

# LEGISLATIVE ASSEMBLY DEBATES

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**TUESDAY, 3rd FEBRUARY, 1931**

**Vol. I—No. 14**

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## OFFICIAL REPORT



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# LEGISLATIVE ASSEMBLY.

Tuesday, 3rd February, 1931.

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

## MEMBER SWORN:

Sir Zulfiqar Ali Khan, Kt., C.S.I., M.L.A. (Nominated Non-Official).

## QUESTIONS AND ANSWERS.

### EXAMINATIONS OPEN TO ACCOUNTANTS.

281. **\*Mr. D. K. Lahiri Chaudhury:** (a) Is it a fact that candidates who hold substantive posts in the Accounts Service under the Government are allowed to sit for the Subordinate Accounts Service Examination till the age of 30?

(b) If the answer to part (a) be in the affirmative, will Government be pleased to state whether men having the requisite educational qualifications will be allowed to sit for the examination for all the higher divisions that will be held by the Public Service Commission in the near future? If not, why not?

**The Honourable Sir James Orerar:** (a) No age limit is prescribed for candidates appearing for the Subordinate Accounts Service Examination, admission to which is confined to men already employed in Accounts offices, who have put in some years of service.

(b) Does not arise.

### REDUCTION OF STAFF OF THE OFFICE OF THE DIRECTOR GENERAL OF POSTS AND TELEGRAPHS.

282. **\*Mr. S. C. Mitra:** (a) Has the attention of Government been drawn to the article "Retrenchment" on page 83 of the *Indian Post* of September 1930?

(b) Is it a fact that a copy of the Memo. No. 10-F.B.S./30, dated the 8th September 1930 issued by the Director General of Posts and Telegraphs was furnished to the Union?

(c) Will Government please state whether the sense of the passage "A contented and loyal staff is a most valuable asset, etc." in that Memo. was what was actually desired by the Director General in regard to the whole staff of the Department, including the Director General's own office?

(d) If so, will Government be pleased to say whether in respect of his own office the Director General has made a drastic reduction of staff without reducing the work with the result:

- (1) that due to that drastic reduction effected already on the recommendation of Rai Bahadur J. P. Ganguly the staff of some of the Branches of the Director General's office are over-worked to the extreme;

- (2) that the staff is, therefore, unable to cope with the work demanded from them at the present rate;
- (3) that due to excessive labour to which they were subjected some of the assistants of that office fell seriously ill and met premature deaths; and
- (4) that thus working under various disabilities a few senior assistants of that office have taken pension early and a few others have applied for pension?

**Mr. J. A. Shillidy:** (a), (b) and (c). The reply is in the affirmative.

(d) Government are satisfied the reductions made in the establishment were justified, and have no reason whatever to believe that they caused any serious consequences to the health of the staff, or led to premature retirement in the manner suggested.

#### REFUSAL OF HOLIDAYS AND LEAVE TO THE STAFF OF THE OFFICE OF THE DIRECTOR GENERAL OF POSTS AND TELEGRAPHS.

288. **\*Mr. S. C. Mitra:** (a) Is it a fact that due to the reduction of staff of the office of the Director General of Posts and Telegraphs without reduction of work, as was admitted by Government in reply to part (b) of starred question No. 309 in this Assembly on the 18th July 1930, the staff of that office is being compelled to work very hard and extra hours in season and out of season and:

- (1) that ordinarily principal holidays are denied to them by office orders to that effect;
  - (2) that privilege leave when it falls due is not granted even if they fall ill and not without production of a medical certificate from the Civil Surgeon;
  - (3) that a certificate from the registered medical practitioners if submitted by the staff is not accepted and counter-signature on it from the Civil Surgeon is insisted upon invariably in every case; and
  - (4) that in cases of leave granted on medical certificates the clerks concerned are served with notices afterwards to join office earlier?
- (b) Will Government be pleased to say in this connection:
- (1) in how many Branches of the Director General's office were the staff altogether denied leave even on closed days during the last Christmas holidays by an Office Order and what are those Branches;
  - (2) whether that Office Order was prepared by the Chief Superintendent of the office or by any officer on his own responsibility;
  - (3) whether that Office Order was approved by the Director General himself, if not,
  - (4) who among the officers of that office took upon himself the responsibility and on whose recommendation, and
  - (5) whether any officer finally approved that Office Order without taking the Director General's approval? If so, who?

(c) Is it a fact that a clerk of that office, working under the Chief Engineer, having suddenly fallen ill this month, has applied for leave supported by a certificate from the Civil Surgeon, and has been proposed to be called upon to explain why he should not be punished?

**Mr. H. A. Sams:** (a) No.

(1) No.

(2) and (3). The facts are not as stated by the Honourable Member.

(4) No.

(b) (1) None.

(2) to (5). Do not arise in view of reply to (b) (1).

(c) An explanation has been called for from the Assistant concerned for leaving heavy arrears in his work, but not for going on leave.

#### INCREASE OF WORK IN THE POSTS AND TELEGRAPHS DEPARTMENT.

284. **\*Mr. S. C. Mitra:** (a) Are Government aware of the fact that the work of the Posts and Telegraphs Department has grown to a great extent on account of the introduction of the Air Mail Service greeting telegrams and owing to some other activities?

(b) If so, will Government be pleased to state serially, from the beginning of 1928, the various new measures adopted and steps taken with a view to improve the financial condition, referring to the Director General's circulars announcing the introduction of such measures, etc.?

**Mr. J. A. Shillidy:** (a) No.

(b) The question does not arise.

#### "CHARACTER SHEETS" MAINTAINED IN GOVERNMENT OFFICES.

285. **\*Mr. S. C. Mitra:** (a) Will Government be pleased to say whether in any of the offices of the Government of India and their attached offices there is a system of maintaining a document called "Character Sheet" showing confidential reports in respect of each individual of the non-gazetted establishments?

(b) If so, what are the names of those offices and what is the procedure adopted in maintaining those documents and particularly what is recorded in them?

**The Honourable Sir James Crerar:** (a) and (b). A record of the work and character of the ministerial establishment is maintained in most of the Departments of the Government of India Secretariat. These are submitted periodically to a superior officer of the Department, who records his opinion. His remarks are shown to the official concerned.

#### LEAVE RULES FOR SUBORDINATE ESTABLISHMENT IN THE GOVERNMENT OF INDIA OFFICES.

286. **\*Mr. S. C. Mitra:** (a) Will Government be pleased to say:

- (1) whether the certificates given by a registered medical practitioner in respect of subordinate establishment in the Government of India offices are accepted as valid in granting leave;
- (2) whether counter-signature from the Civil Surgeon is or is not required on that certificate;

- (3) how many months' leave is granted to the said staff on the certificate of a registered medical practitioner, if counter-signature from the Civil Surgeon is not required; and
- (4) in case if counter-signature from the Civil Surgeon is required, how many months' leave is granted?

(b) Will Government be pleased to lay on the table the rules governing the grant of privilege leave in the ordinary course and on medical certificates and say particularly whether in the Secretariat and attached offices of the Government of India privilege leave is granted to the subordinate staff generally on medical certificate?

**The Honourable Sir George Schuster:** On the assumption that the Honourable Member's question relates to the subordinate establishment of the Government of India whose pay is debitable to civil estimates the reply is as follows:

- (a) (1) Yes.
- (2) Such counter-signature is not normally required, but it is open to the authority competent to sanction leave to secure a second medical opinion from an Agency or a Civil Surgeon if it so desires.
- (3) and (4). The Honourable Member is apparently inquiring regarding leave on average pay. Under the proviso to Fundamental Rule 81 (b) (ii), a maximum of 8 months' leave on average pay, if due, may be granted at any one time, on production of a medical certificate. The counter-signature by an Agency or a Civil Surgeon of the medical certificate does not affect the period of leave.
- (b) The Honourable Member's attention is invited to sections I—IV of chapter X of Part IV of the Fundamental Rules, a copy of which I place on the table.† Departments of the Government of India grant leave on average pay freely without medical certificates during seasons of the year when there is no great pressure of work. For reasons which the Honourable Member will appreciate, they cannot in general spare their staff during the latter part of the Delhi season, except in cases of genuine sickness.

#### ALLEGATIONS REGARDING PROSECUTION OF THE OFFICIALS OF THE BHAGYAKUL POST OFFICE.

287. **\*Mr. S. C. Mitra:** (a) Has the attention of Government been drawn to an article published in the October 1930 issue of *Labour* under the caption of "A Glimpse into the Postal Administration"?

(b) Will Government be pleased to state whether any enquiries have been made about the serious allegations that were made therein against the mode of investigation of Mr. I. B. Sen, the investigating Inspector?

(c) Is it a fact that in the Bhagyakul (Dacca) insured loss case, officials of the Bhagyakul (Dacca) Post Office were prosecuted and at last acquitted after prolonged trial?

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† The copy of the rules was placed in the Library of the House.

(d) Will Government be pleased to state why the matter was not investigated by the Divisional Superintendent?

(e) Did the Superintendent instruct the police of Tarpassa to search the mail cabin of the steamer? If not, why not?

(f) Is it a fact that Mr. I. B. Sen requested Mr. Lalit to depose on the lines suggested by him, which he did not comply with and as a result he was dismissed?

(g) Are Government prepared to consider the question of paying compensation to the poor officials who were prosecuted and acquitted and of reinstating Mr. Lalit?

**Mr. J. A. Shillidy:** (a) Yes.

(b) Yes.

(c) and (d). The case against three officials was first enquired into by the Divisional Superintendent; subsequently an investigation was carried out by the police. As a result, these three officials were prosecuted in the Magistrate's Court. Of the three, the Magistrate acquitted two and committed one to the Court of Sessions where he was acquitted.

(e) Government have no information.

(f) No.

(g) No.

#### CLERICAL APPOINTMENTS IN THE POST OFFICE.

288. **\*Mr. S. C. Mitra:** (a) Will Government be pleased to submit a statement showing the number of candidates for clerical appointments recruited in the Calcutta General Post Office and the Alipore and Howrah Post Offices, who are still on the waiting list?

(b) Will Government be pleased to state as to how many vacancies existed in those post offices up to December, 1930?

(c) Will Government be pleased to state further as to why, in spite of vacancies, the candidates were not confirmed in those posts and did the Postmaster General, Bengal and Assam Circle, demand any explanation from the Presidency Postmaster, Calcutta, or Postmasters, Alipore and Howrah, for not providing these candidates with appointments within six months of the completion of their training?

(d) Is it a fact that Government contemplate filling up those vacancies by Lower Division clerks, who will be recruited from the rank of postmen and discharge those candidates who have been recruited for clerical appointments?

(e) If so, will Government be pleased to state why they will discharge the men who served the Department for years?

(f) What do Government propose to do in their case in future?

**Mr. H. A. Sams:** The information is being collected and will be communicated to the Honourable Member in due course.

#### APPOINTMENT OF HEAD CLERKS TO THE SAVINGS BANK DEPARTMENT OF THE CALCUTTA GENERAL POST OFFICE.

289. **\*Mr. S. C. Mitra:** (a) Will Government be pleased to state whether the work of the Savings Bank Department is similar in all post offices in India?

(b) Is it a fact that there are four Head Clerks on selection grade pay in the Savings Bank Department of the Bombay General Post Office where there are 17 clerks, and there are only two Head Clerks on selection grade pay in the Savings Bank Department of the Calcutta General Post Office where there are 28 clerks?

(c) If so, will Government be pleased to state the cause of such difference in these two offices?

(d) Is it a fact that Mr. G. V. Bewoor in his report on Time Test has recommended six supervisors for the Savings Bank Department of the Calcutta General Post Office?

(e) If so, will Government be pleased to state whether they propose to increase the number of selection grade Head Clerks of the Savings Bank Department of the Calcutta General Post Office? If not, why not?

**Mr. H. A. Sams:** (a) The answer is in the affirmative.

(b) In the Bombay General Post Office there are four Head Clerks in the Selection Grade and 21 time-scale clerks. The position in the Calcutta General Post Office is as stated by the Honourable Member.

(c) The number of Selection Grade posts is determined solely with reference to the number of charges of sufficient importance to justify a pay above the time-scale.

(d) The facts are not quite as stated by the Honourable Member. As an appendix to his Report Mr. Bewoor compiled a statement showing the result of the application of his recommendations to certain Departments of various post offices. In the case of the Savings Bank Department of the Calcutta General Post Office this result gave a staff of 6 Supervisors.

(e) I am unable to make any such statement.

#### INCOME AND EXPENDITURE OF THE POSTAL AND TELEGRAPH DEPARTMENTS.

290. **\*Mr. S. C. Mitra:** (a) Will Government be pleased to supply a statement showing actual income and expenditure of the Post Office and Telegraph Department separately of the year 1929-30 and the approximate income and expenditure of the year 1930-31?

(b) Will Government please further state whether there has been any fall in the income of the Department?

(c) Is it a fact that Government want to effect some retrenchment to meet the deficit?

(d) If so, on what lines?

(e) Do Government propose to abolish certain posts of gazetted officers? If not, why not?

**Mr. J. A. Shillidy:** (a) and (b). The income in 1929-30 was Rs. 11,30,00,000 and the expenditure Rs. 11,90,00,000. The income and expenditure for 1930-31 will be made available to the Honourable Member with the publication of the Budget figures. Government anticipate a considerable fall in the revenue of the Department.

(c), (d) and (e). Every effort is being made to curtail the working expenses of the Department in a manner consistent with efficiency. The exact nature of these proposals I am not yet in a position to announce.

**ARRESTS UNDER REGULATION III OF 1818.**

291. **\*Mr. Gaya Prasad Singh** (on behalf of Mr. B. Das): Will Government be pleased to state how many persons have been arrested under the Regulation III of 1818 during the last seven months?

- (i) What are their names and places of residence?
- (ii) Where have they been detained since the time of their arrest?
- (iii) What were the reasons for their arrest?
- (iv) What allowances have been granted to each of them for their food, other necessities and dependants, if any?

**The Honourable Sir James Crerar:** (i) Three persons. Their names are Ghulam Muhammad Aziz, Abdul Waris, and Malik Fazal Elahi. The first two belong to Amritsar District and the last to Lahore.

(ii) In the Punjab.

(iii) I would refer the Honourable Member to the answer given by me to Mr. Gaya Prasad Singh's question No. 43 on the 27th January.

(iv) A lump allowance of Rs. 60 on first admission into jail to meet expenditure on necessary articles, a monthly allowance of Rs. 32 and a daily allowance of Rs. 1-6-0. An allowance of Rs. 60 a month has been sanctioned for the family of Ghulam Muhammad Aziz. As Fazal Elahi and Abdul Waris are reported to have no family or relation dependent on them, no family allowances have been sanctioned for them.

**ARREST AND HANDCUFFING OF MR. M. F. QURBAN AT LAHORE.**

292. **Mr. Gaya Prasad Singh** (on behalf of Mr. B. Das): (a) Is it a fact that Mr. Malik Fuzl-i-Ilahi Qurban of Lahore, one of the victims of the Regulation III of 1818, was roped and handcuffed by the police when arrested at his residence at Lahore?

(b) If so, did Government punish the police officer who was responsible for roping and handcuffing Mr. Qurban?

(c) Are Government aware of the fact that before his arrest Mr. Qurban had visited Meerut, twice in connection with the defence work of the accused of the Meerut conspiracy case, and had accepted the office of the Secretary of the Meerut Prisoners' Defence Committee?

(d) Are Government aware of the fact that while at Meerut the local police one morning entered the room of Mr. Qurban and roped and handcuffed him and then let him off after a time?

(e) Is it a fact that Mr. Qurban was arrested to be detained under Regulation III of 1818 at a time when he had gone back to Lahore from Meerut to bring his luggage in order to live at Meerut permanently as a Secretary of the Meerut Prisoners' Defence Committee?

(f) Is it a fact that the accused in the Meerut conspiracy case made a statement in the court that the Government arrested Mr. Qurban in order to terrorise those persons who wanted actively to help the accused in their defence?

**The Honourable Sir James Crerar:** I am making enquiries and will communicate the result to the Honourable Member in due course, but there is no foundation for the suggestion that action was taken against him under Regulation III of 1818 in connection with any activity on behalf of the Meerut case under-trial prisoners.



**FACILITIES GRANTED TO PRISONERS CONFINED UNDER REGULATION III OF 1818.**

293. **\*Mr. Gaya Prasad Singh** (on behalf of Mr. B. Das): (a) Will Government be pleased to state what facilities have been granted to the State prisoners referred to above regarding (i) interviews with their friends and relatives, (ii) newspapers and literature, (iii) writing and receiving of letters and (iv) walking in the open air?

(b) What is the size of the rooms or cells where they are living and how many doors or windows does each of these rooms contain?

(c) Are they shut up in rooms or cells? If so, where?

(d) Are the abovementioned State prisoners keeping good health? What were their weights at the time of their arrest and what are their present weights?

**The Honourable Sir James Crerar:** (a) There is a special Code of Rules for persons confined under Regulation III of 1818 under which they enjoy special concessions in the matter of interviews, literature, letters and exercise and recreations. I am enquiring from the Local Government what precise facilities are being given to these prisoners.

(b) and (c). I have no information. I shall, if the Honourable Member so desires, make enquiries and inform him of the result.

(d) I have received regular reports about the state of health of one of the prisoners, Abdul Waris, who since his arrest has gained in weight—his weight on admission on 5th December, 1930, being 135 lbs. and 144 lbs., respectively. I have not received regular reports about the other two but I have asked for them and shall communicate the result to the Honourable Member in due course.

**RETIREMENT OF FIREMEN ON THE GREAT INDIAN PENINSULA RAILWAY.**

294. **\*Mr. Goswami M. R. Puri:** (a) Are Government aware that there has been very little recruitment of men to posts of "A" grade firemen on the Great Indian Peninsula Railway during the last five years?

(b) Is it correct that a number of posts originally allotted to "A" grade firemen were filled in by reducing sanction of "A" grade firemen and proportionately increasing the number of "B" and "C" grade firemen?

(c) How many applications for "A" grade firemen's posts were received on the Great Indian Peninsula Railway and how many applicants were non-Christians?

(d) Will Government state the number of firemen engaged in "B" and "C" grades on the Great Indian Peninsula Railway during the last five years? How many of the new recruits were non-Christians?

(e) Is it correct that the sanctioned number of "A" grade firemen has been reduced? Did Government ascertain, before reducing the number, that no suitable candidates were forthcoming for these appointments, by advertising the vacancies in the newspapers? If not, why not?

(f) Is it correct that a number of "B" and "C" grade firemen were engaged at Bhusawal and Nagpur during the recent Great Indian Peninsula Railway strike, over and above the sanctioned strength and that each such fireman is now being treated as equivalent to two "D" grade firemen or Agwalas in respect of pay and that a large number of posts of "D" grade firemen or Agwalas have thus been absorbed or held in abeyance?

(g) Are Government aware that previously the recruitment of firemen on the Great Indian Peninsula Railway was being done by the late Loco. Superintendent, Parel and that now these posts are filled by Divisional officers?

(h) If reply to part (g) is in the affirmative, are Government prepared to issue instructions to the Great Indian Peninsula Railway authorities that, in future, the recruitment of firemen shall be made by open competition, that recruitment shall be made by only the Head of the Department, namely, the Chief Transportation Superintendent, Bombay and that vacancies must first be advertised in newspapers?

(i) Will Government state the number of "A" grade firemen working in the Great Indian Peninsula Railway on the 1st April, 1924, and the 31st December, 1930?

**Mr. A. A. L. Parsons:** I have called for information from the Great Indian Peninsula Railway Administration and will communicate with the Honourable Member on its receipt.

#### PENALISING OF STRIKERS ON THE GREAT INDIAN PENINSULA RAILWAY.

295. **\*Mr. Goswami M. R. Puri:** (a) Are Government aware that the Agent, Great Indian Peninsula Railway, laid certain obstacles in the way of registration of their names by the Great Indian Peninsula Railway strikers by insisting upon their fulfilling certain conditions not mentioned in the Government of India Railway Board's communiqué, dated the 1st March, 1930?

(b) Did Government receive any such representation from the strikers before the 15th March, 1930? If so, what steps were taken by Government?

(c) Are Government aware that the names of all such persons who were refused registration on the Great Indian Peninsula Railway waiting list were subsequently entered by the Agent of the Great Indian Peninsula Railway on a separate waiting list and is this list now being called "B" list?

(d) If so, do Government propose to issue orders that all such men who were refused registration for various reasons be now placed on the first Great Indian Peninsula Railway waiting list?

(e) Are Government aware that a Boardman at Nagpur, who was engaged during the Great Indian Peninsula Railway strike, was transferred to the D. V. S. Office, Nagpur, even though there were men on the first and second list?

(f) Will Government state the number of clerks directly engaged either by the D. V. S., Nagpur or C. T. S., Bombay, that are now working in the D. V. S. Office, Nagpur? Will Government say why these men were engaged in preference to strikers?

(g) Are Government aware that a number of persons engaged during the strike were those who were once in the employ of the G. I. P. Railway and who had severed their connection with the Railway due to discharge on account of frauds, etc., dismissal and medical unfitness?

(h) Are Government prepared to order that the record of every employee newly engaged during the strike be investigated, and all such persons who once left the service due to one of the above reasons be discharged forthwith?

**Mr. A. A. L. Parsons:** (a) No. If the question refers to the condition that a striker whose place had been permanently filled must vacate his quarters as a preliminary to his name being put on the waiting list, I would refer the Honourable Member to the reply to Mr. Aney's short notice question on the 25th March, 1930, and to Diwan Chaman Lall's supplementary questions. As was then explained, this condition was not mentioned in the communiqué but was a matter of an ordinary business arrangement necessary in order that the permanent incumbents might be provided with housing accommodation and the work of the Railway should go on.

(b) No such representation can be traced.

(c) Under the orders of the Railway Board a register of candidates for employment (not a separate waiting list) has been opened in which the names of strikers not placed on the waiting list who apply for employment are entered.

(d) Government are unable to agree to such men being placed on the waiting list, but as an act of grace they have issued orders that such of them whose names have been registered for employment should be offered employment by the State-managed Railways in India in preference to outsiders but after the men placed on the waiting list.

(e) No. The Agent's attention has, however, been drawn to this part of the question.

(f) I have called for this information and will communicate with the Honourable Member in due course.

(g) and (h). No. An extract of these questions will, however, be sent to the Agent who will doubtless take such action as may be considered necessary.

#### APPOINTMENT OF "NUMBER TAKERS" ON THE GREAT INDIAN PENINSULA RAILWAY.

296. **\*Mr. Goswami M. R. Puri:** (a) Is it correct that on the 1st December, 1930, or about that date nine Number Takers of Nagpur, Great Indian Peninsula Railway, were discharged as inefficient Number Takers?

(b) If so, will Government please state the date on which these Number Takers were examined?

(c) Will Government please state the total number of Number Takers examined on the date on which the above nine were examined?

(d) Is it correct that all the Muhammadan Number Takers who were examined on about that date were passed, while all those who were Hindus were failed and discharged?

(e) Is it correct that their examiner was a Muhammadan who is Head Clerk of the Movement Section of the D. V. S. Office, Nagpur?

**Mr. A. A. L. Parsons:** I have called for the information and will communicate with the Honourable Member on its receipt.

#### DISCHARGE OF CERTAIN GREAT INDIAN PENINSULA RAILWAY STRIKERS AT NAGPUR.

297. **\*Mr. Goswami M. R. Puri:** (a) Is it a fact that 23 Satyagrahi strikers of Nagpur who had been taken back by the Great Indian Peninsula Railway were some time back discharged by the Divisional Transportation

Superintendent, Nagpur, with one month's pay in lieu of notice without assigning any reason?

(b) Are Government aware that prosecutions against these strikers were withdrawn by the Local Government of Nagpur and that they were unconditionally released at the end of April, 1930?

(c) Are Government aware that such summary discharge from service is against the orders governing discharge and dismissal of railway employees issued by the Railway Board in November, 1929 and brought into force from 1st January, 1930?

**Mr. A. A. L. Parsons:** (a), (b) and (c). I have called for the necessary information and will communicate with the Honourable Member in due course.

#### ABOLITION OF THE CREW SYSTEM OF TICKET CHECKING.

298. **\*Mr. Goswami M. R. Puri:** (a) Will Government state the total expenditure incurred by the Great Indian Peninsula Railway on the crew system from its very beginning up to the 31st December, 1930?

(b) Will Government state how long this system will remain in force?

(c) Will Government state the total income derived from the crew system?

(d) In view of the need for retrenchment, will Government state if they contemplate issuing orders for the abolition of this system forthwith?

**Mr. A. A. L. Parsons:** (a) and (c). Figures up to the 31st December, 1930, are not available but, on hearing from the Great Indian Peninsula Railway on this point, I will communicate with the Honourable Member.

(b) I am not in a position to say at present. The question is under consideration.

(d) The question whether the crew system on the Great Indian Peninsula Railway should be continued is under consideration.

#### EXPENDITURE INCURRED ON THE NEW NAGPUR DIVISIONAL TRANSPORTATION SUPERINTENDENT'S OFFICE.

299. **\*Mr. Goswami M. R. Puri:** (a) Are Government aware that an extra expenditure of Rs. 50,000 (Fifty thousand) *per annum* is being incurred by the Great Indian Peninsula Railway owing to the opening of the new Nagpur Divisional Transportation Superintendent's office, as particularised below:

	Rs.
(1) D. V. S. at Rs. 1,900 per month. . . . .	22,800
(2) One Chief clerk at Rs. 240 per month . . . . .	2,880
(3) House rent at Rs. 600 per month . . . . .	7,200
(4) Officer's house allowance at Rs. 1,000 per month. . . . .	12,000
(5) Peons, Travelling Allowance, etc., Rs. 500 per month . . . . .	6,000
Total. . . . .	50,880

(b) Is it a fact that the office of the District Transportation Superintendent, Nagpur, was abolished in 1924 on the plea that it was not necessary and the district was absorbed in Bhusawal Division? Will

Government say if they have considered the possibility of redistributing the Great Indian Peninsula Railway Divisions with a view to save the extra expenditure?

