honourable Member*: "Yes, the Government can.") The Government can; they are capable of it. I therefore submit that we must oppose this Bill and compel Government to amend section 2 of the Indian Special Marriage Act by bringing it into conformity with the statutory provisions of the Indian Majority Act. I, therefore, Sir, oppose the consideration of this Bill.

**The Honourable Sir James Orerar** (Home Member): Sir, the intention of this Bill has been explained by my Honourable friend, Mr. Gwynne. It was merely, without making any alteration of substance in the Act as it stands, to bring the Schedules into conformity with the Act, and to remove the difficulty of administration which has been pointed out by the Calcutta High Court. The point which my Honourable and learned friend has raised is one which will require further consideration. If, therefore, the House will agree to pass the motion for consideration now before it, I shall undertake that no further motion shall be made till that point has been examined.

**Mr. M. R. Jayakar** (Bombay City: Non-Muhammadian Urban): Sir, the point mentioned by Sir Hari Singh Gour is a very important one. I confess I have had no time to look into the several sections of this Act; this Bill merely says that in section 20 and so, for the words so and so, the words so and so be substituted; the practice in the Legislative Council in Bombay used to be, when I was there, that when such Bills were on, the Government showed us the courtesy of putting on the table the Acts to which the amendments were proposed; but apparently in this House such a courtesy does not exist; and the difficulty therefore is that we cannot understand exactly what the amendment amounts to. Therefore,

[Mr. M. R. Jayakar.]

Sir, I could not realize the real nature of the amendment, but now that Sir Hari Singh Gour has drawn our attention to it, it seems to be so obvious that the proposed amendment, if allowed, will create a most extraordinary anomaly. A person who has attained 18 years of age cannot have a guardian except under the circumstances which Sir Hari Singh Gour pointed out; and yet this Bill seeks to make a declaration under clause 5 compulsory, which is not the rule at the present moment, according to Dr. Gour. The result of that would be, as Dr. Gour has pointed out, that a person between 18 and 21 will not be able to take advantage of the Act; he will have to find a father; if his father is dead this will be impossible: then he will have to find a guardian, which is impossible again because no guardian can ordinarily be appointed to a person who has attained 18. The words "twenty-one" in the original Act according to Dr. Gour—and I agree with him—were inserted at a time—in 1870—when India had not its own Majority Act, which was passed in 1875. Therefore the words "twenty-one", according to the state of circumstances in the year 1870, were perfectly sensible; but after the Majority Act was passed in India and "eighteen years" was made the majority year in India, it seems obvious that "twenty-one" should have been removed long before this. Therefore what Dr. Gour has drawn attention to is perfectly obvious, and I cannot understand why Government cannot accede to the point and solve the whole difficulty, either by leaving the law where it is now, with the result that clause 5 will continue to be optional, or if they want to make it compulsory, they should change "twenty-one" into "eighteen" years. That solves the whole difficulty. We should, however, like to have the opinion of the Honourable the Law Member on this point.

**The Honourable Sir Brojendra Mitter** (Law Member): Sir, I must confess that I did not apply my mind to this Bill before this moment. The criticism which Sir Hari Singh Gour has made seems to me perfectly legitimate criticism. If this matter were in court I could easily defend these changes. Sir, I shall give an illustration. My Honourable and learned friend, Mr. Jayakar, knows that in the Hindu law of adoption there is a doctrine that a woman cannot adopt without the consent of her husband . . . .

**Mr. M. R. Jayakar:** In certain parts of India.

**The Honourable Sir Brojendra Mitter:** That is the general law; Vasishta says that no woman may adopt without the consent of her husband. What about a widow? One school of Hindu law has interpreted it in this way: She has not got her husband; consent is not possible; therefore, no consent is necessary. In another school of Hindu law it has been held, on the interpretation of the same text, that a widow cannot adopt because the consent of the husband is a preliminary condition. Now, there are these two different views. In the first view, when there is no husband and, therefore, no consent is possible, no consent is necessary, notwithstanding the injunction of law that such consent should be obtained. Similarly, it may well be argued, if this matter came before a court of law, that in the case of a person between 18 and 21 who has got neither a father nor a guardian, consent is not possible, and, therefore, consent is excused. But these are legal subtleties, and I need not weary the House with legal subtleties. . . . .

**Mr. President:** Is it worth while proceeding with the Bill?



**The Honourable Sir Brojendra Mitter:** What I say is this, that since we are legislating, we might make the law clear and not leave it to be played with in a court of law by subtleties.

**Mr. M. S. Aney** (Berar Representative): At least leave it without creating greater confusion than there was before.

**The Honourable Sir Brojendra Mitter:** Since we are legislating, we might as well make the point clear, and I must confess that if the proposed changes are made, it would create some amount of confusion.

**Mr. C. W. Gwynne:** Sir, the points that have been raised will be very carefully examined; meanwhile I would ask the leave of the House to withdraw this motion.

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

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### THE PRISONS (AMENDMENT) BILL.

**Mr. C. W. Gwynne** (Home Department: Nominated Official): Sir, I beg to move that the Bill further to amend the Prisons Act, 1894, for a certain purpose, as passed by the Council of State, be taken into consideration. The purpose of this small, formal and non-contentious amendment of section 27(2) of the Prisons Act is clearly explained in the Statement of Objects and Reasons. It is a measure of administrative convenience rendered advisable by the decision, on a recommendation of the Conference of Inspectors General of Prisons in 1928, that the age limit of an adolescent prisoner should be 21 and not 18 as it was before. The amendment is designed to secure a more convenient and suitable provision for adolescent prisoners, both under trial and convicted, for purposes of proper segregation while in prison. Local Governments have been consulted on this amendment and have all agreed to it. Sir, I move.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill

The Title and Preamble were added to the Bill.

**Mr. C. W. Gwynne:** Sir, I move that the Bill, as passed by the Council of State, be passed.

The motion was adopted.

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### THE REPEALING AND AMENDING BILL.

**The Honourable Sir Brojendra Mitter** (Law Member): Sir, I beg to move that the Bill to amend certain enactments and to repeal certain other enactments, as passed by the Council of State, be taken into consideration.

[Sir Brojendra Mitter.]

Sir, this Bill may be described as legislative spring cleaning. The object is to make some necessary amendments of a formal nature in certain enactments and to repeal certain spent or useless matter in the Statute-book. The reasons for the proposed amendments and repeals are fully explained in the Statement of Objects and Reasons. Sir, I move.

The motion was adopted.

Clauses 2 to 4 were added to the Bill.

The First and Second Schedules were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

**The Honourable Sir Brojendra Mitter:** Sir, I beg to move that the Bill, as passed by the Council of State, be passed.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Friday, the 7th March, 1930.