**Mr. A. A. L. Parsons:** (a) and (b). The formation of the new Transportation Division at Nagpur at a cost of Rs. 65,000 approximately is a part of measures of re-organisation of the Transportation Department of the Great Indian Peninsula Railway which are calculated to lead to annual net economies of several lakhs of rupees. Some part of these economies, roughly about 5 lakhs per annum, has already been secured.

In regard to the first part of (b) of the question I have called for information and will communicate with the Honourable Member on its receipt.

#### INDEBTEDNESS OF MR. J. C. O'LOUGHLIN, POSTMASTER, DELHI.

300. **\*Mr. B. Sitaramaraju** (on behalf of Mr. Nabakumar Sing Dudhoria): (a) Is it a fact that Mr. J. C. O'Loughlin, Postmaster, Delhi, is in grave financial embarrassment?

(b) Is it a fact that his pay is under attachment?

(c) What is the total amount of attachment still outstanding against him?

(d) Was this fact brought to the notice of the Director General of Posts and Telegraphs?

(e) If so, what action was taken by the Director General?

(f) Is it a fact that in the Post Office Department when the pay of an official of the subordinate service is under attachment, ordinarily he is not placed to work there where monetary responsibility is involved?

(g) Is similar procedure followed in case of Gazetted Officers? If not, why not?

**Mr. J. A. Shillidy:** The matter is under investigation.

#### APPOINTMENTS IN THE CORRESPONDENCE DEPARTMENT OF THE CALCUTTA GENERAL POST OFFICE.

301. **\*Mr. B. Sitaramaraju** (on behalf of Mr. Nabakumar Sing Dudhoria): (a) Is it a fact that it has been ordered by the Director General, Posts and Telegraphs, in the Circulars No. 16 and 17, dated the 18th August, 1930, that some junior officials below 35 years of age will be nominated to sit for the lowest Selection Grade examination?

(b) If so, what will be the minimum qualification of those officials?

(c) Will Government be pleased to state how many applications from the intending candidates were received by the Presidency Postmaster, Calcutta and how many of them were from graduates and undergraduates?

(d) How many graduates were there in the Correspondence Department, Calcutta, General Post Office (both permanent and reserve) at the time of selection?

**Mr. H. A. Sams:** (a) Yes.

(b) Passing the first efficiency bar.

(c) and (d). Government have no information and they do not propose to call for it, as the selection of junior officials was left entirely to the discretion of the Head of the Circle concerned.

**APPOINTMENTS IN THE CORRESPONDENCE DEPARTMENT OF THE CALCUTTA GENERAL POST OFFICE.**

302. **\*Mr. Bhuput Sing** (on behalf of Mr. Nabakumar Sing Dudhoria): (a) Is it a fact that the Office Superintendent of the Correspondence Department, Calcutta General Post Office, invited applications from all the graduate clerks and reserve clerks?

(b) Will Government please state, how many applications reached the Presidency Postmaster?

(c) Is it a fact that some of the applications were withheld by the Office Superintendent?

(d) Are Government prepared to investigate the matter?

**Mr. H. A. Sams:** (a) to (c). Government have no information.

(d) If the facts are as alleged by the Honourable Member in part (c) of his question, it is open to the officials concerned to represent their cases through the usual channels.

**APPRENTICES AT THE NASIK-ROAD SECURITY PRINTING PRESS.**

303. **\*Maulvi Muhammad Yakub:** What is the total number of apprentices in the Nasik Road Security Printing, India, Currency Note Press Department? How many of them are Indians and how many Europeans and Anglo-Indians? And how many of them are in Classes A and B?

**The Honourable Sir George Schuster:** The Honourable Member is referred to the statement I laid on the table in reply to question No. 261 yesterday.

**HOUSES BUILT FOR THE MASTER AND STAFF OF THE NASIK-ROAD SECURITY PRINTING PRESS.**

304. **\*Maulvi Muhammad Yakub:** What is the cost of the house occupied by the Master of the Press at Nasik Road? Was it built at a cost of Rs. 1,10,000? Is it also provided with a ball room? What was the cost of building the houses for the Deputy Master and the other which was some time ago occupied by his Personal Assistant? What was the cost of the other houses built for the European Staff? Are Government aware that the quarters built for the Indian employees are very unsanitary and inconvenient and are not provided with even a sink for water?

**The Honourable Sir George Schuster:** The cost of the Master's house was Rs. 1,17,000. It is not provided with a ball room. The Deputy Master's and the Personal Assistant's houses cost Rs. 76,000 each. The cost of the remaining European quarters, including another gazetted officer's quarter, was approximately Rs. 5,40,000, to accommodate a personnel of thirty with their families. Owing to the necessity for providing a source of supply of stamps and currency notes at a time when building costs were very high, these houses cost some 35 per cent. more than would be the case were they to be built now.

It is not a fact that the quarters for the Indian employees are either insanitary or inconvenient. Only the latest 3rd and 4th grade quarters are not provided with water and a sink. This was intentional, as it was found that in the older quarters which had water supply and sinks, the

occupants allowed unsuitable waste to accumulate in an insanitary manner. Water supply and washing places, separately for men and women, are provided in close proximity to the new 3rd and 4th grade quarters.

**COMPLAINTS AGAINST THE EUROPEAN AND ANGLO-INDIAN EMPLOYEES AT THE NASIK ROAD SECURITY PRINTING PRESS.**

305. **\*Maulvi Muhammad Yakub:** (a) Are Government aware that there are general complaints by the Indian employees of the Nasik Road Security Printing India Currency Note Press Department against the ill-treatment and use of indecent language of the European and Anglo-Indian employees?

(b) Are Government prepared to appoint a mixed committee of officials and non-official Members of this House to enquire and investigate the grievances of the Indian Staff of the above named Department?

**The Honourable Sir George Schuster:** (a) No.

(b) No.

**APPOINTMENTS IN THE INDIAN POLICE SERVICE.**

306. **\*Rai Bahadur Sukhraj Rai** (on behalf of Kumar Gupteshwar Prasad Singh): (a) Will Government be pleased to state what percentage and how many posts are filled in the Indian (Imperial) Police Service (senior scale, not inferior scale) by the officers promoted from the Provincial Police Service in each province now? What is the total number of senior scale posts in the Indian Police Service in each Province?

(b) Is it not a fact that, according to the Lee Commission recommendation, 20 per cent. of these superior posts ought to be held by officers promoted from the Provincial Police Service?

(c) If so, will Government state why there is difference between the figures in different provinces?

(d) Do Government propose asking the different Provincial Governments to fill up the necessary number of existing and future vacancies owing to proportionate pension retirements and other unforeseen casualties to bring up the percentage to 20 wherever this has not been reached?

**The Honourable Sir James Orerar:** (a) I place a statement on the table giving the information. In addition to members of the Provincial Service who have been substantively appointed to superior posts in the Indian Police Service, there are of course officers who are officiating in permanent and temporary superior posts, the details of which will be found in the Provincial Civil Lists.

(b) The Lee Commission recommended that in future 20 per cent. of the posts in the Indian Police Service should be filled by promotion from the Provincial Services, instead of 11 per cent. as had been the rule previously, but they did not recommend that this should be done within any specified period. They estimated that under their scheme a cadre of 50 per cent. Europeans and 50 per cent. Indians would be attained in the course of 25 years. It has always been the intention that the 20 per cent. proportion should be filled as rapidly as possible, consistently with avoidance of injustice to the existing members of the Service, and for this purpose certain executive instructions have been laid down.

(c) The state of promotion in the Indian Police Service cadre varies in different provinces, which accounts for the difference in the proportion of promotions in them.

(d) All Local Governments are required to undertake an annual examination of their cadres. The figures I have given show that satisfactory progress is being made in this matter, except in Burma, where conditions are exceptional, and I do not consider it necessary to issue any further instructions.

STATEMENT.

Province.	Total No. of Superior posts.	No. of superior posts		Percentage of Col. 3(a) to Col. (2) (in round figures).
		(a) sub-stantively filled.	(b) ultimately to be filled.*	
1	2	3		4
Madras . . . .	43	6	9	14
Bombay . . . .	45	6	9	13
Bengal . . . .	60	8	12	13
United Provinces . . . .	64	10	13	16
Punjab . . . .	62	8	11	13
Burma . . . .	46	3	9	7
Bihar and Orissa . . . .	34	4	7	12
Central Provinces . . . .	32	5	6	16
Assam . . . .	15	3	3	20

\* 20 per cent. of column (2) except in the combined cadre of the Punjab, Delhi, North-West Frontier Province and Baluchistan where the percentage prescribed is 18.

PROMOTION TO THE INDIAN CIVIL SERVICE OF OFFICERS OF THE PROVINCIAL CIVIL SERVICE.

307. **\*Rai Bahadur Sukhraj Rai** (on behalf of Kumar Gupteshwar Prasad Singh): (a) What percentage and how many posts out of those in the senior scale of the Indian Civil Service are now held by officers promoted from the Provincial Civil Services in the Judicial and Executive branches respectively?

(b) How many senior scale posts are there in the Indian Civil Service in each province, in Executive and Judicial branches respectively?

(c) Is it not a fact that, according to the Lee Commission recommendations, 20 per cent. of the senior scale posts ought to be filled by promotion from the Provincial Civil Services?



(d) Do Government contemplate impressing on the various local Governments the necessity of filling up the necessary number of existing and immediately future vacancies by promotion of Provincial Civil Service officers, in order to make Indianisation of these services effective?

(e) What was the percentage and how many posts (the actual number) of the superior scale in the Indian Civil Service and Indian Police Service are held by members of the Provincial Civil Services, Judicial and Executive branches respectively, and the Provincial Police Service in each province at the time the Lee Commission recommendations were published?

(f) How many senior scale posts were there in the Indian Civil Service (Judicial and Executive branches respectively) and Indian Police Service in each province at the time the Lee Commission recommendations were published?

**The Honourable Sir James Crerar:** (a) and (b). A statement is laid on the table.

(c) Yes, but their recommendation was accepted with the modification that the 20 per cent. should include posts filled by direct recruitment from the Bar. I would invite the Honourable Member's attention in this connection to the reply given by the late Sir Alexander Muddiman to part (c) of Mr. K. C. Neogy's question No. 1371 on the 24th March, 1926.

(d) The Lee Commission did not recommend that the full 20 per cent. of superior posts should be listed immediately, but that a cadre of 50 per cent. Europeans and 50 per cent. Indians should be attained by this and other methods in 15 years. It is the policy of Government to fill the 20 per cent. as rapidly as possible, consistently with avoidance of injustice to existing members of the service, and to this end executive instructions have been laid down. The Honourable Member will see from the statements that considerable progress has been made in this respect. I may mention that, in addition to the posts shown in the statement, which have actually been listed, a considerable number of Provincial Civil Service officers officiate in superior posts.

(e) and (f). Two statements are laid down on the table. These give the figures of January, 1924, five months before the publication of the Lee Commission's Report.

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Statement showing the number of superior posts (including listed posts) in the Indian Civil Service and their distribution between the executive and judicial branches on the 1st January, 1924.

Province.	Number of superior posts including listed posts.		Total.	Number of listed posts.		Total.	Percentage.	
	Executive.	Judicial.		Executive.	Judicial.		Executive.	Judicial.
Madras	65	28	93	5	6	11		
Bombay	45	30	75	2	3	5		
Bengal	56	42	98	6	6	12		
United Provinces	76	36	112	4	8	12		
Punjab	53	28	81	6	7	13		
Burma	65	24	89	7	7	14		
Bihar and Orissa	43	18	61	5	2	7		
Central Provinces	41	15	56	3	4	7		
Assam	21	*	21	1	*	1		
Total	465	221	686	39	43	82	8.4%	19.5%

\*No separate judicial cadre. Includes posts recruited from the Bar.

Number of Government of India posts . . . . . 60  
 Total number of superior posts—(465 plus 221 plus 60) . . . . . 746  
 Percentage of all listed posts on total number of superior posts . . . . . 11%

Statement showing the number of superior posts (including listed posts) in the I. C. S. and their distribution between the executive and judicial branches on 1st January, 1931.

Province.	Number of superior posts including listed posts.			Number of listed posts.			Percentage.		
	Executive.	Judicial.	Total.	Executive.	Judicial.		Total.	Executive.	Judicial.
					P. C. S.	Bar.			
Madras	66	32	98	7	7	4	18		
Bombay	46	33	79	4	5	3	12		
Bengal	55	46	101	7	8	4	19		
United Provinces	76	38	114	8	8	1	17		
Punjab	53	31	84	8	5	2	15		
Burma	65	26	91	9	5	3	17		
Bihar and Orissa	43	20	63	5	2	2	9		
Central Provinces	40	15	55	5	5		10		
Assam	23	*	23	3	*		3		
Total	467	241	708	56	45	19	120	12%	18.7% 26.6% (Percent- age of all P. C. S. Judicial posts only.)

\*No separate judicial cadre.

Number of Government of India posts	.	.	.	.	.	61
Total number of superior posts (467 plus 241 plus 61)	.	.	.	.	.	769
Percentage of all listed posts on total number of superior posts	.	.	.	.	.	15.6%

*Indian Police Service.*

Province.	Total number of superior posts in the Indian Police Service on the 1st January, 1924.	Actual number of superior posts in the Indian Police Service reserved for members of the Provincial Police Service on the 1st January, 1924.
Madras	41	3
Bombay	45	6
Bengal	60	6
United Provinces	62	4
Punjab	60	5
Burma	51	3
Bihar and Orissa	36	3
Central Provinces	31	3
Assam	15	2
	401	35

Percentage of posts reserved for Provincial Police Service officers to total number of superior posts . . . . . 8.7

**REMOVAL OF THE NON-OFFICIAL CHAIRMAN AND MEMBERS OF THE BEAWAR MUNICIPAL COMMITTEE.**

308. **\*Mr. Gaya Prasad Singh:** (a) Is it a fact that the Local Government of Ajmer-Merwara, by a special notification, have removed Mr. Nathulal Ghiya, the non-official Chairman and Messrs. K. L. Varma, Vishnulal Rawat, B. K. Sircar and Tarachand four elected members of Beawar Municipal Committee on the allegation that their continuance as Chairman and members of the Committee was undesirable?

(b) If so, will Government please state the grounds on which their continuance on the committee was considered undesirable and prejudicial to public interest?

(c) Will Government also state why when one non-official Chairman was removed, another non-official Chairman was not allowed to be openly elected by the Municipal Committee, but Rai Bahadur Kishenlal, Extra Assistant Commissioner, Beawar, was appointed Chairman by the Local Government?

**Mr. J. G. Acheson:** (a) Yes.

(b) Continuance of Mr. Nathulal Ghiya on the Beawar Municipal Committee was considered undesirable and prejudicial to the public interest as

he was sentenced to six months' imprisonment under Section 4 of the Prevention of Intimidation Ordinance, 1930. The other four elected members were removed as they were involved in political activities to the detriment of constructive work for the Municipality.

(c) The appointment of Rai Bahadur Kishenlal as Chairman of the Municipal Committee was made at the express request of members of the Committee, who represented the unsatisfactory state of the municipal finances and urged the appointment of an experienced official.

#### TRANSFER TO "C" CLASS OF "A" CLASS PRISONERS IN THE AJMER CENTRAL JAIL.

309. **\*Mr. Gaya Prasad Singh:** Is it a fact that nine political prisoners in Ajmer Central Jail have been transferred from "A" to "C" class from 16th December, 1930? If so, will Government kindly state its reasons?

**The Honourable Sir James Grerar:** I am making enquiries and will communicate the result to the Honourable Member.

#### ESTABLISHMENT OF A CENTRAL BANK AND TRAINING OF INDIANS IN BANKING.

310. **\*Lala Rameshwar Prasad Bagla:** (a) In view of the fact that the contract with the Imperial Bank of India is to expire this year, will Government be pleased to state whether they propose to establish the new Central Bank as recommended by the Young Commission and supported by the Simon Commission and the Government of India despatch?

(b) Will Government be pleased to state the actual number of the staff officers which the Imperial Bank of India has recruited from England or other foreign countries and why this unprecedented procedure was followed when a number of probationary assistants were being trained by the Bank itself?

(c) Have Government considered the advisability of sending a certain number of qualified young men of India every year to study foreign methods of banking, as is being done by the Bank of Japan?

**The Honourable Sir George Schuster:** (a) As regards the agreement with the Imperial Bank of India, I would refer the Honourable Member to my reply on 27th January to Mr. B. Das's question No. 72. and to my further replies to supplementary questions then put.

(b) If the Honourable Member will state the period to which his question refers, I will endeavour to obtain the information from the Imperial Bank of India.

(c) The question of banking education for Indians is one of the questions which have been specially referred to the Banking Enquiry Committee. I prefer to await their recommendations before replying to this question.

CURRENCY AND EXCHANGE POLICY OF GOVERNMENT.

311. **\*Lala Rameshwar Prasad Bagla:** (a) Will Government be pleased to state the total quantity of silver sold, with corresponding rates, and the total amount of deflation that the Government has brought about in the currency?

(b) What steps, if any, do Government contemplate to take in order to mitigate the general slackness in the trade and commerce of the country?

(c) Is it a fact that manipulations of various kinds were resorted to by Government with a view to maintain and thereby justify the eighteen pence ratio?

**The Honourable Sir George Schuster:** (a) Last March I announced details of the sales of silver up to the end of February, 1930. While I was prepared on that occasion to give a review of the Government's policy over a period of years, I think it would be contrary to the public interest that any close record of current transactions should be published. I can, however, inform the Honourable Member that no contracts for the sale of silver have been made by the Government since the middle of October last. The recent slump in the silver market cannot therefore be said to have been immediately affected by the action of the Government of India.

(b) The real causes of the present trade depression are unfortunately beyond the control of the Government of this country.

(c) Government in their capacity as currency authority, and in order to maintain stability of the exchange value of Indian currency, have taken measures of the kind normally employed by currency authorities in all countries with stabilized currencies.

FLOTATION OF THE NEW STERLING LOAN.

312. **\*Lala Rameshwar Prasad Bagla:** (a) Do Government remember the pledge given by the then Finance Member, Sir Basil Blackett, on the floor of the Assembly against the policy of outside borrowings?

(b) If so, why in violation of that pledge, were the Government out to float the new sterling loan to the gigantic extent of 33½ crores in the London market at such a high rate of interest?

(c) Could not Government borrow the desired sum at a lower rate in India?

(d) Were Government aware, before raising the new loan, that the whole country disapproved of the terms of its issue?

**The Honourable Sir George Schuster:** (a) Government are not aware of any pledge of the nature referred to in the question. On the contrary, Sir Basil Blackett repeatedly indicated in his speeches that the resources of the Indian market would probably have to be supplemented by borrowing abroad.

(b), (c) and (d). The attention of the Honourable Member is invited to paragraphs 72 to 82 of my speech introducing the Budget for 1929-30, and to my reply to Dr. Ziauddin Ahmad's starred question No. 13 on the 26th January, 1931.

### PROTECTION FOR THE COTTON TEXTILE INDUSTRY.

313. **\*Lala Rameshwar Prasad Bagla:** (a) Are Government aware that in spite of the protection afforded to the cotton textile industry by enhancing the import duty last year, the said industry has been all along experiencing a continued depression?

(b) Will Government be pleased to state if they are contemplating to afford further protection to the said industry either by way of raising the import duty by 5 per cent. without any preference to British piece-goods, or by way of adequate reduction of freight charges all over the country?

**The Honourable Sir George Rainy:** (a) The Government of India are satisfied that any depression existing in the cotton textile industry since the duties were enhanced is not ascribable to importations from abroad.

(b) Government have no proposal for according further protection to the cotton textile industry under consideration at present.

### PROTECTION OF THE HOSIERY INDUSTRY IN INDIA.

314. **\*Lala Rameshwar Prasad Bagla:** (a) Will Government please state the name or names of the country or countries from which India imports hosiery and the quantity and value of the hosiery imported?

(b) Are Government aware that a number of Indian hosiery factories have recently been closed down owing to foreign competition particularly that of Japan which has flooded the Indian markets with cheap products?

(c) Do Government know that the cost of production of hosiery in India is about 25 per cent. higher than the rate at which Japanese manufactures are sold in India?

(d) If the reply to parts (b) and (c) is in the negative, are Government prepared to institute an enquiry in the matter?

(e) If the reply is in the affirmative, what steps do Government contemplate to take to save this industry?

**The Honourable Sir George Rainy:** (a) The information is contained in the Sea-borne Trade Accounts, copies of which are available in the library.

(b) and (c). Government have received representations which contain statements to that effect and ask for protection to the hosiery industry.

(d) and (e). The representations are under consideration.

### EXPORT OF INDIAN PIECE-GOODS.

315. **\*Lala Rameshwar Prasad Bagla:** (a) Will Government be pleased to place before the House a statement containing the names of the countries to which Indian piece-goods are exported and the total value of such piece-goods?

(b) What measures, if any, have Government so far adopted in order to stimulate the export trade of Indian piece-goods?

(c) Will Government please state the methods adopted for the publicity of the Indian manufactures in the various foreign markets which are the usual customers of Indian products all over the world?

**The Honourable Sir George Rainy:** (a) The Honourable Member is referred to the Annual and Monthly Accounts relating to the Sea-borne Trade and Navigation of British India, copies of which are in the Library.

(b) In 1928 an Indian Trade Mission was sent to certain countries in the Near East and in Africa to make a survey of their potentialities as markets for Indian cotton goods and to make recommendations for the encouragement of the export of cotton manufactures from India. As an outcome of their recommendations and of the proposals submitted by the High Commissioner for India and the Director General of Commercial Intelligence and Statistics, Calcutta, a scheme has recently been approved for the appointment of Indian Trade Commissioners abroad, full details of which are set forth in the proceedings of the meeting of the Standing Finance Committee held on the 16th January, 1930 (Vol. IX No. 13).

(c) The attention of the Honourable Member is invited to Chapters VI to VIII of the Report on the work of the Indian Trade Commissioner in London during the years 1928-29 and 1929-30, a copy of which is in the Library.

#### PROTECTION AND ENCOURAGEMENT OF THE INDIAN CINEMA INDUSTRY.

316. **\*Lala Rameshwar Prasad Bagla:** (a) Will Government please state the total number of American film companies which have established their offices in India?

(b) Are Government aware that these foreign companies, with their infinite resources and strong financial support, have been doing great injury to the infant cinema industry of India?

-- (c) What action do Government contemplate to take in order to save the cinema industry of India from the foreigners?

(d) Are Government prepared to consider the desirability of appointing a committee to draw out a scheme to be put into operation in order to encourage the said industry?

**Mr. J. A. Shillidy:** (a) Government have no information.

(b) and (c). The Indian Cinematograph Committee referred to the danger of non-Indian control of the Cinema trade and industry, and in paragraph 170, the Committee suggested that Government should arm themselves with legislative powers to exclude foreign concerns from operating in the country. The recommendations of the Committee contained in Chapter IV of their Report, such as the introduction of the "quota system" registration of producers, exhibitors, renters, importers and distributors, etc., were all designed to safeguard the indigenous industry against foreign aggression. But no action on these recommendations has been possible, as most of them hinged on the formation of a Central Cinema Bureau under the Central Government, as proposed in Chapter III of the Report, which did not find favour with most of the Local Governments and trade interests consulted. I would in this connection remind the Honourable Member that, under the present constitution "development of industries" is mainly a provincial transferred subject.



(d) Government do not consider that any useful purpose would be served by appointing another committee, as suggested by the Honourable Member.

#### FALL OF EXPORTS AND IMPORTS.

317. **\*Lala Rameshwar Prasad Bagla:** Will Government be pleased to state the actual amount of fall in the export and import trade of India since the inauguration of the civil disobedience movement?

**The Honourable Sir George Rainy:** The Honourable Member is referred to the monthly Accounts relating to the Sea-borne Trade and Navigation of British India, copies of which are in the Library.

#### FALL IN REVENUE OF CENTRAL AND PROVINCIAL GOVERNMENTS.

318. **\*Lala Rameshwar Prasad Bagla:** (a) Will Government be pleased to state if there has been any fall in the income of Provincial and Central Governments since the inauguration of the civil disobedience movement?

(b) If the answer to part (a) is in the affirmative, will Government be pleased to state the actual loss sustained by the Central Government and the Provincial Governments separately and how much has been shared by each province?

**The Honourable Sir George Schuster:** (a) Revenue returns up to date for the current year show a falling off as compared with the previous year.

(b) I place on the table a statement showing the actual revenue figures for the Central Government and each Provincial Government for the first eight months of the years 1929-30 and 1930-31.

*Statement comparing the total Revenue (Excluding Refunds and Working Expenses) of the Central and Provincial Governments during the first 8 months of 1929-30 and 1930-31.*

(In lakhs of rupees.)

Government.	8 months ' actuals, 1929-30.	8 months ' actuals, 1930-31.
India . . . . .	76.48	67.24 (Approximate.)
Madras . . . . .	7.82	7.29
Coorg . . . . .	7	6
Bombay . . . . .	8.34	7.31
Bengal . . . . .	6.46	5.27
United Provinces . . . . .	7.55	7.09
Punjab . . . . .	6.98	6.48
Burma . . . . .	3.66	3.66
Shan States . . . . .	18	17
Bihar and Orissa . . . . .	3.14	2.82
Central Provinces . . . . .	2.36	2.23
Assam . . . . .	1.50	1.43

IMPORTATION OF TIBETAN SALT.

319. \***Lala Rameshwar Prasad Bagla:** (a) Is it a fact that, in Kumaon Division, Tibetan salt is still imported in large quantities?

(b) Is Tibetan salt a contraband salt?

(c) Is it a fact that the Salt Act is not in force in Kumaon Division?

(d) If it is in force, will Government be pleased to point out the Notification whereby the Salt Act came into force in that Division?

**The Honourable Sir George Schuster:** (a) Government have no exact up-to-date records, but according to such information as they possess, it is most improbable that large quantities are imported. I have, however, called for further information.

(b) Salt duty has not been levied on Tibetan salt imported into Kumaon in the past. It is not, therefore, treated as contraband.

(c) and (d). The Salt Act is applicable to the Kumaon Division under section 1 of the Indian Salt Act, 1882.

RECRUITMENT OF THE INDIAN MEDICAL SERVICE.

320. \***Lala Rameshwar Prasad Bagla:** (a) Is it a fact that a Sub-Assistant Surgeon is eligible to be taken into the Indian Medical Service Corps?

(b) If so, what salary do Government propose to give him in that capacity?

(c) Are Government aware that a large number of private practitioners with high medical qualifications are yet unemployed and are easily available for direct appointment, and yet is it a fact that Government consider it advisable to re-inforce the Indian Medical Service by Sub-Assistant Surgeons?

(d) Will Government please state if there has been any representation made to them by the Sub-Assistant Surgeons on their inclusion in the Indian Medical Service?

**Mr. G. M. Young:** (a) Sub-Assistant Surgeons are eligible for appointment to the Indian Medical Service, if they possess the requisite professional qualifications.

(b) The same as other members of the Indian Medical Service.

(c) The policy of Government is to select the most suitable and highly qualified candidates, irrespective of the class from which they are drawn. No special preference is given to Assistant or Sub-Assistant Surgeons; and, as a matter of fact, no Sub-Assistant Surgeon has been appointed.

(d) No.

**NUMBERS OF PERSONS ARRESTED AND CONVICTED FOR POLITICAL OFFENCES.**

321. **\*Lala Rameshwar Prasad Bagla:** (a) Will Government please state the exact number of people arrested and convicted for various political offences and under the various ordinances in each province of India since the inauguration of the civil disobedience movement till the 10th of January?

(b) Will Government enunciate their policy which guided them to classify prisoners in A, B, and C classes respectively?

(c) Will Government please state the number of political prisoners all over India, who have been placed in B and C classes?

(d) Will Government be pleased to state what extra expenditure each Provincial Government has to bear approximately for the maintenance of an additional number of political convicts since the inauguration of the civil disobedience movement?

**The Honourable Sir James Crerar:** (a) I would refer the Honourable Member to the reply given by me to Sardar Sant Singh's question No. 12 on the 26th January, 1931.

(b) I would invite the attention of the Honourable Member to the communiqué of the Government of India issued on the 19th February, 1930.

(c) and (d). The Honourable Member presumably refers to prisoners convicted in connection with the civil disobedience movement. I am collecting the information in regard to the classification of such prisoners and will communicate it to him in due course. I have no information of the additional cost incurred by Local Governments on account of such prisoners and do not think there would be any practical value in obtaining it.

**PROFITS ON SILVER AND NICKEL COINS.**

322. **\*Mr. Bhuput Sing:** Will Government be pleased to state:

(a) the number of rupees and small silver and nickel coins minted at Calcutta and Bombay between 1920 and 1930;

(b) the amount of profit that has accrued to the Currency Department in the process of minting thereof; and

(c) the way in which the profits have been accounted for?

**The Honourable Sir George Schuster:** (a) The figures are given in the Reports of the Controller of the Currency copies of which are in the Library of the House.

(b) and (c). There were no profits on the coinage of rupees and small silver. The profits on the coinage of nickel are credited to the revenues of the Government of India under the head XXVIII, Mint. The amounts will be found in the Finance and Revenue Accounts of the Government of India, copies of which are in the Library of the House.

**TENDER VALUE OF SOVEREIGNS IN INDIA.**

323. **\*Mr. Bhuput Sing:** Will Government be pleased to state:

- (a) the real tender value of sovereigns in India; and
- (b) whether the value set upon them is absolutely reciprocal?

**The Honourable Sir George Schuster:** The attention of the Honourable Member is invited to section 2 of the Currency Act (IV of 1927).

**UNPROTECTED RAILWAY TRACKS ON THE EAST INDIAN RAILWAY.**

324. **\*Mr. Bhuput Sing:** Will Government be pleased to state the portions on the East Indian Railway (either on the main or branch line) where the railway track is unprotected by wire-fencing on either side?

**Mr. A. A. L. Parsons:** I regret that the information is not available.

**PROVISION OF A THROUGH TRAIN *via* BANDEL-BARHARWA.**

325. **\*Mr. Bhuput Sing:** (a) Will Government be pleased to state whether there is any through train to Delhi running from Howrah, which goes *via* Bandel-Barharwa?

(b) If the answer to part (a) is in the negative, are Government prepared to advise the East Indian Railway management to book some such train to and fro in the preparation of their future time tables for the convenience of through passengers on that section?

**Mr. A. A. L. Parsons:** (a) No.

(b) Government cannot take part in the preparation of time tables. I will have a copy of the Honourable Member's question sent to the Agent of the East Indian Railway for information and for the consideration of his Administration.

**PROVIDENT FUND FOR GOVERNMENT SERVANTS.**

326. **\*Mr. N. R. Gunjal:** (a) Will Government be pleased to state whether they have drawn up any definite scheme of Provident Fund, as proposed by the Honourable Mr. Vedmurti in the Council of State in 1924?

(b) If the reply to part (a) is in the affirmative, will Government be pleased to state when it is likely to be introduced?

(c) Will Government be pleased to state whether the scheme will be made applicable to the menial staff working under the Government of India?

(d) If the answer to part (c) is in the negative, will Government be pleased to give reasons?

**The Honourable Sir George Schuster:** (a) and (b). I would refer the Honourable Member to my reply to Sardar G. N. Mujumdar's question No. 100 given on the 28th January, 1931, which answers these points in substance.

(c) and (d). The question of admitting inferior servants of the Government of India to a Provident Fund or to benefits of a corresponding kind has been engaging the attention of Government for some time; but it is considered that a decision should now be deferred until the Report of the Royal Commission on Labour becomes available.

#### PENSION RULES FOR MENIAL STAFF OF THE CURRENCY OFFICE, BOMBAY.

327. **\*Mr. N. R. Gunjal:** (a) Will Government be pleased to state whether it is a fact that a definite promise was given to the menials of the Bombay Currency Office that their pension rules would be revised when the pension rules of the Bombay Government were revised?

(b) Will Government be pleased to state whether they are aware that the Bombay Government have now revised the pension rules of their menial staff since April 1929?

(c) If the answer to part (b) is in the affirmative, will Government be pleased to state whether the same rules will be applied to the menials of the Currency Department? If not, why not?

**The Honourable Sir George Schuster:** (a) No.

(b) Yes.

(c) I would refer the Honourable Member to the reply given to question No. 268 by Mr. N. M. Joshi in September, 1928. The scheme of temporary increase in small pensions referred to therein has since been extended up to the 31st October, 1931, and the question of the permanent revision of the pension rules of inferior servants under the Government of India is still under consideration. The Government of India cannot bind themselves to follow absolutely the practice of Local Governments in such matters.

#### RECOMMENDATIONS OF THE CURRENCY STAFF ENQUIRY COMMITTEE.

328. **\*Mr. N. R. Gunjal:** Will Government be pleased to state whether the recommendations made by the Currency Staff Enquiry Committee, will be given effect to from the next official year (April 1931)?

**The Honourable Sir George Schuster:** The recommendation of the Committee, for an increase of pay of shroffs in the Bombay Currency Office, which has been accepted by Government and approved by the Standing Finance Committee, will be given effect to from the 1st March, 1931, a similar readjustment in the scales of pay of shroffs in all the Currency Offices being made from the same date.

#### INSTRUCTIONS TO INCOME-TAX OFFICERS.

329. **\*Dr. Ziauddin Ahmad:** (a) Have Government issued instructions to the Income-tax officers, which do not form part of the Income-tax Act?

(b) If so, will Government please lay a copy of such instructions on the table?

(c) Have Government specified assessable and non-assessable incomes in any circular letter? Is the circular letter published in the Gazette of India? If not, will Government lay a copy of the circular letter on the table?

**The Honourable Sir George Schuster:** (a) and (b). The Central Board of Revenue issues instructions from time to time to Commissioners of Income-tax in regard to the administration of the Act. The Board also exercises rule-making powers under the Act. The rules framed by the Board and the gist of such of its other instructions as are of general interest will be found in the Income-tax Manual, a copy of which is in the Library of this House.

(c) I do not know what letter my Honourable friend has in mind. No such circular letter has been issued by the Central Board of Revenue.

**Dr. Ziauddin Ahmad:** Did the Central Board of Revenue issue a letter to the income-tax officers, specifying that certain classes of income should be considered as assessable and some other kinds as non-assessable?

**The Honourable Sir George Schuster:** If the Honourable Member will put before me any evidence of the letter which he has in mind, I shall be very glad to answer questions in relation to it.

#### REPORT ON THE WORKING OF THE CREW SYSTEM.

330. **\*Dr. Ziauddin Ahmad:** (a) Did Government appoint any committee or depute any individual to report on the working of the crew system?

(b) If so, will Government lay the report on the table?

(c) Was the report discussed by the Railway Board and what was its decision?

**Mr. A. A. L. Parsons:** (a) Government appointed a Committee to report on the working of the crew system on the East Indian Railway.

(b) and (c). The Report is at present under the consideration of the Railway Board and a decision has not yet been arrived at. After a decision has been arrived at, I will have a copy of the Report placed in the Library. I will also send the Honourable Member a copy.

**Dr. Ziauddin Ahmad:** Will the Honourable Member send a copy now?

**Mr. A. A. L. Parsons:** We are not prepared to send a copy until we have arrived at a decision on the report, which I expect, will take place in the course of the next week or two.

**Dr. Ziauddin Ahmad:** Will he also give a copy of a similar report on the G. I. P. Railway system?

**Mr. A. A. L. Parsons:** There is no such report.

#### NON-RELEASE OF KHAN ABDUL GHAFFAR KHAN, A POLITICAL PRISONER IN BAD HEALTH.

331. **\*Dr. Ziauddin Ahmad:** (a) Is it a fact that the Government released some political prisoners on account of ill-health?

(b) Is it not a fact that Khan Abdul Ghaffar Khan is not in good health?

(c) Will Government be pleased to give reasons for not releasing Khan Abdul Ghaffar Khan, when other prisoners were released under similar conditions?

**The Honourable Sir James Crerar:** (a) A few prisoners convicted of offences in connection with the civil disobedience movement have been released on account of the state of their health.

(b) and (c). No; his health is reported to be quite good.

#### RELEASE OF POLITICAL PRISONERS IN THE NORTH WEST FRONTIER PROVINCE.

332. **\*Dr. Ziauddin Ahmad:** (a) Are Government contemplating releasing more prisoners in the near future?

(b) Are Government prepared to include the prisoners in the North West Frontier Province sent to jail for a similar offence?

**The Honourable Sir James Crerar:** The Honourable Member will no doubt realise that the policy of Government in this respect must depend on the manner in which the situation develops but no question of discrimination between provinces would be involved.

#### APPOINTMENT OF LOCAL BODIES IN THE NORTH WEST FRONTIER PROVINCE.

333. **\*Dr. Ziauddin Ahmad:** (a) Have Government sanctioned the appointment of local bodies in the North-West Frontier Province?

(b) Will the non-official elected members be in a majority in these local bodies?

(c) If the answer to part (b) be in the negative, will Government give reasons for adopting a practice different from that in other provinces?

(d) Are Government prepared to reconsider the matter?

(e) Have elections for local bodies been held? If not, why not?

(f) When will the elections be held?

**The Honourable Khan Bahadur Mian Sir Fazl-i-Husain:** (a) Yes.

(b), (c) and (d). It has been decided that the District Boards and Municipal Committees, the members of which, with the exception of the Peshawar Municipal Committee, have hitherto been entirely nominated, shall consist of nominated and elected members in equal numbers. This the Honourable Member will recognise is a good advance in the liberalisation of their constitution.

(e) and (f). The elections have not yet been held as the necessary preliminaries are still in progress. They will be held in the beginning of June, if it is not found possible to complete the preliminaries before then.

**Dr. Ziauddin Ahmad:** In all other provinces the elected members in local bodies are in a majority. That being so, will the Honourable Member please say why a different practice is being adopted in the North West Frontier Province?

**The Honourable Khan Bahadur Mian Sir Fazl-i-Husain:** In all the provinces there have been non-official members in a majority for a long time, while here there has been no elected member on any local body except in Peshawar, right up till now.

**Seth Haji Abdoola Haroon:** Is it because Government consider that this province is a backward one that they are not giving a majority of elected members in the local bodies, or is it for some other reasons?

**The Honourable Khan Bahadur Mian Sir Fazl-i-Husain:** There is no such idea of backwardness, in particular; the only idea in support of this action is whether there ought to be advance by steps or by leaps?

**Mr. K. Ahmed:** What is the percentage of elected members and the nominated members now?

**The Honourable Khan Bahadur Mian Sir Fazl-i-Husain:** There is no percentage of elected members, there being none.

**Mr. K. Ahmed:** What is the proportion of members and how many of them really represent the people?

**The Honourable Khan Bahadur Mian Sir Fazl-i-Husain:** Don't quite follow. As to representation that is a matter for guess, because there is no election.

**Mr. K. Ahmed:** When there have been so many Resolutions passed in this Assembly and other places and on the public platform, when will the Government think over this question?

**The Honourable Khan Bahadur Mian Sir Fazl-i-Husain:** I shall be grateful if the Honourable Member will refer me to the Resolutions passed by the Assembly or by the Council of State on the subject.

**Mr. K. Ahmed:** Are not the Government aware of the fact that in so many public places and Legislatures Resolutions were passed and memorials were sent to the Government and the Government have done nothing so far?

**The Honourable Khan Bahadur Mian Sir Fazl-i-Husain:** I am aware of one representation which was made by the people of the Frontier Province to their Chief Commissioner in the beginning of July, 1930, in response to which a promise was made that the constitution of the local bodies would be liberalised, and the present measure that I have indicated is in pursuance of that promise.

**Mr. K. Ahmed:** Is it not a fact that, in this very Assembly some time ago, and within my knowledge for the last eleven years, Government made a promise throughout the régime of Sir Denys Bray who was then sitting here, and that promise has not been fulfilled?

**The Honourable Khan Bahadur Mian Sir Fazl-i-Husain:** The Honourable Member's knowledge is what is called *sina basina* (handed on unrecorded): I have not seen yet any record of it.

**Mr. K. Ahmed:** Is that my fault or the fault of the other side?

**Maulvi Muhammad Shafee Daoodi:** Do not the Government recognise that the population of the province is more homogeneous and more suited to democratic forms of institutions than others?

**The Honourable Khan Bahadur Mian Sir Fazl-i-Husain:** That is a point on which Government are not interested to make any denial.

**Dr. Ziauddin Ahmad:** Did not the Government promise to the Frontier Province people that they would enjoy the same liberties and the same rights as are being enjoyed by the Punjab, and is it now the practice in the Punjab to have an equal number of elected and nominated members on local bodies?



**The Honourable Khan Bahadur Mian Sir Fazl-i-Husain:** I have already admitted that in other provinces the elected element in local bodies preponderates, but in the Frontier Province till now there has been no elected element whatsoever, and in order to make good this defect Government have already decided that the constitution of local bodies shall be liberalised, and a certain measure of liberalisation has taken place, or at all events, is in the course of taking place. I trust that Honourable Members will recognise that that certainly is a very desirable thing.

**Dr. Ziauddin Ahmad:** The Honourable Member did not reply to the first part of the question; did not the Government promise the people of the Frontier Province that they would enjoy the same rights and privileges as were enjoyed in the adjacent province of the Punjab, and if so, why is this right denied to them?

**The Honourable Khan Bahadur Mian Sir Fazl-i-Husain:** The Honourable the Chief Commissioner's reply to the representations made to him by the people of the Frontier Province was published broadcast, and therein it was definitely stated, so far as I can now recollect, not having the statement before me, that in the activities of beneficent Departments every effort would be made, subject to finances being available, to raise the standard of efficiency in the said Departments to the same level as prevails in the adjoining districts of the neighbouring province. That is as far as I can recollect, and I have no doubt every effort is being made by Government during the preparation of their Budget which the Honourable Members will recognise is a deficit Budget, to work up to that promise.

**Dr. Ziauddin Ahmad:** Sir, we do not recognise the Chief Commissioner of the N. W. F. P., because that province is administered directly by the Government of India. I would like to know what the Government of India have done to fulfil the promises made to the people of the N. W. F. P. at the time of the separation of the province by Lord Curzon in 1901?

**The Honourable Khan Bahadur Mian Sir Fazl-i-Husain:** My researches have not gone back to that date.

**Sir Abdur Rahim:** Are the people of the N. W. F. P. satisfied with what the Government have done for them in this matter?

**The Honourable Khan Bahadur Mian Sir Fazl-i-Husain:** I have not had opportunities really of ascertaining the views of the people of the North West Frontier Province recently; by recently I mean during the last three or four months, the period during which the proposals for advance have been matured by the Local Government. I shall indeed be very glad to get into touch with that opinion in case it is ascertainable.

**Mr. K. Ahmed:** Is it not the reason why in Peshawar and throughout the N. W. F. P. and further on towards Kabul all this disorder has taken place and Government are experiencing considerable trouble? Are Government aware that all this trouble and disorder is due to the non-fulfilment of their promise; all this chaos and disorder is due to their not being in touch with the public opinion in the N. W. F. P.? When do they propose to remove all the difficulties of the people of the N. W. F. P. and get rid of all their troubles and thus avoid the squandering of public money for maintaining a huge military force at an enormous cost?

**The Honourable Khan Bahadur Mian Sir Fazl-i-Husain:** I am afraid, Sir, we are getting beyond the scope of the subject matter of the question.

**Mr. Muhammad Yamin Khan:** May I ask if the Honourable Member has read the debates in this House on the frontier policy question, when the late Lala Lajpat Rai, the Leader of the Nationalist Party, was here, and he supported that Resolution? Has he also read the debate which took place last year during the Budget session on a cut on the frontier policy?

**The Honourable Khan Bahadur Mian Sir Fazl-i-Husain:** Sir, not in this connection.

**Dr. Ziauddin Ahmad:** Two more supplementary questions, Sir. The Government promised, in reply to my question at the Simla Session, that they would establish these local bodies at an early date and allowed seven months to elapse. We still hear that they will be started in June next. I would like to know the cause of this abnormal delay.

**The Honourable Khan Bahadur Mian Sir Fazl-i-Husain:** What the Honourable Member has stated is perfectly correct. It was intended last July, when the Assembly met, that these institutions should be started at an early date. It is for the Honourable Members to say whether the passing of the last seven months, due to the abnormal conditions prevailing in that province, can be dubbed as undue delay, or is justified.

**Dr. Ziauddin Ahmad:** We are not satisfied with the answer. My second supplementary question is . . . .

**Mr. President:** Next question please.

#### CONTINUED APPLICATION OF MARTIAL LAW IN THE NORTH WEST FRONTIER PROVINCE.

334. **\*Dr. Ziauddin Ahmad:** (a) Is it a fact that the North West Frontier Province is administered directly by the Government of India?

(b) Will the Government be pleased to give an example of a province where martial law has been applied for a longer period than in the North West Frontier Province?

**Mr. J. G. Acheson:** (a) Yes, Sir.

(b) In the Madras Presidency during the Moplah disturbances Martial Law actually remained in force for a longer period than has been the case in the Peshawar District.

#### THE BANK RATE IN ENGLAND AND IN INDIA.

335. **\*Dr. Ziauddin Ahmad:** (a) What is the rate of interest of the Imperial Bank of India now?

(b) What is the rate of interest of the Bank of England on the same date?

(c) Is there a marked difference in the rates of interest? If so, why?

(d) What was the Imperial Bank of India reserve on the day the rate was increased from 5 to 6 per cent.?

**The Honourable Sir George Schuster:** (a), (b) and (c). I would refer the Honourable Member to my reply to Lala Hari Raj Swarup's question No. 267 on 2nd February, 1931.

(d) The bank rate was raised from 5 to 6 per cent. on the 20th November, 1930. The Imperial Bank's cash on the 14th November and on the 21st November was 24,89 lakhs and 20,27 lakhs respectively.

#### RESHUFFLING OF THE ADMINISTRATIVE AREAS OF STATE-OWNED RAILWAYS.

336. **\*Dr. Ziauddin Ahmad:** (a) Are Government aware that the organization of the Post and Telegraph offices is provincialised?

(b) Have Government ever considered the desirability of reshuffling the administrative areas of State-owned railways and making them coincide with the provincial areas?

**Mr. A. A. L. Parsons:** (a) The reply is in the negative.

(b) No; and Government do not consider that any re-arrangement of the railway systems on the basis suggested would be practicable.

**Dr. Ziauddin Ahmad:** The reply to part (a) of this question is in the negative, that is, there is no provincial organization in the Posts and Telegraphs Office. Do I understand that?

**Mr. A. A. L. Parsons:** The Honourable Member's question should, I think, be put, after due notice, to my Honourable friend Mr. Sams. I derived the information from his Department on which I gave a reply to part (a).

**Dr. Ziauddin Ahmad:** I did not follow the reply.

#### PURCHASE OF THE BENGAL AND NORTH WESTERN RAILWAY.

337. **\*Dr. Ziauddin Ahmad:** (a) Have the Government of India addressed any letter to the Government of the United Provinces about the purchase of the Bengal and North Western Railway and the Rohilkund and Kumaon Railway?

(b) Have Government received its reply? Will the Government be pleased to lay it on table?

(c) Have the Government of India asked the United Provinces Government to find out the opinion of the United Provinces Legislative Council about the purchase of the Bengal and North Western Railway?

(d) Have the Government of India suggested the extension of the contract of the Bengal and North Western Railway for another period of 50 years?

(e) Are Government considering the flotation of a loan in India, or both in India and England for the purchase of the Bengal and North Western Railway?

**The Honourable Sir George Rainy:** (a) Yes.

(b) A reply has been received and will be made available to the Committee which, as I mentioned in answer to the Honourable Member on the 26th of last month, I hope the House will appoint, to examine the whole question. Pending that examination, I do not think it desirable to lay papers.

(c) I understand that His Excellency the Governor of the United Provinces in Council has decided, at the suggestion of the Government of India, to give the Legislative Council of the United Provinces an opportunity to discuss the question.

(d) No.

(e) Consideration of this question must obviously await the decision which may be reached after the examination by the Committee.

**Mr. Gaya Prasad Singh:** When does the contract with the Bengal and North Western Railway terminate?

**The Honourable Sir George Rainy:** It does not terminate automatically. I think the position is that the Government of India can terminate the contract by giving notice before the 31st December next.

**Mr. Gaya Prasad Singh:** Do Government realise the necessity of settling this question far in advance of the time when the contract is due to terminate by giving notice?

**The Honourable Sir George Rainy:** I think, Sir, it is desirable to reach a decision on that question as soon as possible. I admit that.

**Maulvi Muhammad Shafee Daoodi:** Do Government propose to take any steps to terminate the contract?

**The Honourable Sir George Rainy:** What I indicated in reply to an earlier question put a few days ago by my friend, Dr. Ziauddin Ahmad, was that Government would propose before the end of this year, the appointment of a Committee to examine the question of what should be done in this matter.

#### APPOINTMENT OF MUSLIMS IN ACCOUNTS OFFICES IN RAILWAYS.

338. **\*Seth Haji Abdoola Haroon:** (a) Is it a fact that, with the exception of one officer on training, there is not a single Muslim superior officer in the Audit Department of Railways?

(b) Is it a fact that there is not a single Muslim in the Audit Department of Railways as (a) Assistant Audit Officer (b) Senior Accountant, and, if so, what steps do Government propose to take to have Muslims represented in this Department?

(c) Is it a fact that there has never been a Muslim Officer in the Office of the Accountant General, Railways (now Director of Railway Audit), and, if so, are Government prepared to take steps to appoint a Muslim Officer in this office?

**The Honourable Sir George Schuster:** With your permission, Sir, I will answer questions Nos. 338 and 339 together. Information is being obtained and a reply will be sent to the Honourable Member as soon as possible.

#### APPOINTMENT OF MUSLIMS IN ACCOUNTS OFFICES IN RAILWAYS.

†339. **\*Seth Haji Abdoola Haroon:** (a) Will Government please state if a Muslim has ever been appointed as (i) Audit Officer; (ii) Assistant Audit Officer; (iii) Senior Accountant; (iv) Junior Accountant; and (v) Sub-head

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†For answer to this question, see answer to starred question No. 338.

to remove communal inequalities in the Railway Audit and Accounts Department? If so, please state number of each class?

(b) If not, do Government propose to consider the feasibility of such a step?

#### APPOINTMENT OF MUSLIMS IN ACCOUNTS OFFICES IN RAILWAYS.

340. \***Seth Haji Abdoola Haroon**: Is it a fact that not a single Muslim has ever been appointed as an officer or as a Superintendent in the Railway Clearing Accounts Office? Is it also a fact that there is not a single Muslim Officer or Senior Accountant in the accounts offices of all State Railways except the North Western Railway, and all Company railways without exception? If so, why?

**Mr. A. A. L. Parsons**: I am not aware of the position on Company-managed railways, but with regard to the Railway Clearing Accounts Office, and other Railway Accounts Offices, the answer is in the negative.

#### PUBLICATION OF FIGURES OF ACCOUNTS DEPARTMENTS OF RAILWAYS.

341. \***Seth Haji Abdoola Haroon**: Will Government please take steps to publish separately figures of accounts departments of Railways in the Report of the Railway Board in the same way as the figures of Agency, Engineering, Transportation, Commercial, Mechanical Engineering and Stores Departments are published?

**Mr. A. A. L. Parsons**: The statement of gazetted officers in Departments employed on Railways published as Appendix F to Volume I of the Report by the Railway Board will in future show separately, the number of officers of the Railway Accounts Department.

#### LACK OF MUSLIM OFFICE SUPERINTENDENTS ON THE NORTH WESTERN RAILWAY.

342. \***Seth Haji Abdoola Haroon**: (a) Is it a fact that there is not a single Muslim Superintendent in the headquarters office of the North Western Railway?

(b) Is it a fact that there is not a single permanent Muslim Office Superintendent in the whole of the North Western Railway system?

**Mr. A. A. L. Parsons**: (a) and (b). The reply is in the affirmative.

#### LOWER GAZETTED POSTS ON THE NORTH WESTERN RAILWAY.

343. \***Seth Haji Abdoola Haroon**: Will Government please state how many lower gazetted posts have been created on the North Western Railway in the years 1930 and 1931:

(a) in the Commercial Department,

(b) in the Transportation Department,

(c) in the Way and Works Department,

(d) in the Mechanical Department,

and how many of these posts have been given to Indians,

(i) to Muslims and (ii) to Non-Muslims?

**Mr. A. A. L. Parsons:** In December, 1930, six Commercial Superintendents' posts in the subordinate service were converted into Lower gazetted posts. No permanent promotions have been made to fill the posts, but the holders of the posts abolished have been appointed to officiate in the new posts pending the Agent's recommendation how they should be filled permanently.

In 1931, as a result of the revision of the cadres, provision has been made for 58 posts in the lower gazetted service. For a large part these replace existing posts in other services. They come into being on the 1st March, 1931, and the Agent's proposals for filling them are awaited.

#### APPOINTMENT OF MUSLIM OFFICERS ON STATE RAILWAYS.

**344. \*Seth Haji Abdoola Haroon:** Will Government please state what steps have been taken by them to give effect to the promises made by the Honourable Sir George Rainy and Mr. Hayman in their speeches made on the 24th February, 1930, on the floor of this House regarding appointment of Muslim Officers on State Railways?

**Mr. A. A. L. Parsons:** A memorandum giving the information asked for by the Honourable Member is under preparation and, when ready, will be placed in the Library of the House. I will also send him a copy.

**Seth Haji Abdoola Haroon:** And not to all the other Members?

**Mr. A. A. L. Parsons:** I think it will be rather a long memorandum. I am going to place copies in the Library and send the Honourable Member himself a copy.

#### APPOINTMENT OF MUSLIM OFFICERS AND CLERKS IN THE HEADQUARTERS OFFICES OF THE NORTH WESTERN RAILWAY.

**345. \*Seth Haji Abdoola Haroon:** Is it a fact that (a) there is not a single Muslim Officer or an Office Superintendent or even a Head Clerk in the whole of the Personal Branch of the Headquarters Offices, North Western Railway, Lahore, (b) the percentage of Muslim clerks in this branch is lower than their percentage in the Agent's Office as a whole?

(c) If so, are Government prepared to issue instructions to the Agent to have the Muslims fairly represented in all the grades of this Branch?

**Mr. A. A. L. Parsons:** (a) The reply is in the affirmative.

(b) The reply is in the affirmative.

(c) Promotions to higher grades are made with reference to seniority and merit without regard to communal considerations.

#### CONSTRUCTION OF THE BOMBAY-SIND DIRECT RAILWAY.

**346. \*Seth Haji Abdoola Haroon:** Will Government be pleased to state when it is proposed to start the construction of the Bombay-Sind direct railway?

**Mr. A. A. L. Parsons:** I would refer the Honourable Member to my answer to Mr. Lalchand Navalrai's starred question No. 84 on the 20th January, 1930.

**RETURN TO INDIA OF MAULVI OBAIDULLAH SINDHI.**

347. \***Seth Haji Abdoola Haroon:** (a) Will Government be pleased to state:

- (i) Whether they are aware that Maulvi Obaidullah Sindhi (resident of Sialkot) had emigrated from India to Afghanistan more than 15 years ago?
- (ii) Whether it is a fact that Maulvi Obaidullah has remained all the past 15 years as a destitute stranger in one or the other foreign country either in Asia or in Europe?
- (iii) Whether they are aware that at present Maulvi Obaidullah is residing at Mecca in the Hedjaz and is anxious to return to India?
- (iv) Whether there are any such serious charges against the said Maulvi Obaidullah as to prevent his return to India? If there are, what are they?

(b) Will Government be pleased to declare whether they will or will not allow his return to India?

**The Honourable Sir James Crerar:** (a) (i) and (ii). I am aware that Maulvi Obaidullah went to Afghanistan in 1915 and thereafter to Moscow and other countries, but I am not aware that he has been destitute.

(iii) I am aware that he is in the Hedjaz but I have no information about his anxiety to return.

(iv) There are serious charges against him which I am not in a position to disclose at this juncture.

(b) The Government of India will take all the circumstances connected with his case into consideration if and when he applies for facilities to return to India.

But I am not in a position to make any statement at present what their decision would be if that case arose.

**Maulvi Muhammad Shafee Daoodi:** Is the policy of Government of keeping the charges made against Maulvi Obaidullah secret a desirable policy?

**The Honourable Sir James Crerar:** The circumstances regarding those charges are matters of very great intricacy and I do not think that it would be in the public interest to make any statement with regard to them.

**Maulvi Muhammad Shafee Daoodi:** But as the thing took place fifteen years ago, is it not now only a matter of history, and do not the Government think that the disclosure of the charges would satisfy the people as to the real objection of the Government?

**The Honourable Sir James Crerar:** I hope the Honourable Member will accept my assurance that, to the best of my judgment, it would not be in the public interest to make a statement.

**APPOINTMENT OF MUSLIMS IN THE CUSTOMS DEPARTMENT.**

348. \***Seth Haji Abdoola Haroon:** Will Government be pleased to state what action, if any, the Collector of Customs, Karachi, has taken or proposes to take to give effect to the recommendation contained in the Government of Bombay's Notification No. 2610, dated the 5th February, 1925, regarding the appointment of Muslims in the Customs Department?

**The Honourable Sir George Schuster:** The orders issued by the Bombay Government have no application to the recruitment of services or posts in Departments under the Central Government and no change in the existing orders is contemplated pending the completion of the examination of the effect of those orders, which is now in progress.

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#### ELECTION OF MEMBERS TO THE SALT INDUSTRY COMMITTEE.

**Mr. President:** I have to inform the Assembly that the following Members have been elected to the Committee to examine the Report of the Tariff Board on the salt industry, namely:

1. Mr. L. V. Heathcote.
  2. Mr. B. Das.
  3. Mr. N. N. Anklesaria.
  4. Mr. R. K. Shanmukham Chetty.
  5. Mr. C. C. Biswas.
  6. Nawab Major Malik Talib Mehdi Khan.
  7. Mr. G. Morgan.
  8. Mr. S. C. Shahani.
  9. Seth Haji Abdoola Haroon.
  10. Mr. S. C. Mitra.
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#### ELECTION OF MEMBERS TO THE STANDING COMMITTEE ON ROADS.

**Mr. President:** I have to inform the Assembly that the following Members have been elected to serve on the Standing Committee on Roads, namely:

1. Rao Bahadur M. C. Rajah.
  2. Mr. L. V. Heathcote.
  3. Lieutenant Nawab Muhammad Ibrahim Ali Khan.
  4. Mr. B. Rajaram Pandian.
  5. Mr. M. R. Goswami Puri.
  6. Rao Bahadur S. R. Pandit.
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#### THE SPECIAL MARRIAGE (AMENDMENT) BILL.

**Sir Hari Singh Gour** (Central Provinces Hindi Divisions: Non-Muhammads): Sir, I beg to move that the Bill further to amend the Special Marriage Act, 1872, be taken into consideration.



[Sir Hari Singh Gour.]

Sir, if this were not a new House, I would not have detained the House very long, but I have to explain to the House the reason why I have sponsored this Bill which had been introduced in the late Imperial Legislative Council as far back as 1868. Sir, at that time the Bill was not introduced by a private Member, but it was introduced by that very eminent lawyer, Sir Henry Maine, who was then the Law Member of the Government of India, and if Honourable Members will indulge me, I will point out to them the necessity which then existed and the necessity which has since been strengthened and reinforced with the passage of time. Sir Henry Maine in 1868 felt that there was a necessity for the establishment of a general civil marriage law in this country, and in introducing his Bill, he pointed out that as the Government of India were religiously neutral, it was the duty of the Government of India to establish a neutral marriage law. That Bill was under discussion from 1868 to 1872, when it was enacted in a restricted form, popularly known as the Brahmo Marriage Act. But the necessity for a general civil marriage law had long been felt in this country, and in 1908, Mr. Bhupendra Nath Basu re-introduced the Bill which had been, as I have pointed out, first introduced by the then Law Member in 1868. That Bill was circulated, but after circulation, Mr. Bhupendra Nath Basu left the Imperial Legislative Council and the Bill itself was shelved. Mr. Patel, when he was a Member of the Imperial Legislative Council, again revived it, and later on, in 1921, Sir, I re-introduced the Bill, and it was circulated, and after collection of opinions in the provinces it was referred to a Select Committee. But my Muhammadan friends in those days objected to the inclusion of their community in that Bill, and out of deference to them I cut them out as well as a few other communities and it became then enacted as the Special Marriage Act of 1923, which legalises marriages between Hindus, Buddhists, Sikhs and Jains.

Now, the necessity which existed for the establishment of a general marriage law in 1868 is a necessity which, as I have said, has grown greater with the passage of time. Let me summarise the views of that eminent jurist, Sir Henry Maine, as given by him in his speech on that Marriage Bill in 1868. He said that the Government of India had passed a *Lex Loci* Act the object of which was to give every person the freedom of conscience. As a necessary corollary of the passage of a *Lex Loci* Act the Government of India were bound to pass a civil marriage law. This is what he says:

"It is incredible to me that, except by an oversight, they should have expressly provided for the protection of the right of inheritance, but should have omitted to provide for the right of contracting marriage, without which that inheritance cannot arise."

Then, turning to the religious argument, he says that the Hindu marriage and the Muhammadan marriage and the other communal marriages are sanctioned by local usage, and because they are sanctioned by customary usage, they are only legal within the area where the custom operates. They have no international validity, and therefore, so far as the marriages in India under the personal laws of the parties are concerned, while they are perfectly good within India, the moment people go out of India those marriages are open to question. In a very recent case reported in Law Reports, 1930, probate page 217, this very question was discussed at very great length, and the principle that was laid down in that case is this. The Judges said marriage in Christendom and indeed

12 Noon.

in the civilised part of the world means a monogamous marriage, marriage of one man to one woman to the exclusion of all others. Any marriage that takes place in violation of this principle is not a marriage within the meaning of law. That, I submit, is the principle which they enunciated here.

**An Honourable Member:** Which High Court?

**Sir Hari Singh Gour:** The English High Court, and here is a book by Mr. Geary on "Marriage and Family Relations".

**Mr. Amar Nath Dutt** (Burdwan Division: Non-Muhammadan Rural): Who is he? We have not heard of him.

**Sir Hari Singh Gour:** I will lend my book to you.

**Mr. Amar Nath Dutt:** I want to know his credentials.

**Sir Hari Singh Gour:** His credentials are unquestionable. He is a barrister of the Inner Temple. This is what he says:

"A marriage when a former husband or wife is alive is null, as well by the spiritual as by the Common Law, and they are not husband and wife *de facto*. For polygamy and polyandry are forbidden by Christianity and the law of England and every other civilised country and the law of England will not recognise a Mormon or polygamous marriage."

That was laid down as far back as 1888 by the Court of Chancery, and as I have pointed out, that principle was re-established and reaffirmed in the later case to which I have referred. I would not have drawn Honourable Members' attention to this fact were it not for the fact that a very large number of Indians migrate to South Africa and other parts of Europe and America.

**Maulvi Muhammad Yakub** (Rohilkund and Kumaon Divisions: Muhammadan Rural): It would be wise on your part if you were also to migrate to South Africa. It will be useful to you as well as to the House.

**Sir Hari Singh Gour:** Now, as regards the law that is applicable, the principle of marriage law on the Continent of Europe, in England and America and in South Africa, and indeed so far as I am aware in all the British Dominions, is a statutory marriage to the exclusion of all parochial, customary or local marriages. Consequently, when Indians go to South Africa, the one question with which they are confronted is: Is your marriage registered under any statute? And if it is not registered, a great deal of difficulty arises as to the recognition of these matrimonial ties not sanctioned by the law of the land, and that is exactly the case in the whole of Europe where no marriage is recognised unless it is a statutory marriage, which means a marriage under the civil law. I therefore submit that, apart from the other questions to which I shall presently refer, a statute must be enacted in this country for the purpose of registering marriages, marriages which would be good not only in India but throughout the civilised world. That, I submit, is the prime necessity of the State, and it was pointed out by Sir Henry Maine in his opening speech to which I have referred. This is what Sir Henry Maine points out:

"But the theory which imposed religious marriage in Europe has never had any counterpart in India. In European countries the legislator believed or professed to believe that some one religion was true and could alone impart efficacy to the rites by which marriage was celebrated. That was his justification, whatever it was worth

[Sir Hari Singh Gour.]

For the protection of that one religion and in its interest, he compelled everybody to submit to its ceremonial. But there never has been anything like this in India under the British Government and whatever were the theory of the Muhammadans, there was nothing like it in their practice. It is a famous saying of a well known French Statesman, that 'the law should be atheistic'. Well, if the expression be permissible, the law of marriage has in this country always been atheistic, in the sense that it has been perfectly indifferent between several religions of which no two could be true. One may be true but not two. This peculiarity of Indian law results in the rule that a man may at pleasure desert the religion in which he was born and contract a civil marriage. A Hindu can become a Christian or a Muhammadan, or he may adopt the Fetichism of the Kols or Santhals and he can contract a lawful marriage. But if he stops short of that, as the law stands, marriage is denied to him. Take the case of a Hindu becoming Muhammadan, a kind of conversion which goes on every day of our lives. The convert is compelled by the principles of his new religion to regard the faith of his ancestors as hateful and contemptible. But if he does not go so far as that, if he retains some tenderness for his old faith, and continues to regard it as not absolutely evil, he is debarred from all share in the fundamental institution of organised civil society. Such a state of the law is unexampled in Europe. Nothing in the Western World has any relevancy towards it or bearing on it."

Honourable Members will thus see that, looking at the question from a constitutional point of view, it was the duty of every State to provide a non-denominational marriage law, and I therefore submit that Sir Henry Maine was perfectly right in 1868 when he introduced his civil marriage law. I venture to submit that it was the duty of the Government, after the lead given by Sir Henry Maine, to push on with the enactment of the civil marriage law. I have told you that the Government were guilty of the abnegation of their duty in not doing what I submit it was their duty to do. It was left to the enterprise of private Members, and three Honourable Members whose names I have mentioned ventured to fill this lacuna in the civil law of India. I therefore submit that, so far as *a priori* considerations are concerned, I have made out an unanswerable case for the establishment of a civil marriage law in this country. Then, Sir, civil marriage law, as I have said, exists in the whole of Europe, and as Honourable Members are aware, it exists today in the two large Moslem countries of Turkey and Egypt. India is the only country east of Suez where we have not got a purely civil marriage law.

**Maulvi Muhammad Yakub:** What is your authority for saying that such a marriage law exists in Turkey and Egypt?

**Sir Hari Singh Gour:** My friend, Maulvi Muhammad Yakub, was a Member of this House when the Turkish deputation came to this country and I am perfectly certain that his memory cannot be short when those members of the deputation asked their co-religionists to support a purely civil marriage law because it was the law of Angora.

**Maulvi Muhammad Yakub:** They never did so; at any rate I have no information about it.

**Sir Hari Singh Gour:** Very well, you can inquire.

**Maulvi Muhammad Yakub:** But you should quote the authority.

**Sir Hari Singh Gour:** Then, Sir, I pass on now to the present law of the country. What I am trying to do is not to introduce an innovation in the marriage laws of this country. If a Hindu or a Muhammadan wishes to marry outside his community, he is entitled to do so everywhere outside India. In England he can contract a civil marriage. He can contract a civil marriage on board a British ship, let us say three miles out of

Bombay or Calcutta, or out of any of the British Indian ports, because a British ship is in the eyes of the law a floating island and subject to the English law on the high seas. Consequently an Indian too, if he wishes to contract a civil marriage, is today entitled to contract a civil marriage anywhere outside the territorial waters of India.

**An Honourable Member:** That is nowhere stated.

**Mr. Muhammad Yamin Khan** (Agra Division: Muhammadan Rural): Will it be recognized as a lawful marriage in India?

**Sir Hari Singh Gour:** My friend asks me whether it will be recognized as a lawful marriage in India. A civil marriage, Sir,—and my friend is a barrister, he ought to know— . . . .

**Maulvi Muhammad Yakub:** But you are also a barrister.

**Sir Hari Singh Gour:** . . . . creates an international status and is quite good all over the world.

**An Honourable Member:** Except in India.

**Sir Hari Singh Gour:** And I hope I have tried to point out that it is only a civil marriage that is a good marriage throughout the world because it has the sanction of the Legislature. Any other form of marriage, whether under the Hindu or the Muhammadan law or under any personal law of the parties, is not a marriage which is recognized and of that universal vogue throughout the world: and it is for that reason that Sir Henry Maine in 1868 wanted to endow you with a civil marriage law, and it is for that reason that subsequent attempts have been made by non-official Members to supply this defect in the Indian legal system. Now, I think I have said enough on the question of the history of this Bill and on the point that, in trying to enact this law we are following the good example of all the other civilized countries of the world. I have further pointed out that the establishment of a civil marriage law in India will only remove a territorial disability which exists here, and that the right of an Indian to contract a civil marriage is inherent and can be enforced everywhere outside British India. That being the case, I cannot understand the attitude of my opponents; and I cannot allow my motherland to be under this perpetual scourge and disability that an Indian who can marry and exercise his ordinary civil right outside India, the moment he puts his foot upon his own land, becomes immediately clothed with this disability and is not able to do what he is free to do anywhere outside his own country. That, I submit, is a disability which every patriotic Indian should combine to remove from his country, and therefore, Sir, I ask the concurrence of this House in removing this blot not only upon the Indian Statute-book but upon the fair name of India. (*An Honourable Member:* "Oh"! (Laughter.) Then we shall be asked—I have no doubt that some of my friends on both sides of the House must be indulging in what I may call the personal equation—and my Muhammadan friends especially must be asking, how is this Bill to be reconciled with their own religious laws? That, Sir, is a perfectly just argument of my friends. Now, Sir, I wish to convince my friends. Take the case of the Mussalmans. So far as they are concerned, they will probably see from my Bill that it is a purely voluntary Bill, that it is an optional Bill which does not compel anybody to marry under the Bill or

[Sir Hari Singh Gour.]

not marry at all. Therefore, I submit that, so far as my Mussalman friends are concerned they need not be in that trepidation in which my friend, Maulvi Muhammad Yakub, finds himself, because he has been making frantic efforts and going about with a sheet of paper in his hand to his co-Mussalman friends and asking them to sign in advance their death warrant and say that whether they are convinced by my arguments or not, they will oppose this Bill.

**Maulvi Muhammad Yakub:** As you have been asking all the other Members to support you.

**Sir Hari Singh Gour:** I have never asked any of them to do a wrong thing.

**Mr. D. K. Lahiri Chaudhury** (Bengal: Landholders): I think according to my friend the only fault of Muhammadans is that they believe in their own religion?

**Sir Hari Singh Gour:** I am afraid Maulvi Muhammad Yakub was internally conscious of the weakness in his case, and he thought that he must take time by the forelock because, if he lets the other Honourable Members hear the reasons given in support of the Bill, they may find themselves converted to my view; and it is to prevent them.

**An Honourable Member:** There are a very few of them.

**Maulvi Muhammad Yakub:** Is it for the first time that you are wasting our time by asking us to hear those reasons?

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

**Sir Hari Singh Gour:** It is for the purpose of preventing Honourable Members from becoming converts to my view that my esteemed friend, Maulvi Muhammad Yakub, has taken time by the forelock; but I assure him in all sincerity that if he would only calmly consider the merits of this Bill, he will find that there is everything to support that Bill and nothing to oppose it.

**An Honourable Member:** Certainly not.

**Sir Hari Singh Gour:** Have not my Mussalman friends, brothers, sisters and daughters to marry? Is it not that with the growing tide of public opinion, my Mussalman friends, along with the Hindus, would like to institute the system of monogamous marriages? Sir, a monogamous marriage is at the present moment in this country impossible under the personal laws, the communal laws of both Hindus and Muhammadans; and if you make a civil marriage optional, they can have a civil marriage in which monogamy is enforced; and I ask my Mussalman friends to seriously consider this aspect of the question.

**Mr. D. K. Lahiri Chaudhury:** What about the Hindus? I ask my Honourable friend to say whether he is a Hindu or not.

**An Honourable Member:** He is not.

**Mr. President:** The Honourable Member may be allowed to continue his remarks.

**Sir Hari Singh Gour:** Now that is the first point. Now take the other point. It is stated in the Statement of Objects and Reasons that supposing my Mussalman friends will say that "We are entitled under the *Shariat*, under our own law, to marry a believer in one God, and consequently Mussalmans are entitled to marry a Christian or a Jew because they are both monotheists". But where is the law in this country which will permit them to marry her? It is the behest of the scribe, which cannot be enforced in this country because there is no marriage law. If therefore, my Muslim friends want to marry the monotheists, then this law will give them the power to do so.

The third point is this. My Muslim friends will note that, at the present moment under the Customary law which has eclipsed and obscured the purity of their Koranic law, the various sub-sects of the Muslims are not entitled to intermarry. Now, Sir, my Bill gives them that liberty. It is not a question that this Bill compels anybody to marry outside his caste or to marry outside his creed. It provides you with a machinery for the purpose of contracting a monotheistic or monogamous marriage at your pleasure and at your discretion. Therefore, I submit, it is only a source of strength to the people of this country, and I cannot understand how any caste or community should object to it.

Then, Sir, my Honourable friend, Mr. Jayakar, who spoke on this Bill on the last occasion in this House, appealed to the people of this country that with the growing sense and feeling of nationality, at any rate let all Indians be one upon this statute. I ask my Muslim friends, I ask every one in this House, whether the time has not come for bringing this unifying measure on to the Statute-book, which compels nobody, but which at any rate establishes the theoretical equality of all kinds and conditions of people in this country. I therefore submit that there can be no reasonable objection to the passing of this measure. I will only ask Honourable Members seriously to consider and not to run away with their passions or with their prejudices. If they seriously consider and indulge in argument and reason, they will very soon find that there is absolutely nothing that they should take objection to in this perfectly innocuous and innocent measure intended to arm the people of this country with a right which all civilised people possess outside India and which Indians acquire the moment they leave India.

Sir, I move.

**Mr. President:** Motion moved:

"That the Bill further to amend the Special Marriage Act, 1872, be taken into consideration."

Mr. Krishnamachariar has given notice of an amendment for circulation.

**Raja Bahadur G. Krishnamachariar** (Tanjore *cum* Trichinopoly: Non-Muhamadan Rural): May I first oppose the motion for consideration of the Bill, then take the result and decide whether the amendment for circulation should be moved or not?

**Mr. President:** This is the Honourable Member's opportunity to move his amendment. If no amendment is moved, the voting will be for and against the consideration of the measure and at that stage, if the motion for consideration is passed, then it means that the Bill has been accepted by the House. The Honourable Member is perfectly free either to move or not to move his amendment.

**Raja Bahadur G. Krishnamachariar:** In the circumstances, I do not propose to move my amendment for circulation. Sir, this amendment of the Special Marriage Act has been a hardy annual since 1921, and howmuchsoever you try to suppress it, it always rears its head again and again. So I consider that now that an occasion has arisen, it should be beaten with a big stick and laid to rest once and for all so that we may not hear of it again (Hear, hear). For these reasons, I do not propose to move my amendment for circulation, but straightaway proceed with the motion for opposing the consideration of the motion made by my Honourable friend, Sir Hari Singh Gour. Sir, we have been treated to flights of international status and conditions existing in England and in all civilised countries. It is a very good essay or sermon, but I am a plain man coming from rural parts and quite content with the status that India at present possesses so far as these subjects are concerned, quite content with what we already have, with what our ancestors have already given us and which I hope our descendents, as long as the sun and the moon last will keep dear.

**Mr. K. Ahmed** (Rajshahi Division: Muhammadan Rural): Then why do you want Dominion Status?

**Raja Bahadur G. Krishnamachariar:** Personal status and political status are quite different.

**Mr. K. Ahmed:** But your forefathers did not have them.

**Raja Bahadur G. Krishnamachariar:** Now at present we are concerned with the status created by marriage and with nothing else. Throughout the speech of my Honourable friend, he had been treating us to what the great Sir Henry Maine—a very great lawyer, a man of very great ability and I think a man with international reputation—what he attempted to do, but which a wicked Government, after he turned his back from this place entirely forgot and out of sheer ingratitude did not follow the lead that he gave.

**Mr. K. Ahmed:** What about Mr. Basu?

**Raja Bahadur G. Krishnamachariar:** Unfortunately my Honourable friend, whether out of forgetfulness or out of choice, did not look up what happened immediately after Sir Henry Maine left these shores. A gentleman of equal eminence, equal ability of the name of Sir James Fitz James Stephen took the place of Sir Henry Maine. At the time when he introduced that Bill, Sir Henry Maine was confronted with a very very restricted request that was made to him on behalf of the Brahmos of Bengal. Those people were the dissenters from the Hindu religion and their position as described by Sir James Stephen was that "no form of marriage legally constituted and valid beyond all doubt or question was provided for them and I do not know whether such a state of things is not a greater grievance than a downright disability to marry." That was the position which confronted Sir Henry Maine, and after considering all the points before him, he framed a Bill, Sir Henry Maine proposed—I am reading from the proceedings of the Legislature—to make the Brahmo question the opportunity for passing a measure of the most comprehensive nature. That, Sir, is a mistake which he committed.

He overdid what he had to do, with the result that when the measure was circulated to Local Governments and public bodies for their opinion, there was a mass of opinions received which showed the great opposition that the country raised against the Bill. Then it was found by the Government of India "that the Bill, as drawn by Sir Henry Maine, would involve an interference with Native law which we did not consider justifiable under all the circumstances of the case". That was the reason why that Bill could not be proceeded with, not because an ungrateful Government thought that, now that Sir Henry Maine was out of the way, they could do anything they liked with the Bill. Sir, the Bill that he introduced interfered with Native law, and Government did not consider that they were justified in doing so. As for Sir Henry Maine's comprehensive proposals, I think my Honourable friend Dr. Gour would be interested in reading the speeches of Sir James Fitz James Stephen where, after expressing his profound respect for the opinion expressed by that great lawyer, he says, "Sir Henry Maine appears to me to have taken a view of the position of Native law in this country with which I cannot altogether agree". I do not think, Sir, I would be justified in wasting the time of the House by quoting several pages from these proceedings to show how Sir James Fitz James Stephen justified the position that Sir Henry Maine entirely mistook the actual conditions existing in India at that time and therefore gave vent to certain observations upon which my Honourable friend, Sir Hari Singh Gour, fastened three-fourths of his arguments. Now, Sir, after Sir Henry Maine had left these shores, Sir James Fitz James Stephen introduced a modified Bill which even evoked a greater opposition, but in the end it passed as what we all know as the Special Marriage Act, 1872. That Act apparently satisfied the majority of the people of the country, for no one heard anything about it for 36 years, until Mr. Bhupendra Nath Basu one morning thought that the people of India were being ground down by this law and it should be liberalised; and therefore the brilliant idea struck him that a Bill should be introduced whereby a member of any community might marry a member of any other community and thus create what my friend Dr. Gour is trying to do today. That Bill proposed that there should be marriage between any two persons of any two communities of either sex without distinction of caste, creed or colour. It was introduced in 1908, and it met with very strong opposition both from the Government and from the people of the country. At that time Mr. Jenkins, a Bombay gentleman, I believe, who was in the Government of India, very strongly opposed it and it was also opposed by the then Home Member, Sir Reginald Craddock, with the result that the Bill was thrown out. Then time passed. Mr. Patel, the distinguished ex-President of this august Assembly, thought that he would take what he considered to be the line of least resistance and rather than introduce a comprehensive measure, first felt his ground by introducing what he considered or what he called a Hindu Marriage Validating Bill, according to which he proposed to validate marriages between various sub-sections and sub-castes of the Hindus. That Bill, after a storm of discussion, went before the Select Committee. The Select Committee I believe reported, but further proceedings did not take place because of the then impending reforms, and Mr. Patel took the suggestion that was made to him that it would be much better if a Bill of that nature was introduced in the reformed Assembly. That was



[Raja Bahadur G. Krishnamachariar.]

the position at the time when these reforms came into existence. I think this will be the proper place for me to explode once for all the claim that the introduction of the reforms has given the *carte blanche* to people who otherwise do not seem to have anything to do in this world, except to tackle every religious and social usage and to create confusion as far as they possibly can with the help of this Legislature. Now, Sir, what did the Reforms Act do? It enlarged the Legislative Councils: it gave, so far as this Assembly is concerned, an elected majority. What else? What about representation? Has it in any way enlarged the representation in such a manner that the interests of the various communities are properly represented, and in such a manner that when these gentlemen came here and said, or pretended to say, that they represented a certain community, their statement could be taken as a fact? Sir, the reforms while giving a few extra seats, have not even provided for those forms of procedure by which a person, who comes here as a representative, could at least *primâ facie* raise a presumption in his favour that he is a representative of the community to which he belongs, or which he says he represents. On the other hand, those people who fight the elections, do not fight upon any principle. They have no programme, nor are they returned upon any particular ticket. Each man fights, and as most of the Honourable gentlemen here know, preference is either by personality or by caste or community.

**Mr. S. C. Jog** (Berar Representative): That may be your experience but it is not the case with everybody.

**Mr. K. Ahmed:** Do they do that in the other countries?

**Raja Bahadur G. Krishnamachariar:** I do not know what they do in the other countries, and I do hope that my experience is mistaken. I should very much like to see my Honourable friend stand up and say that he or anybody else represents the community or the place from which he comes exactly in the same way that a regular representative institution works in other parts of the world. However, that is neither here nor there.

Sir, I was on the point as to how far the introduction of the reforms has given these gentlemen any liberty to interfere with the religious rites and usages any more than what they did before the introduction of the Reforms. I say, and I say most emphatically, that no such liberty has been given, and the position is the same exactly as it was before the introduction of the Reforms. Directly these Reforms came into existence, the first step that was taken in this Assembly was to see if the Hindu law could not be codified. There seems to be some fatality dogging this Hindu law, because when there were so many other questions in the country, economic questions, questions which would raise the status of the country, these things were neglected. It is only the Hindu law which is being pursued and pursued and pursued to death. So the first question that arose before this Assembly was to codify the Hindu law; and up arose our friend Dr. Gour, a past master in the art of writing text-books and Hindu codes. And although he supported it very strongly, unfortunately our friend, Dr. Sapru, was too much for him. There was a passage-at-arms between him and Dr. Sapru, and eventually Dr. Sapru won. So

the codification proposal fell through and the opinions collected now lie in the Library with no one to look into them. But our friend Dr. Gour is not going to be put down by that. He is one of those gentlemen who do not know what defeat is or where the defeat is. So he began to frame Bills, and one of the unfortunate Bills that he framed—I say unfortunate because of the result not on account of him—was about the amendment of the Special Marriage Act. This started in 1921. Remember, the reformed Council started in 1921, and Dr. Gour's Bill also started simultaneously in 1921. Now, a Bill was introduced similar to the one that is now being fought, in a more comprehensive manner, and all the eloquence that my friend could muster to his side was not sufficient to induce this House to agree to that Bill going to the Select Committee.

**Sir Hari Singh Gour:** No, Sir, the Bill did go to the Select Committee.

**Raja Bahadur G. Krishnamachariar:** Well, Sir, the Bill went to the Select Committee, but eventually at any rate it was negatived.

**Sir Hari Singh Gour:** It was not negatived. I withdrew it.

**Raja Bahadur G. Krishnamachariar:** Very well then. It was posited. (Laughter.) I am perfectly right when I said that the Bill did not go to the Select Committee. In the year 1922 in the Delhi Session my friend fought and fought. There was a regular discussion and after all the arguments that he had been able to put forward with such great force and weight, the Assembly would not agree to refer it to Select Committee. I am perfectly right in this, and I challenge my Honourable friend to contradict me. Then they all went up to Simla. In Simla you know that the House is somewhat thinner. People who go to Delhi, some of them at least like myself, probably are not particularly anxious to go to Simla and expose themselves to the cold there. So my friend took advantage of that. I do not mean it in any offensive manner. The Bill was introduced and my friend, Mr. Rangachariar, who was at that time a very stout opponent of the Bill, raised a point of order. But unfortunately there are certain loopholes in the rules—I have myself taken a great deal of advantage of them during my practice at the Bar—which led my Honourable friend to introduce that Bill and to make a motion that it be referred to a Select Committee, although only two months previous to that his motion to the same effect was defeated at Delhi. The point of order raised by Mr. Rangachariar was overruled and rightly overruled and he got his motion passed. How? 33 against 34. I believe in billiards and other games there is what is called a fluke. In the same way my Honourable friend got it by a fluke, 33 against 34. It went before a Select Committee. How the very same gentleman who negatived the reference to a Select Committee in Delhi came to agree to the reference being made in Simla? It is not at this distance of time possible for me to say from a perusal of all the debates what took place at that time. However, the fact is there, that it went before a Select Committee. The Select Committee reported and it came back, and eventually it got passed with the blessing of friends who in the beginning opposed, but later supported, one of them being my friend, Mr. Rangachariar, upon whose support Dr. Gour made so much in his last speech, and he is perfectly entitled to do so, because Mr. Rangachariar was an uncompromising opponent of this Bill

[Raja Bahadur G. Krishnamachariar.]

during the Delhi Session. But he thought that orthodox opinion had been completely placated by the amendment of certain sections of the Act and therefore he agreed. However, Sir, the Bill was passed and it became Act XXX of 1923. The result is that our friend, Dr. Gour, reached the stage which Mr. Patel wanted to reach, with a slight extension, because Mr. Patel's Bill was only a Bill for inter-caste marriages. Here it included the Buddhists, Sikhs and the Jains. This Bill had the support among others of my friend, Sir Sivaswami Iyer, who frankly confessed that the opinion of the country was against that Bill. I ask Dr. Gour to make particular note of that. Although his Act of 1923 was passed, and passed I say by a fluke, Sir P. S. Sivaswami Iyer, one of the distinguished supporters of his Bill, said that although he supported it, the country was against it. But why did he support? Because he put the freedom of conscience over everything else and it was the duty of every Government to uphold freedom of conscience in every man. What did the freedom of conscience consist in? Under the Act of 1872, if you wanted to take advantage of it, you had to make a declaration that you did not profess the Muhammadan, the Hindu or the Buddhist or the Parsee or any of those faiths. You had, in order to marry a certain girl, make that declaration, a lie, as has been stated by an Honourable gentleman in the course of the debate on that Bill. So my friend, Sir Sivaswami Iyer, said, "That won't do. I do not believe in the declaration that I make; it is a false statement. No legislature in the world can compel me to make a statement which I know to be false". This again is perfectly right. But my friend looked at one side of the picture. There is another side of the picture. Are you a Hindu really? If you are a Hindu, you have got to conform to the laws and traditions which the Hindu religion enjoins upon you. My friend, Sir Sivaswami Iyer, forgot that. When a man goes about trying to marry a Muhammadan lady, he is not a Hindu. But what does he want? He does not want that a declaration should be made that he is not a Hindu, but at the same time he wants the world to believe that he is a Hindu. Is that conscience?

**Sir Hari Singh Gour:** No, no. He makes no declaration at all about it.

**Raja Bahadur G. Krishnamachariar:** He need not make a declaration. But what he was after is this. If you read the debates—I have not got the time, nor have I got the inclination to waste the time of this House—but if you read the debates you will find the reason why that Bill was introduced. "I do not want to say that I am not a Hindu when I am a Hindu and I want to be a Hindu. Why do you compel me to make that declaration? Because my heart is after that girl and I want to marry her, why should the law compel me to make that declaration? So please allow me to marry that girl and at the same time pretend to the world that I am a Hindu". So I ask Sir Sivaswami Iyer. How can you make a statement which is not correct? It is against your conscience. Can you say that you are a certain man and also you are not that man? Is it not a matter of conscience? Of course that is a matter between these gentlemen and their conscience. And my friend, Dr. Gour, was happy and everybody was happy except the Hindu community. The Hindu community got roped in and Dr. Nand Lal, who was one of the Members at that time, deplored the fact that the Hindus, being a disunited section

of this august Assembly, got themselves roped in, whereas the Muhammadans, by their cleverness, by their intelligence—these are not my words but a paraphrase of Dr. Nand Lal's words—and by their unity, have got out of it. However, whether by running away from the Muhammadans, or by placating them, or by whatever means, my friend Dr. Gour has got it and he has got the certificate of Mr. Jayakar, whom I have not had the honour of knowing personally, that he has immortalised his name in this country for his work in the Assembly by getting this Act of 1923 passed. Thus our friend Dr. Gour's name has become immortal in the annals of this Assembly. Immortality is the end and aim of life, and when you have attained immortality you have got everything that you want in this world. One should have thought that Dr. Gour would have been satisfied with the position that he then obtained and would have kept quiet and made no further attempt. But unfortunately the appetite grew with the eating, and he realised that somehow or other there were one or two sections of the community which he had not roped in before and now he wants to have a chance to get at them. So he drafted a Bill in 1928—the present Bill—and he introduced it in the Assembly . . . . .

**Sir Hari Singh Gour:** It is the revival of the old Bill of 1921.

**Raja Bahadur G. Krishnamachariar:** . . . . in part, because one part has already been passed: that is what I say; I am afraid I have not made myself sufficiently clear and that is the reason for his interruption. The old Bill comprised every section of the community in India. Under the Act of 1923, my friend got the Hindus, Buddhists, Sikhs and Jains and made them immortal; but there were two other communities that were still left in India and he wanted those communities also to be roped in, why? to give them this grand international reputation of getting their marriages registered. Therefore he brought forward this Bill. The Bill was, by motion before this Assembly, circulated. I hope my friend, Dr. Gour, at least has gone through those opinions. But I find that he is not particularly satisfied with them, because he has not touched upon them; they were opinions collected at his own instance, and it is somewhat singular that, in the eloquent speech that he has delivered this morning, he should have entirely ignored those opinions; and for a very good reason too. If you peruse these opinions, you find that there is a vast majority of opinions against this Bill. Therefore he very wisely, as a good lawyer and as a tactician, ignored entirely those opinions, even in the discussion this morning; and then when it came for the Bill to be pushed through, somehow or other, I do not know why, while the putative father, Dr. Gour, was there, the adoptive father, Mr. Jayakar, adopted the Bill and in a very lucid speech, which does great credit to his head, explained the position and made a statement which I hope is incorrect for the sake of the reputation of the Government . . . . .

**Mr. K. Ahmed:** He was the Deputy Leader of your party and you followed him.

**Raja Bahadur G. Krishnamachariar:** I do not know what party I belonged to. Mr. Jayakar in the course of the highly instructive and able speech that he delivered on that occasion stated that Dr. Gour's Bill, which eventually became law in 1923, was not pushed to the extreme

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length of including the Muhammadans in it because the Government promised their support to Dr. Gour upon the principle that half a loaf was better than no bread. This is what Mr. Jayakar said . . . .

**Sir Hari Singh Gour:** No, no. That was the Age of Consent.

**Raja Bahadur G. Krishnamachariar:** Probably, but this is what Mr. Jayakar said in his speech so far as this Bill is concerned.

**Sir Hari Singh Gour:** That half loaf would come later. (Laughter.)

**Raja Bahadur G. Krishnamachariar:** That half loaf had been digested; it is the other half that appears now on the table. The one half in the shape of the Act of 1923 has already been digested; now it is the other half which is before us, and the question is whether anybody is prepared to stomach it or not.

**Mr. K. Ahmed:** It is for you to choose.

**Raja Bahadur G. Krishnamachariar:** The present Assembly will choose between me and Dr. Gour. So far as the present Bill is concerned, the position is this: whereas under the old law the four communities could marry *inter se* and contract a valid marriage, the present position is that anybody, any man, may marry a woman belonging to any caste without any restriction whatsoever. That is the Bill that my friend now seeks to introduce. There was a great deal of argument put forward by him, but I have not heard anything in support or in justification of the Bill that he has now introduced, nor did I hear any argument in support of the provisions of that Bill. What I would respectfully ask is, what particular mission has my friend Dr. Gour in this matter, that he tries to strike at the root of the whole fabric of Indian society, Hindu and Muhammadan; because his Bill is of such a nature that if you pass it, you thereby introduce the European idea of marriage, and by an Act of Parliament turn the Hindu and Muhammadan into an Englishman. That is really the effect of that Bill.

**Mr. K. Ahmed:** Why do you want joint electorates at all then? (Laughter.)

**Raja Bahadur G. Krishnamachariar:** The Bill would have the effect of declaring that religion was not essential to the marriage laws of Hindus and Muhammadans and that not merely as regards mere forms and ceremonies but as regards the people who are permitted to marry. If that is not striking at the root of the fabric of Indian society—I do not care whether it is Hindu or Muhammadan—what else is it? Under the Hindu law and under the Muhammadan law, religion forms part of the marriage. Without it there is no marriage at all, and yet the law that is now attempted to be passed would be a law which does not take any account of religion, and that, Sir, is what I call striking at the root of the Hindu religion.

**Mr. K. Ahmed:** What other countries have not got religion—the advanced and civilised countries of the world?

**Raja Bahadur G. Krishnamachariar:** I am coming to the civilised countries a little bit later. That brings me to the consideration of the

question as to what exactly is the nature of marriage. Among the Hindus it is one of the 48 purificatory ceremonies that one has got to undergo in order to realise the objects laid down in the sacred books. The Hindu marriage, according to the *Dharmashastras*, marks the beginning of the second and perhaps the most onerous of the four stages of a Hindu's life, viz., *Grihasthasrama*.

**Sir Hari Singh Gour:** But nobody interferes with your religion or with your marriage.

**Raja Bahadur G. Krishnamachariar:** Sir, the Bill does interfere—I do not know if anybody interferes. It is called a *Samskara*, generally translated as a sacrament, or a purificatory ceremony, the performance of which removes the taint of seed and womb. It is an obligatory ceremony in the case of girls, just as the *Upanayanam*, or the wearing of the sacred thread, is in the case of the boys of the three regenerate classes. According to the Vedas, the word "*Patni*" means and is intended to connote a woman who with her *Pati* would take part in sacrifices. A Brahmin woman married to a Brahmin is alone called a *Patni*. The very word "*Bharya*", which means wife, has a religious significance attached to it. According to the *Shastras*, no religious ceremony could be performed and none is complete without the lawfully wedded wife taking an equal part in it. Indeed, she is an indispensable factor in securing the *Grihastha*, the four objects in life, the goal for Hindus, viz., *Dharma*, *Artha*, *Kama* and *Mokshu*. The temple rites and ceremonies could not be performed except by a *Grihastha*, as he alone could take the *Diksha*. In fact everything connected with the Hindu can only be performed with the wife as a consenting party. Sir, we are lawfully

advised that there is no such thing as *Grihasthasrama*, and the *Shastras* enjoin upon the King the necessity of guarding the *Grihasthasrama* because it is that which protects all the other *ashramas* constituting the Hindu society. Now, that is the position according to the Hindu law, and that position has been admitted over and over again by the spokesmen of the British Government ever since 1868, when the Native Marriage Act was introduced in the Council.

**Mr. K. Ahmed:** If we allow both the systems to go on, yours will die out.

**Raja Bahadur G. Krishnamachariar:** Everybody has got to die some day or other, sooner or later.

**Mr. K. Ahmed:** Let us see who dies first.

**Raja Bahadur G. Krishnamachariar:** Sir, "It appears to me", said Sir James Fitz Stephen, "that Hindu law and religion on the subject of marriage are one and the same thing; that they must be adopted as a whole or renounced as a whole, that if a man objects to the Hindu law of marriage, he objects to an essential part of the Hindu religion, ceases to be a Hindu, and must be dealt with according to the laws which relate to persons in such a position".

**Mr. K. Ahmed:** This House is not interfering with your religion?

**Raja Bahadur G. Krishnamachariar:** "By recognising the existence of the Hindu religion as a personal law on this matter of marriage, I think that we have contracted an obligation to enforce its provisions in their entirety upon those who choose to live under them, just as we have, by

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establishing the general principle of religious freedom, contracted a further obligation to protect any one who chooses to leave the Hindu religion against injury for having done so".

Now, Sir, I shall make one quotation from the speech of Sir Ali Imam, when he was Law Member, wherein he emphatically accepted the position that Hindu marriage is purely of a religious nature. This is what he said:

"I find that the Law of marriage among the Hindus is far more based on religious obligations, rites and ceremonies than it is amongst the Muhammadans. Amongst the Hindus, it is a sacrament, not only a sacrament of an ordinary character, but it is of such a deep character that even death does not obliterate it, and there are various authorities to show that even after death the sanctity of the nuptial bond and the sacredness of the knot remains".

Later, he observed:

"No Hindu marriage is valid without a substantial performance of the requisite religious ceremonies. It may, for instance, be urged that an advanced Indian may think . . ."

(At this stage the Honourable Member stopped for a few seconds.)

**Mr. K. Ahmed:** Read further on. What does he say? The cat is out of the bag. Please read further on.

**Raja Bahadur G. Krishnamachariar:** That passage is missing, but I think I can quote it from memory. He says, it may be that certain advanced people may say what is the point in these ceremonies, what good is there in these ceremonies; what does it matter if a certain fire is not lit; what does it matter if oblation of ghee is not poured on the fire; what good is there in making an appeal to an imaginary god like Agni? That is all very well for an advanced Indian to say, but Sir Ali Imam asked, "What is the idea of those who are not advanced as you are; what is the opinion of those who represent the country; what happens in your own house? So far as these ceremonies are concerned, they do not depend upon the whim of any particular person, but they are based upon religious sanction," and therefore, Sir, Sir Ali Imam said that marriage was a religious function, and that, I think, correctly represents the position so far as the Hindu law of marriage is concerned.

Now, as regards the Muhammadan law of marriage, I should hesitate a great deal, Sir, in the presence of so many distinguished exponents of that law to say anything very elaborate on it, but I think everything connected with it is contained in their holy scriptures, and if necessary supplemented by their traditions. I have had something to do with these things, and therefore, although I do not pretend to be an authority on Muhammadan law, I think I can speak something about it.

Now, Sir, that being the real nature of a marriage, you cannot interfere with it first according to the principles secured thereunder and which the British Government have declared, and even if there arose a necessity for interfering with it, it can only be when there is a demand from a considerable majority of the community affected by it. That, Sir, is one of the cardinal principles of social legislation. Where you want to alter a law which affects the community, unless there is a general demand on behalf

of that community, you ought not to interfere with that law. This has been accepted as the guiding principle from the time that Mr. Basu introduced his Special Marriage Bill in 1908, and it has been reiterated every time when social legislation was sought to be introduced in this House. Even when the Child Marriage Bill was passed, this principle was accepted, and it was in pursuance of that, the Honourable the Home Member made a motion that it be referred for public opinion in the country. Unfortunately, the Assembly on that occasion was in no mood to accept the motion for circulation of the Bill. But in a similar Bill, which was also under consideration at the time, the same principle was not only enunciated by the Home Member but it was also accepted, and the Bill was thrown out. I am talking of the Indian Divorce Bill, where the Home Member said that he must have evidence that there is a reasonable body of opinion in favour of the Bill, and unless he had that evidence before him, the Government must oppose the Bill. No such evidence was produced before the Government or before the Assembly, with the result that they opposed the Bill and the measure fell through. Early last year when there was an Aryan Validating Marriage Bill introduced, the present Law Member reiterated the same principle. He said that if it was a popular measure among the community affected by it Government would not oppose it, otherwise Government were not going to incur the odium of supporting an unpopular Bill. Sir, it was a very wise and a very just decision. We are already passing through a lot of agitation in the country in consequence of Government having given their hasty, I respectfully submit, and ill-considered support to the Child Marriage Restraint Bill. Sir, that being the condition under which you can interfere with the social law and the religious law of a community, may I respectfully ask Dr. Gour who asked him to introduce this Bill?

**Sir Hari Singh Gour:** My conscience.

**Raja Bahadur G. Krishnamachariar:** Conscience makes cowards of us all. Conscience is a thing, I do not know how elastic or rigid it is. It all depends upon the time, conditions and other intangible things which it is not possible for you to weigh and consider properly in a matter-of-fact Assembly like this august Assembly. Conscience is a very good thing. If that conscience tells you to do a certain thing, by all means do it. Why go and trouble me, why go and trouble the community? Why go and create unrest in the minds of 320 millions of people because your conscience impels you to do a certain thing which nobody wants to do. Other people too have got their consciences. I hope that others too have got consciences. Unfortunately, whatever it is, the difficulty is that conscience is such a thing that it has neither, what they call, a soul to be damned, nor a body to be kicked, and therefore, I do not know how I shall get hold of it in order to get a reply from it. In order to satisfy that conscience, you are going to put the whole country into unrest. 320 millions of people who do not want the present Bill but who are satisfied with the position they are in at present—they would like to have two blades of grass grow where one grows now, but my Honourable friend would not think of it. We want to have our economic position improved, but he does not understand what economic position is, and yet he would want an international reputation. If you go to South Africa, somebody would ask you, "Is your marriage monogamous or polygamous?" If you say, polygamous, you are asked to walk out. It does not matter to me. There is plenty of room in my country; I shall remain where I am, but I will try to improve my economic



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condition. And my Honourable friends like Sir Hari Singh Gour, instead of devoting their attention and their energies to that sort of thing, go and dabble in questions which go to the root basis of your society, which are ingrained very deep in your heart, and which it would be very dangerous for anybody to play with. Sir, so far as that is concerned, as I was saying, there is no demand. No Hindu ever asked that he should be allowed to marry a Muhammadan and *vice versa*. That is the essence of the provisions of this Bill; the essence of the Bill is that and nothing more. It is admitted that there has been no demand. Even if there had been a demand, there is one thing that I would respectfully and at the same time very strongly urge before this Assembly and it is this. I know that under section 65 (1) of the Government of India Act this Assembly can pass laws for any person, and for any place, and upon any subject. . . .

**Mr. President:** May I ask the Honourable Member how long he is going to address the House? I am asking this for two reasons; the first is, that we are very near the time for adjournment for Lunch, and the second is, that this is an important question and a large number of Members would like to participate in the debate. The Honourable Member has been speaking for nearly an hour already and I should like to know how long he proposes to continue.

**Raja Bahadur G. Krishnamachariar:** About half an hour, Sir, with your permission.

**Mr. President:** I am sorry that the Honourable Member has no consideration for the other Honourable Members who desire to take part in the debate. The Honourable Member can go on.

**Raja Bahadur G. Krishnamachariar:** Sir, I shall try to be as brief as possible, but at the same time, it is a matter which is somewhat important from my standpoint and I thought that I should lay before the House all the considerations which should weigh with the House before it commits itself one way or the other to my Honourable friend's motion.

**Mr. President:** Please go on, but try to be as brief as possible.

**Raja Bahadur G. Krishnamachariar:** There can be no doubt that under the Government of India Act you can pass any law you like, just as you can do many other things which ordinarily no one would think of doing. But, Sir, the obligation to uphold the existing state of things is laid down by statute and it would clearly be undesirable for the Legislature to interfere with it. And that, Sir, brings me to a consideration of certain of the points which my Honourable friend has referred to in his Statement of Objects and Reasons. In that Statement my Honourable friend has given eight advantages which would accrue if this Bill were passed. I have already referred to two or three of them in my previous observations and I would only like to refer to one or two matters. Dr. Gour says that one of the advantages is that it would tend to the unification of the Indian races without at the same time interfering with their personal religion. That is a matter upon which I would respectfully refer this House to the opinions that have been collected, in which the Local Governments, as well as distinguished persons, have discussed this subject in great detail and have pointed out that so far from creating unity it would only help to create another caste in this country and thereby split the society into

further sub-divisions, and would not operate in the way that the Honourable the Mover thinks it would. The next advantage he mentions is that "being merely optional, it trenches upon no one's rights". That contains a fallacy which I respectfully submit ought to be exposed. That a Bill is permissive is no reason why it should be accepted, because, although the Bill is permissive, the institution to which it relates is also permissive, because marriage is not obligatory upon anybody. You need not contract a marriage, and consequently the fact that it is permissive is absolutely no ground for making out that you can pass any law you like. As regards the law which obtains in civilised countries, I would only say this. There are certain recent publications which I would very strongly commend to the attention of Honourable Members in this House. Two of them are: "The Bankruptcy of Marriage" and "Marriage in the Melting Pot". These two books are worthy of consideration before you make up your mind as to the system of marriage that exists among civilised nations in Europe. Sir, it was my intention to draw the attention of the House to a few more points but in view of the observations that fell from you, I think I had better leave it to my colleagues to do it.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

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The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. President in the Chair.

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**Mr. M. Maswood Ahmad** (Patna and Chota Nagpur *cum* Orissa: Muhammadan): Sir, I oppose the Bill on two grounds, first of all on religious grounds, and secondly, on the merits of the Bill. Sir, my first ground upon which I rely is the religious point of view. Islamic religion does not allow such marriages. The Holy Koran is quite clear on this point. (*See Sura, Baqar, Ruku 27.*) No Muslima, that is a Mussalman woman can be married with anybody but a Muslim, that is, a Muslim man. Sir, there might be felt some doubt and so I shall refer to *Ruku 27* of *Sura Baqar*, which may be translated as follows:

"And do not marry the idolatresses until they believe, and certainly a believing maid is better than an idolatress, even though she should please you; and do not give (believing woman) in marriage to idolaters until they believe, and certainly a believing servant is better than an idolater even though he should please you; these invite to the fire and Allah invites to the *Jannat*."

*Ruku 2 Sec. 10* of *Sura Mumtahana* :

... neither are those (women who believe) lawful for them (who do not believe) nor are those (men who do not believe in Islam) lawful for them (women believing in Islam)",

and so the passages go on. Sir, this form of marriage is quite against the spirit of Islam. A marriage is allowed with *Katabia*, that is, a woman who believes in any one book like *Injil* or *Taurat* but not with a *Kitabee*. Sir, a Muslim man can marry a *Katabia* woman who believes in such books, but a Muslim woman cannot marry even a *Katabee* man who believes in *Injil* or *Taurat* or any such other books. *Hadises* are quite clear on this point. Many *Hadises* can be seen in *Sahab*. All the four

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Imams are unanimous on this point. Sir, there are two centres of Ulemas now-a-days in India, there are two Jamiat Ulemas. One of them has its headquarters at Cawnpore and the other at Delhi. The powerful Jamiat Ulema of Cawnpore, which has got its branches all over India, also opposes this Bill. I have received a letter from *Motamar Islami* asking me to oppose the Bill. The translation of the letter is as follows:

“Sir Hari Singh Gour’s Bill to amend special marriage Act, 1872, grossly interferes with Islamic *Shariat* and contravenes Law of the Holy Kuran. Mussalmans must therefore oppose it.”

Maulana Mazharuddin and Maulana Abdul Majid Kadri have come to see our opposition.

As the Provincial Secretary of the Bihar Province of that Jamiat Ulema, I have been advised by members and the Secretary of the Jamiat Ulema to oppose the Bill. Another telegram I have received from the President of the Jamiat Ulema, Delhi, which is as follows:

“Gour’s Bill regarding international marriage against Islamic principle. Please oppose it strongly.”

Sir, this Jamiat Ulema of Delhi supports the Congress movement, but with all its national spirit, this Jamiat Ulema also opposes the Bill. I find two articles; one in the *Al-Aman*, which is the organ of the Jamiat Ulema of Cawnpore and the other article in the *Al-Jamiat*, the organ of Jamiat Ulema of Delhi. In both the articles they have clearly written that such a marriage is quite illegal according to Islamic law. Sir, there are other Mussalmans, say the Shiah or any other sect, but they all oppose it. The Shiah law, as far as I know, goes a step further and is more strict in this matter. It means, then, that nearly all the different schools of Mussalmans oppose it. Sir, we do not want a Mussalman who does not believe in the Koran, who does not respect it, to have the liberty of contracting such a marriage when such a marriage is against the Islamic law. Let him or her go away. Let him or her declare that he or she is not a Mussalman.

Sir, the other point is about the merits of the Bill, and as to that there are many difficulties. In the Act of 1872, to which the amendment has been proposed by my learned friend, Sir Hari Singh Gour, I do not find any clause about inheritance, divorce, etc., and, Sir, afterwards there was an amendment in 1923, in which the same difficulty was perhaps felt, and sections 22 and 24 were added for persons professing Hindu, Sikh, Buddhist and Jaina religions. Section 22 says:

“The marriage under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family”,

—which is a clear safeguard for the remaining other members of the family.

And again, Sir, as to succession, under section 24:

“Succession to the property of any person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the Indian Succession Act, 1865”.

So, Sir, only this amendment which has been proposed by Sir Hari Singh Gour will not be sufficient because at that time when this amendment

was made in 1923, a clause 24 was added to clear the point about succession. Sir, this clause 24 will not help in this amendment, because this clause is only for Hindus, Buddhists, Sikhs and Jains. Similarly, there are many other difficulties, so that I say this Bill on its merits is of no use, and from the religious point of view also it cannot but be thrown away. I do not know what will be the attitude of our Christian and Jewish friends in this matter, because this Bill affects them also, but in the eyes of Mussalmans such a marriage for a Mussalman cannot be other than *Zena* (invalid), and the issues of such a marriage cannot be treated as other than *harami bachchas* (illegitimate children). Sir, our religion does not allow us to contract such a form of marriage. We Muhammadans believe in the Holy Koran, and the *Hadis* and the *Fikah*. Clearly in the Koran many passages can be found which clearly show that such a form of marriage is quite illegal. There are many such passages in the *Hadis* and *Fikah*; and I hope the Official Benches will not commit the same mistake which they committed at the time of the Sarda Bill, (Laughter), and I hope the majority community also, who always wish us to trust them, will not take up such an attitude as to impose such legislation on us or bring such Bills before the House again. With these words, Sir, I beg to oppose this Bill.

**Maulvi Muhammad Yakub:** For a long time my Honourable friend, Sir Hari Singh Gour, has been trying to pilot this revolutionary measure through the Legislative Assembly unsuccessfully, and considering that perhaps the present House is weaker than its predecessors, he has had the audacity to bring this measure again before the House. In the opening sentences of the Statement of Objects and Reasons, which he has given for moving this Bill, he says "The laws of all civilised countries provide for the contract of civil marriage by persons who may so desire". Well, he himself admits that such measures which he considers to be social measures can be introduced only if the people of a country desire to have them. Now, Sir, as regards this measure . . . .

**Sir Hari Singh Gour:** Is that what it means?

**Maulvi Muhammad Yakub:** These are the words of the Honourable Member. If his words have no meaning then I am not responsible.

**Sir Hari Singh Gour:** It means that if any person wishes to contract a civil marriage the laws of the State provide for such a marriage.

**Maulvi Muhammad Yakub:** He may mean something else from what he states. His actual words are: "The laws of all civilised countries provide for the contract of civil marriage by persons who may so desire". If the people of a country do not desire such laws, then probably it is not right for the Legislature to impose such laws upon an unwilling people. The verdict of the country has more than once been expressed through the voice of their elected representatives, namely, the Members of this House. Whenever this measure has come before the House, an overwhelming majority of the representatives of the country has been against it and has clearly shown that the verdict of the country is against this measure. My Honourable friend, Sir Hari Singh Gour, is unable to realise that a social measure cannot be successfully passed against the will of the people. You cannot thrust social reforms upon an unwilling people of any country. Measures of social reform, if they are social

[Maulvi Muhammad Yakub.]

reforms at all, must be on a par with the wishes of the people of the country. No measures which are not on a par with the wishes of the people of the country can ever be successful. As my Honourable friend, Mr. Maswood, has just now said, I oppose the Bill firstly on the general principle that the Legislature should not interfere with the domestic affairs of the people; that the social and domestic affairs of a people should not be interfered with by the Legislature against their own wishes, unless there is an overwhelming majority of the people, who are concerned, in favour of any measure. If they want that such a measure should be passed, then by all means it would be eligible for the Legislature to introduce and pass a measure like this. But if it is found, as it has been found in this case, that an overwhelming majority of the people of the country, in whose name my Honourable friend wants to speak in this House, is against it; if it is found that the people of this country do not want a measure like this, then neither we, the Members of this House, nor the Government have any right to impose such a measure on the people. So in the first place, on the general principle, I oppose this Bill.

Again, I consider it my duty, as a Muslim, to put the Muslim point of view before this House. The Muslim point of view on this question is that this measure is clearly against the definite injunctions of the Holy Koran. My Honourable friend says it is a voluntary measure and you may adopt it or not adopt it. This is not the case. If this Bill is passed into law, it would validate marriages which are invalid according to Muslim law and thus there is interference in religion. My Honourable friend, Mr. Maswood, has given the verse of the Koran, but he has not quoted the full verse. I should like to quote from the Holy Koran which if translated, would run:

“And do not marry the women who believe in more than one God until they profess Islam, and certainly a Muslim maid slave is preferable to one who believes in more than one God, even though you may be enamoured of her; and do not give Muslim women in marriage to those men who believe in more than one God until they embrace Islam, and certainly a Muslim slave is preferable to a man who believes in more than one God even though you may have a great liking for him.”

**Sir Hari Singh Gour:** That is intermarriage between monotheists.

**Maulvi Muhammad Yakub:** I do not know what my Honourable friend means by saying so. As regards the Mussalmans, of course, all those people who have their beliefs in some scriptures, for instance, the Christians and the Jews are treated differently according to our *Shariat*. Intermarriage with them is permissible under the Islamic law. The Jewish law prohibited intermarriages with all other people. And even Paul so liberal in his views, strictly prohibited intermarriages with all unbelievers:

“Be ye not unequally yoked together with unbelievers: for what fellowship hath righteousness with unrighteousness, and what communion hath light with darkness?”

The Islamic law is in this respect more liberal than both the Jewish and the Christian laws. There are other verses of the Holy Koran also which declare such marriages invalid, and the effect of the Bill, if enacted into law, would be that these marriages would become valid, which is an interference with the injunctions of the Holy Koran. My Honourable

friend, Sir Hari Singh Gour, in his Statement of Objects and Reasons, while giving the blessings of his Bill, says that it would prevent artificial conversions resulting from exigencies of marriage. Well, probably this exigency does not arise in the case of Mussalmans, because they have got a very wide field of selection for their wives. They are permitted to marry Muslim girls as well as girls belonging to the other revealed religions, and therefore the Mussalmans have a very wide field for selection. Moreover my Honourable friend says that if you go outside India and you marry a girl who does not belong to any of the revealed religions, that marriage would be valid. I say that this fear of proclaiming oneself outside the pale of one's religion is a very strong check upon reckless youths from contracting sensational marriages which very often prove unhappy after a short time. If this check is removed, and if this Bill is enacted into law, then you will find that there will be a great social revolution in the country; many sensational marriages by reckless youths will be performed, which after a short time will prove unhappy, and probably the number of divorce cases in this country will become double or treble the number of divorce cases in England. So far as the Muslim law is concerned, it is quite clear on this point. The opinions of the Ulemas of Islam are also against this Bill. Only last evening I received a telegram from Maulana Kifayat Ullah, the grand Mufti of Delhi, in which he says, "Gour's Bill regarding international marriages against Islamic principle. Please oppose it strongly." We have also just received a message from the office of the *Mutamari Islam*, which is addressed to the Mussalman Members of the Assembly and runs as follows:

"Dear Sir,

Sir Hari Singh Gour's Bill to amend the Special Marriage Act of 1872 seriously interferes with the Islamic *Shariat* and contravenes the law of Holy Quran. Mussalmans must therefore be excluded from it."

This letter is signed by Maulana Mazharuddin, Maulana Abdul Majid Qadri, Secretary of the *Mutamari Islam*, and Maulana Abdul Hamid, Secretary of the Jamiat Ulema of Cawnpore. Articles in the Muslim papers, *Al-Aman* and *Al-Jamiat*, have also appeared, in which it has been strongly urged upon the Mussalman Members of the Assembly to oppose this Bill, and we have been told that as Mussalmans we cannot support it. So the Mussalman opinion on this point is very clear. I do not know what idea my friend has got about monotheistic marriages. He says that scope should be given for monotheistic marriages. It is really difficult to understand what he means. But so far as the Mussalmans are concerned, I should like to tell him that he is very much mistaken if he thinks that polygamy is allowed in Islam, without any restrictions. Polygamy is not allowed in Islam. The only thing is that Mussalmans, under certain conditions, can marry a restricted number of wives which cannot exceed four. But that is also under certain conditions. Strictly it has been said in the Koran:

"If you are afraid that you cannot do justice among your wives, then you can marry only one wife."

So it is wrong to say that polygamy is unrestrictedly allowed in Islam and therefore I do not think that Mussalmans require his Bill in order to be monogamists.

[Maulvi Muhammad Yakub.]

Here, I would remind my friend of what a French philosopher and traveller has said in this connection. He says:

"Man in all climes is by nature polygamic; only in the East he is openly so."  
(Laughter.)

I do not think that by passing a measure of this sort my friend will change the order of nature. On general principles as well as according to the principles of Islamic law I am entirely opposed to this Bill. Government have, very wisely, since the inauguration of British rule in India, observed a policy of non-interference with the religious affairs of the people. Of course it was only last year that my Honourable friend, the Home Member, was roped in by my friend, Rai Sahib Harbilas Sarda, in his Bill of social reform. But probably Government have by this time realised the mistake of supporting the Sarda Bill, and I hope they will take a lesson from what they have learnt by supporting that measure and will now again revert to their wise policy of not being a party to such controversial measures which are opposed to the general opinion of the country.

Sir, I need not make a long speech. My Honourable friend from Madras has already dwelt at great length on all the aspects of this Bill. With these few words only, I oppose the Bill.

**Mr. Jagan Nath Aggarwal** (Jullundur Division: Non-Muhammadan): Sir, it is my good fortune to have caught your eye and it is time that some relief came to this measure of Dr. Gour seeing that from all quarters of the House it has been assailed. I wish to examine this proposition which Dr. Gour is placing before this House somewhat dispassionately. I first want to examine the proposition that the religion both of Hindus and of Muhammadans is in danger if this Bill were passed. First I will examine the proposition so far as the Hindus are concerned, because many a time we have been assured that the Hindu religion is hopelessly in danger, and that if this Bill were passed Hindu society would go to dogs. So far as that is concerned, Hindu society is in this unenviable position, that it should long ago have gone to the dogs, because a similar Bill which was sponsored by Dr. Gour in 1923 is part of the law of the land, and so far as persons who profess the Hindu, Buddhist, Jain or Sikh religion are concerned, they can contract these marriages which are now said to be so dangerous.

• **Maulvi Muhammad Yakub:** How many have done so?

**Mr. Jagan Nath Aggarwal:** I will come to that. My learned friend asks how many have done so. I know of some in my own province. A good many experiments of that kind have been tried and my answer to that will be in a little more detail later on. But I will lay before you this proposition, is the Hindu religion really in danger? This law has been in operation now for seven years, and any Hindu, Buddhist, Jain or Sikh could have intermarried during the last seven years. The flood-gates of matrimony have not been opened and not many notices have been filed for special marriages under this Act before the Special Registrar. This Bill has been in working order and a good use of its provisions has been made in my province without any alarming results. The whole point underlying this Bill is, either you hang these people who want to contract these unorthodox marriages on the next lamp post, or if you do not, then permit

them their liberty of conscience and liberty of action. Do not penalise their children; do not create unnecessary litigation between the children and the heirs of these people. Give them liberty of action and allow them to marry and have peace. Let not their children be engaged in unnecessary litigation. So far as the Hindus are concerned, therefore, we are in this position that for these four religions, Hindu, Jain, Buddhist and Sikh, they have the liberty of marrying outside their own circle and experience shows that there is not such a danger as is threatened from all sides.

So far as the Muhammadans are concerned, my Mussalman friends have made a great point of the fact that this is opposed to the dictates of the Koran. A good deal can be said for that position, and if one were to go solely by the dictates of the Koran, one might say that there is nothing to be said for the measure. But there is this proposition to be examined. We are in an age when everything in the Koran is not being followed. There are people among Muhammadans who have married Christian wives, who have married outside.

**Maulvi Muhammad Yakub:** That is permissible under the Koran.

**Mr. Jagan Nath Aggarwal:** My learned friend pointed out that it is permissible. I would just beg leave of you to read a passage from the book of that great jurist, the late Right Honourable Syed Ameer Ali, wherein he has pointed out how far a Muhammadan can marry outside. This is the passage which I wish to draw your attention to:

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

From these and similar directions two somewhat divergent conclusions have been drawn by the lawyers of the two schools.

The Sunnis recognise as legal and valid a marriage contracted between a Moslem on one side and a Hebrew or a Christian woman on the other.

They hold, however, that a marriage between a Musulman and a Magian or a Hindoo woman is invalid. The Usulis, the M'utazilas and a large section of the Akhbaris agree with the Sunni doctors. They recognise the validity of a permanent contract of marriage between a Moslem and a female belonging to 'the Scriptural sects' or believing in God. Some of the Akhbari Shiahs, however, do not recognise as legal a permanent contract of marriage between a Moslem and a woman following any other creed."

It goes on like this, the whole point underlying this being that among Muhammadans marriage with persons professing certain religions is permitted and with whom lawful marriages can take place.

Now, Sir, I put this question. If it is permissible to a Muhammadan and it has been permissible to a Muhammadan to marry, say, within these three religions, how many have exercised that option? Has not the same danger threatened the Muslim society all these centuries? If that is so, why should it at this particular time be open to objection that by making it permissible to allow some people a certain freedom and to regularise their marriage and to make it possible for them to have a legal status in this country which they enjoy everywhere else, the whole society would be in danger? Now, Sir, I put the proposition like this. If a certain latitude has been permitted to the

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Hindu society, no danger has come to that society. A certain latitude has been permitted to Muhammadans and no serious consequences have resulted therefrom, and I submit that this measure has got to be examined in the light of first principle. What is the real underlying principle and why is it that we are espousing this cause? Two things I wish to place in the forefront. First of all, one of the underlying ideas of this Bill is that it will permit monogamous marriages. Those who do not like to be bound by these monogamous marriages can conveniently stay outside. But what right have they not to permit a certain section of the population who may be so minded to contract monogamous marriages? Are not they prepared to allow this freedom of choice? Here are two schools. One school has been in possession of this privilege of having polygamous marriages all along. There is the other school which says, "Give us a chance to convert the country to having monogamous marriages". What right have they not to give freedom of views to these people and to everybody else and not to permit them to exercise this right. They say it is a matter of choice to us and we will exercise it.

Then I wish to put before you another proposition. Look at it in this aspect. How many people amongst the Muhammadans exercised that privilege of marrying four wives? My friends, I assure you that it is very few who have done it. It is perhaps reserved for the very rich to indulge in this luxury. Similarly there is no limit among the Hindus to the number of wives, but how many among them have married more than one wife? There also it is reserved for very few. It is just as well that the wise only marry once or the wisest never marry at all. But still if the proposition is like this, I do not see why you should object to giving this freedom. Thus first and foremost you are by this Bill merely permitting monogamous marriages, and according to the principle of free exercise of choice you should not oppose it.

Secondly, there is another point involved in it and that is that it will permit the growth of nationalism. As has been said, that is the essential merit of this Bill. It will break down the rigidity of caste. I can assure you, Sir, in my own province, these marriages which are obnoxious to the caste principles in some parts are permitted. We have in our part of the country various devices by means of which we get round that caste principle, which is operative in other parts of the country. We have our customary law by means of which amongst Hindus an inter-caste marriage can be celebrated. The customary law permits of a marriage between a Brahmin and a Khatri. If that is permissible in a province to have marriages under the guise of custom, and you have never smelt any danger there, then I do not see where the danger comes in here. Let me mention another thing. We have what is called the Sikh Anand Marriage Act, by which anybody who likes can become or call himself a Sikh and marry under that Act. Nobody has smelt any danger in that. Therefore we notice that this so-called society, which is supposed to be endangered by Mr. Gour's Bill, is already exposed to dangers, at least in the North-West part of the country, and nobody in Madras or elsewhere has ever thought that the Punjab society was ever in any danger. I therefore say that all these dangers are already there. We have at the present moment the customary law undermining that principle of Hindu law, the Sikh Anand Marriage Act which permits anybody to call himself a Sikh and then marry. Therefore I submit that all these objections to the measure have

to be examined by something more substantial than the usual parrot like cry that the Hindu society and the Muhammadan society are in danger, I have examined it from the point of view of polygamy and there is not much to be said for this measure from that point of view.

Now, if we look at the provisions of this Bill, I feel that there are some provisions which err on the side of strictness for those who come under the purview of this Bill. That is one grievance against the Bill. For example persons who marry under this Bill are immediately supposed to have separated from the family. The father of the person is permitted to adopt another, and it looks as if the son were dead and the law which is applicable to him is not his own personal law but the law of the Indian Succession Act. These, I submit, are serious drawbacks. For that I suppose Dr. Gour is biding his time and will take the necessary opportunity to bring in the necessary amendments and those will be measures on which I have something to say. But for the time being I submit that, looking at this measure, the essential point of this measure is that it is a permissive measure. If you are trying to stop all marriages which do not follow the strict rules of the Koran or the Shāstras, by all means do it. But recognising that it is impossible to stop these marriages, it is only fair and just to look facts straight in the face and to make provision for those who have contracted other marriages. If you do so, I submit, Sir, that neither Hindu law nor Hindu society nor any other society would be in danger, except that it will be our sheer inability to look facts in the face. One might say that none are so blind as those who will not see. If we have already such marriages going on, then better look at them and provide for them. Then it has been said that the opinions of Jamait-ul-Ulema and various other bodies are opposed to it. I submit this appears to be the only thing in support of this proposition. Those who are conservatively disposed, those who take shelter behind the opinions of these bodies are more conservative than they. Look at the things from a rational point of view, and if there is any reason in support of this proposition, then by all means support it. I submit, Sir, the real principle applicable to this controversy is that marriage has long passed out of the domain of status in various countries. It is time in this country as well that it was so. We already see it being slowly done. Permit those who want to walk out of this realm of status into the realm of contract. Let them do it and watch the experiment. If you find that this experiment is successful then come over to it yourself. But do not begin to throw stones at those who want to try the experiment. I submit, Sir, that from the point of view of nationalism, of liberty of conscience and freedom of their views, and from the general principle that we must allow equality to man and woman, this Bill should be supported by all sections of the House.

**The Honourable Sir Brojendra Mitter** (Law Member): I am frankly opposed to this measure. I am speaking not merely on behalf of the Government but as a lawyer, and I shall presently examine this Bill from the legal standpoint. Sir, the policy which the Government have always adopted with regard to social legislation was stated in these terms by the Honourable Mr. Jenkins when Mr. Bhupendra Nath Basu's Bill was before the Legislature:

"It is a fixed principle of the Government of India not to interfere in any way whatsoever with the personal laws and customs of the different peoples of India unless they have very strong and conclusive evidence that the change is desired by the people who are affected."

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Sir, in this Bill the communities sought to be affected are the Christians, the Jews, the Parsis and last but not the least the Moslems. You have heard, Sir, what the general Moslem feeling is. The Moslem feeling is against this measure; I shall come to it later and deal more in detail with the Moslem aspect of it when I examine the Bill on its legal side.

As regards the three other communities, so far as the Christians are concerned, it is not at all a necessary measure, because as is well-known, under the Christian Marriage Act a marriage would be valid if either party be a Christian. Therefore mixed marriages are allowed under the Christian Marriage Act . . . .

**Sir Hari Singh Gour:** Who is to marry them?

**The Honourable Sir Brojendra Mitter:** Before a registrar. If my friend wants the reference I will give it to him in a minute.

**Sir Hari Singh Gour:** Section 5 of the Indian Christian Marriage Act.

**The Honourable Sir Brojendra Mitter:** Well, you know it. Therefore, so far as the Christians are concerned it is not a necessary measure. We may dismiss the Christians from our consideration for the moment.

Now, what about the Parsis and the Jews? When a similar measure or rather an identical measure was before the House some time ago, opinion was sought from different authoritative quarters, and the Secretary of the Magan David Synagogue stated, as I find in the opinions collected, that "the Jewish community desires no change in the present law". It is well-known that Jewish marriages depend wholly on the religious usages of the Jewish faith, and they do not want a change. So far as the Parsis are concerned, I have got here the representations made by the Parsi Federal Council against Sir Hari Singh Gour's Special Marriage Amendment Bill. With your permission, Sir, I shall read a portion of that memorial:

"It is submitted that so far as the Parsi community is concerned, this fundamental assumption—(the assumption being that marriage is merely a matter of contract and has got nothing whatsoever to do with religion)—is not only fallacious but entirely irreligious. The Parsi Zoroastrian religion as professed by an overwhelming majority of the community has always regarded marriage as a sacrament and not at all as a mere contract. Sir Erskine Perry, so far back as 1843, judicially declared that the institution of marriage is with the Parsis so mixed up with and incorporated in their religious ordinances that the court would never think of applying to their established practices any mere municipal regulation of English law. In the great and most leading judgment of Lord Stowell it is clearly laid down in so many words that the customs of the Parsis are and have been from time immemorial opposed to the validity of marriages not solemnised according to the rites of the religion and that no marriage between a Parsi and a person of another religion can according to the rules of their religion, of whose infraction no instance is known, be solemnised with the rites which in the eyes of that community and therefore in the eye of the law, alone have any binding force. As Sir Thomas Strangman the Advocate General of Bombay gave his opinion, a Parsi lady by marrying non-Parsi ceases to belong to the Parsi community, even though she might go on professing the Zoroastrian religion. All these doctrines have been fully recognised by the legislature in the provisions of section 3 of Act XV of 1865 after full consideration by prescribing the religious ceremony of Ashirvad as an essential and unavoidable requisite of a Parsi marriage. Section 3 of the Act lays down that no marriage between Parsis shall be valid unless such marriage shall be solemnised according to the Parsi form or ceremony called Ashirvad, by a Parsi priest. The Ashirvad ceremony contains nothing which any reasonable Parsi who

believes in the Zoroastrian religion can object to. This being so, if any individual holds that marriage is a mere contract and not a sacrament, he or she cannot make it a grievance that to get married under the Act III of 1872 he or she has to declare that he or she does not profess the Zoroastrian religion. Any rationalist, atheist or free-thinker is fully entitled to his freedom of belief and action, so long as he does not pose as a religious individual. In effect the Bill is an attack upon the fundamental and basic principles of all religions and an attempt to undermine them."

Sir, that is the view which the Parsis took. The Jews do not want it; the Parsis do not want it; it is not necessary for the Christians; there remains the Moslem community.

So far as the Moslem community is concerned, it has been often said, and it is, I suppose, believed by some, because of repetition, that a Moslem marriage is a mere matter of contract. It is nothing of the sort. Although it is not a sacrament in the sense that a Hindu marriage is a sacrament or a Roman Catholic marriage is a sacrament, it is bound up with their religion. The fundamental basis of a Moslem marriage is religious sanction. Therefore it is a mistake to suppose that it is a purely secular contract. Where is the sanction? The sanction is to be found in the Koran, the holy book of the Moslems. Sir, I am not going to deal with the religious aspect of it at all. I shall deal only with the legal aspect. I shall examine presently what will be the effect of a statutory marriage on the rights and obligations of Moslems under the Muhammadan law. It will be admitted by everybody that the Moslems are governed by their personal law as the Hindus are governed by their personal law. Sir Hari Singh Gour in his Statement of Objects and Reasons says that the benefits of his wonderful Act of 1923 have been assured to Hindus and people professing allied faiths that is, Buddhists, Sikhs and Jains, and he wants to extend those benefits to the Moslems, Parsis, Jews and Christians. This is what he says:

"The advantages of the measure, if enacted, are obvious. The Bill would enable persons subject to polygamous marriage laws to contract monogamous marriages and remove the inequality in the matter of divorce. It would elevate the status of women. These benefits have already been assured to the Hindus, Buddhists, Sikhs and Jains by Act XXX of 1923, and there is no reason why the benefit that that Act confers upon the communities named should not be extended to other communities who might as regards succession be equally brought under the law enacted in the Indian Succession Act."

Therefore the object is to confer the doubtful benefits of the Act of 1923 on the Moslems. Now, are they benefits in the first instance? The central idea of this measure, as also of the measure of 1923, is that it ensures monogamous marriage. That is, it prevents a polygamous marriage. Sir, I contest that proposition. Act III of 1872, as amended by Act XXX of 1923, does not prevent a polygamous marriage. It is not a Monogamous Marriage Bill as Sir Hari Singh claims for it. Sir, I shall refer to three sections of Act III of 1872 . . . .

**Sir Hari Singh Gour:** Is that not a matter for the Select Committee?

**The Honourable Sir Brojendra Mitter:** No, Sir, I submit it is not a matter for the Select Committee. It is the fundamental basis of the Bill. His claim is this. He says he is giving a statutory non-denominational marriage because it is necessary to give Indian marriage an international status, and his claim is that the Bill provides for a monogamous marriage and therefore such marriage will receive international recognition. That

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is the fundamental basis of his Bill. If polygamy is not prevented by this measure, then the whole rationale of the Bill falls to the ground. The only justification for this measure is this, that if a person marries under this Act, he or she will not be able to marry again during the subsistence of that marriage. Sir, this Act does nothing of the sort. It does allow more than one marriage. I refer to sections 15, 16 and 19.

Section 15 says this:

"Every person who, being at the time married, procures a marriage of himself to be solemnised under this Act shall be deemed to have committed an offence and the marriage so solemnised is void."

It means this. A married person cannot marry under this Act. If he or she procures a marriage under this Act, that person will be punished and the second marriage will be void. The point before us, however, is this. If a person does marry in the first instance under this Act, can he or she marry again? That is the point for our consideration, and my submission is, he can.

Section 16 says this:

"Every person married under this Act who during the lifetime of his wife or her husband contracts any other marriage,"—

What will be the consequence? Will the marriage be void? No, but it:

"shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the lifetime of the husband or wife, whatever may be the religion of the parties."

All that section says is this, that if a person marries under this Act, and then contracts a second marriage, he will be liable to certain penalties, but that second marriage will not be void. In section 15 the second marriage is declared to be void, but in section 16 only a penalty is provided; just as in the Sarda Act if there is a child marriage, the parties concerned will be subject to certain penalties, but the marriage is not void; the marriage remains. Similarly if a person marries under this Act, and then contracts a second marriage, the second marriage will be a good marriage, it will be a valid marriage, but the person will be subject to certain penalties.

**Sir Hari Singh Gour:** Why don't you amend that?

**The Honourable Sir Brojendra Mitter:** That is not the point before the House.

**Sir Hari Singh Gour:** That is your mistake.

**The Honourable Sir Brojendra Mitter:** I am now dealing with the Bill. I say that the whole fundamental basis of this Bill, as also of the Act of 1923, is erroneous.

Sir, it goes further. In section 19 it is provided that,—

"Nothing in this Act shall affect the validity of any marriage not solemnised under these provisions, nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage, but if the validity of any such mode shall thereafter come into question before any court, such question shall be decided as if this Act had not been passed".

So taking these three sections together, it is perfectly clear to every reasonable person that Act III of 1872, as amended by Act XXX of 1923, does not ensure a monogamous marriage. It does permit a polygamous marriage. Then what is all this fuss about? Here we are providing for a statutory form of marriage which ensures monogamy and thereby our marriages will receive recognition in the civilized world; we shall have a place in the sun. We shall not have a place in the sun by passing this Act.

Sir, I want to say one word with regard to Act III of 1872 in connection with which Sir Hari Singh Gour quoted some passages from Sir Henry Maine's speeches. Sir, it may not be known to all Members of this House how that Act came to be enacted. Before 1868, many, Brahmos, Hindu dissenters, contracted inter-caste and even mixed marriages. At that time a great lawyer, Mr. Cowie, was the Advocate General of Bengal. A question arose and the matter of the Brahmo marriages came before Mr. Cowie for his opinion. Mr. Cowie went into the matter and he declared that these marriages were invalid and the children born of these marriages were illegitimate. Well, that was a very serious situation, because a very large number of marriages had taken place, quite *bona fide*, children had been born, and there was this perilous situation. Keshab Chunder Sen, the great Brahmo leader was then alive. He came to Simla post haste. He consulted Sir Henry Maine as to the way out of the difficulty, and then Sir Henry said this:

"I am prepared on behalf of Government, since such an emergency has arisen, I am prepared to bring forward a measure validating the marriages which had taken place and legitimatising the children born of such marriages."

That is the genesis of the Act of 1868. It was a Government measure. Government intervened in that instance, because an emergency had arisen and because the community affected invited the Government to pass an Act for their benefit. That is why the Government lent its support to that measure, and the measure was passed in the form of Act III of 1872. It is not because there was a sudden wave of reforming zeal which prompted Sir Henry Maine to bring forward that measure. Where is the emergency today? Who wants it? Do the Mussulmans want it? (*Several Muhammadan Members*: "No, no.") Do the Parsis want it? Do the Jews want it? Do the Christians need it? No. Then where is the emergency that this measure should be passed by this Legislature, and particularly at a time when minority communities are insisting on safeguards? Is this the way in which their rights, which they consider to be religious rights, are to be played with by a majority? (*Some Moslem Members*: "Hear, hear.")

**Mr. Amar Nath Dutt:** Why did the Government not observe this wholesome policy when the Sarda Act was rushed through the Assembly?

**The Honourable Sir Brojendra Mitter:** I am not discussing the Sarda Act at the moment; I am discussing Sir Hari Singh Gour's Bill. Sir, as I said before, the Moslems like the Hindus are governed by their personal law. I shall take a few branches of the personal law and very briefly say how each of these branches of the personal law of the Moslems will be affected by this measure. I shall take the subjects of Marriage, Dower, Divorce, Legitimacy, Inheritance, Guardianship, Maintenance and Wakf. I shall take these eight branches of Muhammadan law, all essential.

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Sir, it is well-known that under the Muhammadan law certain marriages are prohibited. I shall take only one of these by way of illustration. If marriage with a woman is prohibited by reason of fosterage, such marriage is void. Under Muhammadan law, as is well known, there are two kinds of irregular marriages. One kind is called invalid and another kind is called void. I am only dealing with the void kind which has got no legal existence. Marriage with a woman prohibited by reason of fosterage is void. Now, supposing marriage with such a woman takes place under Dr. Gour's measure, what happens? Under the statute, it will be valid; under the Muhammadan law it will be void. What about the children? The children will be legitimate no doubt, because the statute renders that marriage valid, but will they be children of a Moslem marriage? No. Then, will they as children inherit? No, because it is only a Moslem child who can be an heir under the Moslem law of inheritance. What is the position of that child then? That child is a legitimate child, but he is deprived of his right of inheritance, because he cannot inherit according to Muhammadan law; it is only Moslem children that can inherit under the Muhammadan law.

**Sir Hari Singh Gour:** What about *Lex Loci*?

**The Honourable Sir Brojendra Mitter:** *Lex Loci* makes ample provision for relevant cases. I have given an illustration of a void marriage. I will now give an illustration of an invalid marriage,—invalid as distinguished from a void marriage. Invalid marriages do not create mutual rights of inheritance. Although the children are regarded as legitimate, invalid marriages do not create mutual rights of inheritance. For instance, marriage with a woman undergoing *iddat* is an invalid marriage; it is not a void marriage; but there are no mutual rights of inheritance in the case of such a marriage. Will such a marriage, which would be permitted under this measure, create mutual rights? No provision is made for that.

I will next take the question of dower. It is one of the most valuable rights which a Moslem woman has. Now, no Moslem woman marrying under this measure can claim dower because it is a statutory marriage; it is not a Moslem marriage. This valuable right will be lost to all Moslem women who marry under the proposed measure. I am showing that if this measure is passed, any Moslem marrying under this measure must lose many of the rights which the Muhammadan law gives to him or her.

**Sir Hari Singh Gour:** They will read your speech and won't marry under the Act.

**The Honourable Sir Brojendra Mitter:** If they don't marry under the Act, then it is not a necessary measure, and why have it, why force it down the throat of an unwilling community?

**Sir Hari Singh Gour:** But they are willing to take the risk.

**The Honourable Sir Brojendra Mitter:** I am coming to that optional argument in a minute.

**Mr. Amar Nath Dutt:** May I ask where was that good sense when the Sarda Bill was on?

**The Honourable Sir Brojendra Mitter:** The Sarda Act is long past.

**Sir Hari Singh Gour:** He is speaking from his brief; that is not his opinion.

**The Honourable Sir Brojendra Mitter:** I am speaking from my brief not out of mere enthusiasm, and I shall be delighted if Dr. Gour, with his inexhaustible knowledge of law, will controvert any of the propositions I am submitting.

Then, take divorce. Those who are familiar with the Muhammadan law know very well the great elasticity which the Muhammadan law, gives in the matter of divorce. All that will be gone. It will be only the Indian Divorce Act which will regulate the rights of parties. I will mention only one. A contract of marriage under the Muhammadan law may be dissolved in three ways; one, by the husband at his will without the intervention of a court of law—I am not concerned with that for the moment—and second, by mutual consent of the husband and wife and without intervention of a court. That is one of the recognised modes by which a divorce can be obtained under the Muhammadan law. That will be denied to persons marrying under this measure because the Indian Divorce Act does not recognise mutual consent as one of the methods by which divorce can be obtained. Here, again, the personal law of the Moslems gives an elasticity to the parties in the matter of divorce; that elasticity will be taken away and they will be relegated to the restricted grounds on which a divorce can be obtained under the Indian Divorce Act.

**Mr. Jagan Nath Aggarwal:** Does my Honourable friend support this elastic form of divorce?

**The Honourable Sir Brojendra Mitter:** I am not here supporting or controverting the wisdom of any branch of the Muhammadan law. All I am addressing myself to is this, that this measure is an interference with the Muhammadan law; it takes away rights from the Moslems which the Muhammadan law gives them; that is all I am concerned with at the present moment. Whether the right ought to be taken away or not is a different matter, I am not to be drawn into an ethical disquisition. I will quote a passage from a well-known book—I am quoting from the book on Muhammadan Law by Sir Dinshaw Mulla.

“An agreement made, whether before or after marriage, by which it is provided that the wife should be at liberty to divorce herself from her husband under certain specified contingencies, is valid if the conditions are of a reasonable nature and are not opposed to the policy of the Muhammadan law. When such an agreement is made, the wife may, at any time after the happening of the contingency, repudiate herself in the exercise of the power, and a divorce will then take effect to the same extent as if the *talak* had been pronounced by the husband. The power so delegated to the wife is not revocable, and she may exercise the power even after institution of a suit against her for restitution of conjugal rights.”

This valuable right which the wife has got will be taken away if she marries under the proposed law.

**Sir Hari Singh Gour:** They will marry with their eyes wide open.

**The Honourable Sir Brojendra Mitter:** Sir, I have shown that in the matter of marriage, in the matter of dower, in the matter of divorce, any Moslem marrying under this measure will be deprived of valuable rights which the personal law gives him or her.



[The Honourable Sir Brojendra Mitter.]

Now, take the case of legitimacy. This is very important. Sir, there is a beneficent rule under the Muhammadan law that when legitimacy cannot be established by direct proof acknowledgment is recognised as a means whereby legitimate descent may be established as a matter of substantive law for the purpose of inheritance. This is a most valuable and beneficent provision of Muhammadan law. Now, this rule will have no application to the case of a child whose legitimacy may be in question if the child is born of a marriage contracted under this measure.

Take the question of guardianship. As Honourable Members familiar with Muhammadan law know, there are special rules of guardianship under Muhammadan law.

**Sir Hari Singh Gour:** Very much more rigid than the Guardian and Wards Act.

**The Honourable Sir Brojendra Mitter:** There are special rules and they were framed for the benefit of the community. They are useful rules. All those rules of guardianship will be swept away and drab uniform rules of the Guardian and Wards Act will come into play. I will give an illustration. The mother is entitled to the custody of her male child until he has completed the age of seven and to the custody of her female child until she has attained puberty, and the right is not lost though she may have been divorced by her husband. Failing the mother, the right of custody of a boy under the age of seven and a girl who has not attained puberty devolves upon certain female relatives in the order enumerated. I would not give the whole list but the first is mother's mother. Now, failing the mother, the mother's mother is the guardian of the infants. Under the Guardian and Wards Act, the mother's mother does not come in at all. Under the Muhammadan law, the mother's mother has got the right to be the guardian of the infant grand children. She will be deprived of that right if this Act is passed. If a marriage takes place under this Act, the children born of that marriage will never be under the guardianship of the mother's mother. Take this case. A mixed marriage takes place and mixed marriages will be permitted under this Act. A young Muhammadan and a young Hindu girl marry out of, say, the dictates of their conscience. I suppose that is the phrase that has been used but it is nothing more than youthful impulse and conscience does not come in there at all. They run away and they marry under this Act before a Registrar. What happens? Suppose a child is born and the question of guardianship arises. The mother is dead. This child of a Muhammadan father will be dealt with under the Guardian and Wards Act, whereas if it was a good Muhammadan marriage, then the most suitable person who would look after this child, the grand mother, would have taken care of it. It is not so in this case. Dr. Gour may say that the Muhammadan rules of guardianship are more rigid than the rules of the Guardian and Wards Act. Nevertheless, the Muhammadan rules are humane and the Muhammadan child will be deprived of the care of the most suitable person to whom it could be committed, if the Muhammadan law were applicable.

Let me take the next item—maintenance. Under the Muhammadan law, children are bound to maintain poor parents. I suppose Dr. Gour will say this is unsound, but it is certainly a humane and beneficent rule that

children should be bound to maintain their parents. Now, children born of marriage under this law would not be bound to maintain their parents. They may say that the parents must shift for themselves. Now, it may be all very well in societies where individualism holds sway that every person must shift for himself but in an Eastern society, sentiments and traditions have hallowed this practice, that children must maintain their poor parents. But under this Act there will be no legal obligation. It will be a mere moral obligation. In the case of people who marry out of impulse and go out of the pale of their society, it is doubtful how far moral obligations will be binding upon them.

Then I come to the wakf. A Muhammadan can create a wakf for the benefit of his children provided the ultimate benefit is given to charity. If a Muhammadan marries under this Act, he will not be able to create such a wakf. If the real object was to make a family settlement which would otherwise be invalid under the Muhammadan law of succession, the wakf would be invalid. Therefore the Muhammadan law of wakf is intimately bound up with the Muhammadan law of succession. Now, if a person marries under this Act, then the Muhammadan law of succession *ex hypothesi* cannot apply. If that be so, the person who marries under this Act will be deprived of the right of creating a wakf for the benefit of his children, because the children would be born of a statutory marriage. Thus, this valuable right will be lost to him. As a matter of fact he will lose most of the rights which his personal law gives him. Practically he will cease to be a member of his community. He will be lost to the community. Again, where the wakf involves the performance of religious duties, the *mutawalli* must be a Moslem. Now, what about the children of a statutory marriage being able to perform religious duties? They cannot, because that marriage is not a valid marriage according to Muhammadan law. If it be not a valid marriage according to Muhammadan law, the children born of such a marriage cannot be held to be such Moslems as are competent to perform religious duties. Here again, he loses his right to become a *mutawalli*. He cannot create a wakf. He cannot become a *mutawalli* if religious duties are involved. It may be said that I am taking extreme cases. Possibly I am but it is only by extreme cases that you can test the soundness or unsoundness of a proposition.

Then take the case of inheritance. Sir Hari Singh Gour himself recognises the difficulty. In his Statement of Objects and Reasons he says this: Moslems might as regards succession be equally brought under the law enacted in the Indian Succession Act. Has there been any claim from the Muhammadan community, that they should in the matter of inheritance be governed by the rules of the Indian Succession Act and not the rules of their personal law? No provision has been made in the Bill for succession. What would happen to the children born of a statutory marriage? How will they succeed? They cannot succeed under the Muhammadan law.

**Sir Hari Singh Gour:** You add a clause in the Select Committee.

**The Honourable Sir Brojendra Mitter:** It is a fundamental matter. It is not a matter of drafting that you may add a clause in Select

[The Honourable Sir Brojendra Mitter.]

Committee. Then again the question arises—who wants it? Sir Hari Singh Gour may want it but the community affected does not want it. Will this House thrust it upon that community?

**An Honourable Member:** Sir Hari Singh Gour also does not want it now.

**The Honourable Sir Brojendra Mitter:** Now, Sir, I have shown that in the matter of Muhammadan personal law the parties to a statutory marriage will lose many valuable rights. The children born of such a marriage will lose practically every right which the Muhammadan law gives to Muhammadan children. That being so, is it to be wondered at that the Mussalman community should oppose this measure? And if that is the feeling of the Moslem community—a genuine feeling based upon good reason—how can Sir Hari Singh Gour expect that the Government should support a measure of this kind which is in effect a revolutionary measure?

**Sir Hari Singh Gour:** Then what did you do in 1929 when this Bill was before this House?

**The Honourable Sir Brojendra Mitter:** I was not here then.

**Sir Hari Singh Gour:** Why, you said you left it to the free choice of the House?

**The Honourable Sir Brojendra Mitter:** Sir, I have endeavoured to show that, so far as the four communities affected by this Bill are concerned, it is not necessary in the case of one, it is not wanted by two of the communities—the Jews and the Parsis—and it would be highly detrimental to the Mussalmans. That is the nature of the Bill. Therefore, it is not a question of extending a benefit which has already been assured to Hindus and other communities, and I dispute the assumption that any benefit has been conferred upon anybody (Hear, hear). If it were relevant, and if there were time, I could have shown that by the Act of 1923 the Hindu community certainly was not benefited; anyone marrying under that measure practically ceases to be a member of the Hindu community and loses all the rights which the Hindu law confers on him. He belongs to that group of persons who do not belong to any community whatsoever. Sir, I will now come to the optional argument. Sir Hari Singh Gour says, “Oh, but this is optional”, “you are not bound to marry under this Act. It is only enabling, it will give you freedom of conscience”, and what not. Now why is this measure brought in at all? Not to give optional benefit to people, but in order to secure international recognition. Sir, in order to secure international recognition, it is necessary that it should be a compulsory measure so as to show that here is a country, India, in which there is a compulsory law ensuring monogamy and therefore deserving of international recognition. If you make it optional, something which may be resorted to by only a few hairbrained people (Laughter), then what becomes of the personal laws? In an international gathering it will be said, “Oh, you still have got your personal laws, you may have the option of running away from your own community and of belonging to no community, to no man’s land, but the bulk of your community stick to their personal laws.” What is the good of having an optional measure for the purpose of international recognition? It may be for freedom of conscience and what not, it may be a forward measure, but certainly for the purpose of international recognition, this optional clause is useless.

**An Honourable Member:** Why, Sir Hari Singh Gour will become an immortal.

**The Honourable Sir Brojendra Mitter:** Sir, we have got two ancient codes of law in this country. I am not talking of the laws of the Jews or of the Parsis because they are very small communities but so far as the majority communities are concerned, there are two very ancient systems of law. These systems of law, the Hindu and the Moslem systems of law, have preserved Hindu society and Moslem society through many centuries. Do not play with these systems by bringing forward this sort of subversive legislation. It is destructive of the whole structure which has preserved these societies through all these long centuries. It undermines the very foundations upon which these social institutions are based, and the institution of marriage is an important part of that foundation. Sir, I do appeal to this House not to play with the ancient institution of marriage in this country. (Hear, hear.)

**Several Honourable Members:** The question may be now put.

**Mr. President:** I think it would be best to put the question. We have a very long agenda. The matter has been fully discussed, and I would ask the House to decide whether they wish to accept the closure. The question is that the question be now put.

The motion was adopted.

**Sir Hari Singh Gour:** Sir, I wish time had permitted a few more speakers to speak on this very interesting and important question. Sir, I must confess that I have been very much surprised by the attitude which the Government have adopted in the year 1931, because when this measure was placed before this House in 1921, they were sympathetic, and when it came up on two other occasions they said that it was a measure upon which their attitude would be determined by the expressions of opinion in this House. Sir, I can understand the fervid, the perfervid appeal which my friend, Sir Brojendra Mitter, has made on behalf of the Government. With his tongue in his cheek he makes us believe that this measure, if passed, will completely destroy the very foundations of Hindu and Moslem societies. Sir, I would certainly have pushed on this motion of mine to its consequence, but I feel that the House is not at the present moment in that sane mood in which I am perfectly certain it will be. . . .

**Mr. Amar Nath Dutt:** What does the Honourable Member mean by saying "that the House is not in that sane mood"?

**Sir Hari Singh Gour:** I hope, Sir, that the discussion that has proceeded will give this House a little time and opportunity to judge of the measure upon its merits, and I therefore wish, Sir, with your permission, to withdraw the motion.

**Several Honourable Members:** No, no.

**Mr. President:** Is it your pleasure, gentlemen, to allow Sir Hari Singh Gour to withdraw his motion?

**Several Honourable Members:** No, no.

**Mr. President:** Permission is not granted. I will now put the question.

The question is:

"That the Bill further to amend the Special Marriage Act, 1872, be taken into consideration."

The motion was negatived. (Applause.)

## THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

**Mr. Gaya Prasad Singh** (Muzaffarpur *cum* Champaran: Non-Muham-madan): Sir, I do not want to move my motion for consideration of the Bill to amend the Indian Telegraph Act, but with your permission I should like to go on to the next Bill on the agenda. . . .

**Mr. President:** You can do so.

**Mr. Gaya Prasad Singh:** Sir, I move:

"That the Bill further to amend the Code of Criminal Procedure, 1898 (*Amendment of Section 144*) be referred to a Select Committee consisting of the Honourable Sir James Crerar, Sir Lancelot Graham, Mr. B. R. Puri, Sir Abdur Rahim, Sir Hari Singh Gour, Rai Sahib Harbilas Sarda, Maulvi Sayyid Murtuza Saheb Bahadur, Mr. Arthur Moore and the mover, and that the number of members whose presence shall be necessary to constitute a meeting of Committee shall be four."

Sir, as stated in the Statement of Objects and Reasons, section 144 of the Criminal Procedure Code constitutes an entire chapter (Chapter XI) whose object is, in the words of the Code, to provide for "Temporary Orders in Urgent Cases of Nuisance or Apprehended Danger". The words of the section were, from the very nature of the entirely temporary action contemplated, made very general, and the discretion left to the Magistrates for the purpose was also correspondingly wide. But the extraordinary and indiscriminate applications of the section that have taken place in recent years on such a large scale for the purpose of suppressing political agitation, or other legitimate activity, are matters which could not have been foreseen, and constitute a misuse of the provisions of the section. The extraordinary powers conferred extend to interference with the lawful rights, and are only to be resorted to when the Magistrate is satisfied that the other powers with which he is vested under the law are insufficient to secure the object which he has in view. This section should not be allowed to take the place of any other provision of the law which might more appropriately apply. I am not going to weary the House by reciting the cases in which this point was discussed but I would only refer to 6 Madras, page 203, which was a full Bench case, 38 Calcutta, page 876, and 17 Allahabad, page 485, which was also a full Bench case. I am sorry I have not got these references with me now. Sir, it is within the experience of all of us that this section, which was intended only to provide for temporary orders in urgent cases of nuisance or apprehended danger, has been misused and misapplied to cases to which it was not intended to apply. People have been prohibited from leading processions, from taking part in lawful activities, such as holding public meetings.

**An Honourable Member:** Even wearing a Gandhi Cap.

**Mr. Gaya Prasad Singh:** And when the period of the prohibitory order has once expired, the order has been renewed with the result that virtually it has become a perpetual injunction. Now, Sir, when the subsequent order purports to renew a previous one which has expired, it is in effect an extension, and therefore without jurisdiction. This view has been referred to in certain law cases, such as 14 Criminal Law Journal, page 658, 7 Calcutta Weekly notes, page 140, and 23 Criminal Law Journal, page 689. I have not these rulings at present before me to verify but a reference will probably bear out my contention. (Sir, I want to restrict this discretionary power which is vested in the Magistrates, and the essence of my proposition is this that notwithstanding anything hereinbefore contained, no order under this section shall be made by a Magistrate so as to restrict the right of any person or persons to convene, attend, or take part in any public or political meeting, association, procession, or other demonstration, unless the Magistrate finds on evidence duly recorded that such direction is necessary to prevent obstruction, annoyance, or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

My second proposition is that no *ex parte* order shall be passed by a Magistrate in such cases without evidence duly recorded, and no such order, if made *ex parte*, shall remain in force for a longer period than forty-eight hours.

My third point is that I want to provide an appeal against the order to the Court of Sessions. Now, in order to establish my case, it is necessary for me to give some instances in which during recent years, the provisions of this section have been misapplied. I will first recall that historic occasion when the Barisal Provincial Conference in 1906 was dispersed under section 144. Why? Because the authorities wanted to take an undertaking from those attending the Conference that the words *Bande mataram* would not be shouted after the close of the Conference. Sir, I am not drawing upon my imagination, but I am reading out to you a passage from a book called "A Nation in Making", by Sir Surendranath Banerjea which will support my statement. At page 226, we read as follows:

"But the story of this act of repression, one of the darkest in the annals of the defunct Government of East Bengal, was not yet closed. The Conference met on the following day and was transacting its business in the usual way, when Mr. Kemp, District Superintendent of Police, entered the *pandal*. He walked up to the platform and told the President that the Conference must disperse, unless he was prepared to give a guarantee that the delegates would not shout *Bande Mataram* in the streets after the Conference was over. The President after consulting the delegates, declined to give the guarantee. Mr. Kemp then read out the order of the Magistrate directing the dispersal of the Conference under section 144 of the Criminal Procedure Code. A wave of indignation passed over the Conference. The delegates were in no mood to submit."

Was this a proper application of the section? Well, Sir, the other occasion on which section 144 was misused or misapplied was in 1917 when Mahatma Gandhi visited Muzaffarpur with the object of making an enquiry into the allegations with regard to the strained relationship that existed between the indigo planters of Champaran and the ryots of the district. Mahatma Gandhi, on invitation, visited Muzaffarpur. He saw the Secretary of the Indigo Planters' Association, as well as the Commissioner of

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the Division, and then he proceeded to Champaran. On reaching Champaran he was served with a notice under section 144. I will read out the terms of that notice. The notice is dated the 16th April, 1917, issued by the District Magistrate of Champaran. It reads:

"Whereas it has been made to appear to me from the letter of the Commissioner of the Division, copy of which is attached to this order, that your presence in any part of the district will endanger the public peace and may lead to serious disturbance which may be accompanied by loss of life and whereas urgency is of the utmost importance; Now therefore, I do hereby order you to abstain from remaining in this District which you are required to leave by the next available train."

That was the notice issued by the District Magistrate of Champaran. Now, it is necessary for the House to understand how this notice was served at the mere direction of the Commissioner of the Division. The letter of the Commissioner of the Division is dated the 13th April, 1917, to the District Magistrate, and it runs as follows:

"Mr. Gandhi has come here in response to what he describes as an insistent public demand, to enquire into the conditions under which Indians work on indigo plantation, and desires the help of the local administration. He came to see me this morning and I explained that relations between the planters and the rayats had engaged the attention of the administration since the sixties, all that we were particularly concerned with a phase of the problem in Champaran now; but that it was doubtful whether the intervention of a stranger in the middle of our treatment of the case would not prove an embarrassment. I indicated the potentialities of disturbance in Champaran, asked for credentials to show an insistent public demand for his enquiry, and said that the matter could probably need reference to Government. I expect that Mr. Gandhi will communicate with me again before he proceeds to Champaran, but have been informed since our interview that his object is likely to be agitation rather than a genuine search for knowledge, and it is possible that he may proceed without further reference. I consider that there is a danger of disturbance to the public tranquillity should he visit your district, and have the honour to request you to direct him by order under section 144 of the Criminal Procedure Code to leave it at once if he should appear."

Sir, I ask my friend the Honourable the Home Member in all seriousness whether the terms of section 144 have been complied with in a case like that. It is the District Magistrate who must be satisfied on evidence that there is an urgent case of nuisance or apprehended danger which requires immediate treatment. From the terms of the letter which I have read out none of the elements of the section seems to be present, and to get rid of an unpleasant visitor, if I may say so, the provision of section 144 was resorted to. The reply of Mahatma Gandhi to the District Magistrate of Motihari is significant. It is a very short one, dated the 14th April, 1917.

"With reference to the order under section 144 of the Criminal Procedure Code which is served upon me, I beg to state that I am sorry that you have felt called upon to issue it, and I am sorry too that the Commissioner of the Division has totally misinterpreted my position. Out of a sense of public responsibility I feel it to be my duty to say that I am unable to leave this district, but if it so pleases the authorities I shall submit to the order by suffering the penalty of disobedience. I most emphatically repudiate the Commissioner's suggestion that my object is likely to be agitation. My desire is purely and simply for a genuine search for knowledge, and this I shall continue to satisfy so long as I am left free."

He was hauled up before the Magistrate, and he pleaded guilty to the charge of disobedience. But in consultation with the higher authorities, the case was withdrawn, and he was allowed to proceed with his work, with the result that no disturbances of any kind occurred, although the planters tried to put obstacles in his way.

Sir, during recent months this section has been so used as to convert the police and the magistracy, which really means the police, in the long run, into legislatures, creating new crimes out of acts which the existing law does not recognise as offences. I will give a few instances. A Magistrate in Madras issued an order under section 144 prohibiting the use of what are known as Gandhi caps by the public at large; and assaults and imprisonments also took place in consequence of this order. The order was ultimately withdrawn at the instance of the High Court. Another Magistrate issued an order forbidding private persons from flying what are called national flags over private houses. This order was also subsequently quashed by the High Court. Peaceful picketing, and peaceful processions with regard to the propagation of *khaddar*, for instance, have also been prohibited under the provisions of section 144 of the Criminal Procedure Code. In 1921 or 1922 our colleague, Maulvi Muhammad Shafi, was served with a notice prohibiting him from addressing a meeting within Hajipur. About the same time Mr. Anugrah Narayan Singh, who was afterwards a Member of the Council of State, was prohibited from making speech in Dumka; and at that time a number of typed copies of notices without names were kept ready by the Sub-Divisional Officer. As soon as an unwelcome visitor would come to Dumka, only the name had to be filled in in the typed copy, and he was served with a notice under section 144, asking him to leave the place, or not to deliver any speech at all. This, I submit, is a most unfair and unwarranted use of section 144. About that time in Sitamarhi, which is a sub-division of Muzaffarpur, a popular Hindi song was prohibited from being sung under section 144, because it was "sung in such a manner as to excite the audience into a frenzy and hatred for the British Government". That was the reason given in the notice, although the song itself was not proscribed. Another notice was served prohibiting a meeting in that very place, Sitamarhi, on the ground that the people attending it would commit a nuisance on the ground, and thereby probably make the place insanitary. (Laughter.) This is a most ridiculous use of section 144. In the district of Muzaffarpur there is a place called Hurdi where a mela is held every year and hundreds of cattle are brought for sale. Two or three Europeans visited that mela, and some one shouted "Mahatma Gandhi ki jai" within their hearing. The result was that a notice under section 144 was issued forbidding people from carrying lathis in that mela, or holding a meeting within a certain radius. About 1921 again, as some Honourable Members will remember, the late Mr. C. R. Das was prohibited from entering Mymensingh, because some school examination was being held at the time, and it was thought that his presence would result in drawing away some of the students from their examinations. Was this section intended to be applied like this? Sir, we know what has been recently happening in Bombay. I will read out the terms of a notice under section 144, which was served upon the Congress people in Bombay recently, and which runs as follows:

"Whereas it has been made to appear before me that the Bombay Provincial Congress Committee has been drilling, exercising and moving in formation its volunteers and other men in the Esplanade Maidan within sight of and in proximity to the Indian infantry regiments, and whereas it appears that the conduct of the Congress volunteers and other bodies of persons who are drilling, exercising and moving in formation there is of such a nature as to lead to annoyance or to provoke a breach of the peace and whereas I am of opinion that in order to prevent a breach of the public peace, riot, or affray, immediate prevention is desirable . . . to abstain from exercising, drilling or moving in formation there for a period of two months from this date."



[Mr. Gaya Prasad Singh.]

Can the lawful right of persons be curtailed in this way?

These are some of the instances in which the provisions of section 144 have been abused. The Gujrat Provincial Congress Committee appointed a non-official inquiry committee to inquire into the conduct of certain police officers who were concerned in a riot or disturbance at a place called Ranpur. Notice under section 144 was promptly issued upon the members of the inquiry committee prohibiting them from entering or making an inquiry into these allegations in the district of Ahmedabad. I submit that this is a most unwarranted interference with the personal rights of individuals, and notice under this section is a gross abuse of powers. The other day I asked a question of the Honourable the Home Member, and in reply I got the information that a dispensary was closed in Peshawar under the terms of a notice which was issued under section 144, because probably some who used to go there for treatment happened to be Congress volunteers. The history of India during the last few years has become a history of *lathi* charges, bloodshed, riot and affray. The police, it appears, break the peace almost everywhere in order, I fancy, to keep the peace; and the magistracy seems to be in an unholy combination with the Executive in trying to suppress the legitimate activities of the people under the cloak of section 144. I would therefore submit, Sir, that the time has arisen when the wide and unfettered discretion which is vested in the Magistrates and which they have so grossly abused, during recent years, should be curtailed; and with this object in view. I have brought forward my Bill. I do not want to proceed very hastily, and recognise the need of caution. So I want it to be referred to a Select Committee. If there are any imperfections in my Bill, or if a better method of improving the deficiencies could be devised, probably we shall be able to consider the same in the Select Committee. With these few words, Sir, I move. (Cheers.)

**The Honourable Sir James Crerar** (Home Member): Mr. President, I must oppose the motion of the Honourable gentleman to refer this Bill to a Select Committee. I do so mainly upon two grounds. I think that if the Honourable Member desires to establish a good case for sending a Bill of this character to a Select Committee, it is incumbent upon him to establish beyond any doubt one of two propositions,—in the first place that the powers are unnecessary, or in the alternative, that the powers are very liable to abuse, that they have been greatly abused and that the law provides no remedy against abuse. I submit to the House that on both or either of those propositions the Honourable Member has not succeeded in establishing a case. This provision of the law is no new provision of the law. It has been on the Statute Book, I think, for at least 50 years. It is not within the category—at least I do not think it can fairly be contended to be in the category—of what are sometimes called extraordinary laws. These powers were deliberately conferred by the Legislature upon the magistracy something like 50 years ago. The necessity was then clearly recognised and the necessity from time to time has arisen, and I add with the greatest regret, that in recent times the necessity has arisen more frequently and in a more acute form. Now, Sir, I do not propose to follow the Honourable gentleman in detail in his recital of various cases in which he alleges these powers have been abused. Of two

cases which occurred before the year 1923 he mentioned the case of an order served in Champaran. It is not my purpose to go into detail into unhappy chapters of so many years ago, which might now be regarded as closed and sealed chapters. As regards the particular incident in Champaran, I would only say this, that at that time the District of Champaran was very seriously disturbed, that disturbances of a serious character took place and I do not think that any candid judge would regard it as a matter of surprise that the authorities thought it necessary to use special powers.

**Mr. Gaya Prasad Singh:** I beg your pardon. There was nothing in 1917; there was no sort of disturbance in Champaran. Will the Honourable Member kindly say to what he is referring?

**The Honourable Sir James Orlor:** In any case, I think, there was considerable ground for apprehension at that time. In any case, the subsequent history of the order to which the Honourable Member has referred even on his own account does not appear to establish a very cogent case of a grave abuse of the section. Moreover those incidents took place before a very important amendment of the law to which my Honourable friend has not referred. In the year 1923 the law was amended in order to bring orders under this section under the direct review of the High Court. To that point I shall revert later. Now, Sir, the Honourable Member has urged that in recent years, and more particularly during the present year, this power has been extensively used—he has said extensively abused. I must state quite candidly that I cannot accept that proposition in any manner whatever. In issuing orders under section 144, in the numerous instances in which Magistrates have found it necessary or have deemed it necessary to issue such an order, that in some cases such an order might have been avoided without any grave effect, I am not prepared to deny. But I do most strongly deny that the power is used frequently on frivolous and unnecessary grounds, and particularly that it has been grossly abused. I will not go more fully into details of cases in which the Honourable Member alleges that the section has been used for political purposes to put it broadly. On the contrary, I feel very strongly that the whole policy of the Local Governments, who are primarily concerned in the administration of this section, of the Government of India and of the responsible Magistrates themselves, is not to use powers under this section for the purpose of checking or in any way impeding any legitimate activity, but solely and entirely for the purpose of maintaining tranquillity and protecting the general public in pursuing their lawful avocations. And I wish to remind the Honourable Member and the House that, quite apart from the use of the section in circumstances of this kind, it has been invoked and indeed it has been found of the most invaluable assistance in another class of cases of apprehended danger. Though I regret to have to recall such an unhappy state of affairs to the House, nevertheless it will be within the memory of the House that not two or three years ago there was an epidemic of sectional and communal riots, in the course of which a great deal of bloodshed took place. I do not think that any Honourable Member here will be disposed to question what I claim, namely, that, in dealing with such lamentable occurrences and more particularly in preventing them, the District Officers throughout the length and breadth of India where those

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troubles took place or were threatened were animated by only one single idea, and that was to prevent these things with their lamentable consequences and to avert bloodshed and to maintain tranquillity. Now, I assure the House, and I am sure on this point I shall have the corroboration of some of my Honourable friends who have more recent and more intimate acquaintance with the administration of the districts, when I say that in circumstances of that kind an order under section 144 is by far the most valuable weapon in their hands. Indeed I should regard it not so much as a valuable weapon as a form of insurance against the occurrence of such disturbances.

Now, Sir, I pass on to another part of the Honourable Member's proposition. It is his object to provide that no Magistrate can make an order under this section without having duly recorded evidence, and that no *ex parte* order should be passed without evidence duly recorded, and that no order, if made *ex parte*, should remain in force for a longer period than 48 hours. Sir, it is of the essence of the sound and effective use of these powers in a very large majority of cases that the order should be made promptly. It is sometimes necessary that it should be made *ex parte*. The effect of the Honourable Member's amendment would undoubtedly be to introduce in the procedure so dilatory a method that a very great part of the utility of the order would be completely lost. If the District Magistrate and the officers under his orders are to intervene in time to prevent these things, it is essential that he should be empowered to intervene promptly. It is quite a possible eventuality from the provisions which the Honourable Member proposes, that an order having been made *ex parte* will remain in force for only forty-eight hours, that the party against whom that order has been made may refuse or omit or be unable to appear or may deliberately evade appearance then that order *ipso facto*, through no fault of the Magistrate, through no fault of the Court, and possibly under circumstances of the gravest danger to the public,—that order *ipso facto* expires. That, I submit, is an impossible state of affairs. If the House is willing to acknowledge at all, and I think it will be willing to acknowledge, that in these difficult and dangerous circumstances which are postulated by the class of cases which both the Honourable the Mover and I are referring to, it is essential that the local authority, the District Magistrate or any officer who occupies a corresponding position, must be granted powers and prompt powers in proportion to his responsibilities.

I pass now to the second part of the Honourable Member's proposition. It is that an appeal should be given from an order made by a Magistrate under this section to the Sessions Judge. Well, the main practical objection to that is that essentially the action under section 144 is action for which the executive authority must be responsible. The Sessions Judge is really not the proper authority to judge either of the necessity or of the propriety of an order of this kind. At any rate he ought not to be the final authority, nor ought he to have powers to hold up the hands of the Magistrate in carrying out what he regards as a measure of essential necessity for keeping or maintaining the public peace. That is not to say that these orders should not be subject to supervision and they are subject to supervision. As I pointed out, the effect of the amendment of the Criminal Procedure Code in 1923 was to give to the High Court power.

which they had not heretofore possessed, to reverse or vary an order made under section 144. That power still subsists; and any person or party against whom an order of this kind has been made or any one who is interested or directly concerned in the order has his remedy; he can move the High Court in review.

For all these reasons, I submit that if any time were opportune at all for a proposition of this kind, the present is the most inopportune. I have endeavoured to point out very briefly and without bringing into the debate any matter of prejudice, without any recital of facts and circumstances, which at the present time it would perhaps not be wise for me to recite, I have endeavoured to point out to the House two things, that these powers have long been on the Statute book; that they have been proved to be not only extremely valuable but necessary, and that powers under this section cannot be exercised—they cannot be abused at any rate without the author of those orders being called to account before the highest court of jurisdiction in the province.

**\*Mr. C. S. Ranga Iyer** (Rohilkund and Kumaon Divisions: Non-Muhammadian Rural): Sir, I desire to take this opportunity to congratulate my friend Mr. Gaya Prasad Singh on the clarity and also the information which distinguished the speech that he gave in introducing the Bill. I admit that the Honourable the Home Member has admitted that in one or two cases section 144 had been misapplied . . . .

**The Honourable Sir James Oserar:** No, Sir; I did not admit that. What I said was that I conceived that in certain circumstances it is possible that that might have been so.

**Mr. C. S. Ranga Iyer:** The Honourable Member tells us that he did not admit it; but he says that he could conceive of circumstances—he could think that such circumstances were possible. If I understand the implications of that statement, I can take it as an admission. But whether he is willing to admit or not, I was generous enough to think that he was willing to admit that there have been out of the numerous cases, the innumerable cases of misapplication, one or two misapplications at any rate in his knowledge. That shows that the Home Department of the Government of India must inquire into this matter and find out in how many cases there have been misapplications. Perhaps, Sir, it is not within the jurisdiction of this House, or perhaps it is; but I think it will be a very good thing indeed, if the Home Department collects information on this matter as to the cases of misapplication or application within the course of the last ten or for that matter within the course of the last fifty years of this law's existence. The Home Member tells us "It is an old law; it has been in existence for the last fifty years". If only he will place before this House the information about the application of this law within the 25 years of its existence, that is to say, the first half of 25 years of its existence, and if also he publishes to the public or places before us the application of this measure for the second half of 25 years, he will discover how grossly this measure has been misapplied. He will discover that in the first half it was not applied for the purposes for which it has been applied during the second half. With the awakening of the public consciousness, with the growth of nationalism, this law,

**\*Speech not revised by the Honourable Member.**

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which great lawyers have admitted was not meant for that purpose, has been used for the purpose of suppressing national awakening. The main argument of the Honourable Member was that this is an old law. Because a thing is old it does not follow that it should live. I admire old age in certain respects. But when old age develops insanity, old age must have its natural end.

**An Honourable Member:** Old must die.

**Mr. C. S. Ranga Iyer:** That is a very good phrase indeed. My friend over there says old men, old institutions and old laws should perish. That is the course of nature, and when a fifty years' old law is not allowed to die, it must at least be allowed rejuvenation; and what my friend Mr. Gaya Prasad Singh wants is just to make the old man young so that he may not misbehave. At any rate, Sir, this law is an old law and it is a bad law, and the old law having become bad, it must go. It is hardly an excuse to say that a law has been in existence for fifty years. This British Government has been in existence for a hundred and fifty years and is becoming every day more objectionable; after one hundred and fifty years every day of its existence is being objected to by the people. The Government themselves have conceded that they are objectionable. The Prime Minister's statement is a confession of their objectionable character, and as a law is 50 years old, I say it is 50 years bad, and it must go.

Sir, the Honourable the Home Member was pleased to contradict certain statements made by my friend Mr. Gaya Prasad Singh in regard to Champaran. I would ask him to go into that question once again; I would ask him to send for the files of his Department and go through them once again. Sir, in Champaran this action under section 144 did not bear fruit. On the other hand, it enabled those who resisted that law to reap the harvest, and the Government themselves realised, having failed to use section 144 for purposes for which they wanted to use it, having failed to realise what they wanted to realise under that section, they only stooped to conquer. They conceded in that matter, and the very concession, the very triumph of Gandhi at Champaran, the very triumph of the public spirited people of Champaran and of Bihar in this matter, is a repudiation of the Honourable the Home Member's statement that the law was necessary there. On the other hand, Sir, it is only a disclosure of the fact that section 144 is time and again hurled against us; it is time and again put against us to destroy every legitimate activity of ours, and as the subsequent action of Government has proved at Champaran, our activities were quite justified, and they were justified by the Government themselves. Therefore, Sir, that argument cannot hold water.

Then we come to the Honourable the Home Member's suggestion that the original law was amended, that is to say, the old man was rejuvenated. Sir, by the provision that there could be an appeal to the High Court . . .

**Sir Hari Singh Gour** (Central Provinces Hindi Divisions: Non-Muhammadan): No appeal.

**Mr. C. S. Ranga Iyer:** I beg your pardon, revision by the High Court. My friend Mr. Gaya Prasad Singh asked "Why not take it before a Sessions Judge?". And the Home Member says how can a Sessions Judge sit in judgment over the Magistrate? That is, in short, what the Home

Member wants us to take from him. He says how can the almighty Magistrate submit to the judgment of the Sessions Judge? That, Sir, is a confession worthy of the Home Department of the Government of India, but that, Sir, is not a thing which is very agreeable to the people. They cannot swallow a thing like that so easily. We are not going to accept the Magisterial right of setting up the criterion of political goodness; we are not going to accept the Magisterial supremacy over the Sessions Judge, specially in a country like this, where the executive has been clothed with an authority unheard of in self-governing countries within the British Empire, it is I think, asking for too much on the part of the Home Member when he says that the Magistrate should not submit to the jurisdiction of the Sessions Judge. And he says there is the High Court. But does he understand, do the Government of India understand, that the High Court is not so near and not so easily accessible to the class of people who come under the punishment of section 144? The High Court is a more expensive proposition to some of our poor public men who are proceeded against under section 144. Sir, it is not proper for any Government to just force litigation, expensive litigation, on a poor and poverty-stricken people, and the most poverty-stricken political strugglers against whom this section is applied or rather misapplied.

Now, Sir, the Honourable the Home Member referred to the communal riots and the use of section 144. I take up his argument for what I consider to be an accurate statement of the matter, and I am prepared to prove to you that it is far from accurate. If section 144 had been applied to communal matters with the same enthusiasm, with the same frequency, with the same audacity with which it has been applied to political matters, possibly I might not have stood up in my place and said, "Wipe out this section or amend it". Of course, my friend does not ask you to wipe it out; he only wants to amend it. That is the only question, and I am glad the Honourable the Home Member has stated that it is also meant for communal riots. I say, Sir, it is meant more for political than for communal riots, and if the Home Member supplies to this House comparative information on how many occasions and for how many communal risings, this section 144 was applied, and if he places before this House or if he publishes through his Publicity Officer for the benefit of the people outside information as to how many communalists were proceeded against under section 144, as to how many communalists were put in prison under section 144, I for one would say that the Government were not abusing this section for political purposes, for the suppression of the expression of public opinion or the opinion of the people themselves. Sir, I know for a fact that this section has not been used for communal purposes with the same audacity, with the same recklessness, with the same lack of regard for purposes for which this section was introduced. I know that it is meant more for political purposes than for anything else. If only the Government ventured to deal with communal movements in the same manner in which they deal with political movements—I know a foreign Government cannot do it—but if the Government were to do it, it would not have justified the existence of a revolutionary and a semi-revolutionary movement, side by side, in the shape of Gandhian lawlessness on the one side and terrorism on the other. It is the abuse of these sections that create movements of that character. You want to put down political movements, and any section is good enough for that purpose. The High Court may review,

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but what does the Magistrate care for the High Court? Is there any Magistrate in this country who is afraid of the High Court, when he has the opportunity and when he feels that he has the right and the justification to use section 144? If section 144 had not been abused for political purposes and if it had been adequately used for communal purposes, if communal leaders had been dealt with for creating communal trouble, and if they had been put in prison under section 144, or if section 144 had been equally and evenly applied for communal purposes, I at any rate would have said that the Home Member was speaking of what has been in practice in this country. He was only making out a case with his ability, which I do not deny, with his shrewdness and with his capacity to produce what appears a seemingly reasonable argument when he said that section 144 must remain for communal purposes. All the more reason why he should amend it and say it is for communal purposes henceforth and not for political purposes. In that case it ought to go to the Select Committee. Sir, I always find that our men on this side are so ready to go to Select Committee when the Government come forward with a motion for Select Committee, but when some suggestion for a Select Committee comes from this side, even the most gracious of officials fight shy of it. Now, the Government could easily have taken up these matters in the Select Committee; they could easily have threshed out the questions in the Select Committee, they could easily have divided in the Select Committee and then discussed it again on the floor of the House. The very idea of the Home Member that he would not even take this to the Select Committee . . . .

**The Honourable Sir James Orerar:** The Honourable Member will recognise that to accept the motion for reference to a Select Committee implies and carries with it the acceptance of the principles of the Bill.

**Mr. C. S. Ranga Iyer:** Sir, though I admit it is generally considered that going into the Select Committee on a matter means an agreement with the principles of the Bill, in my own opinion it is open to the Government not to agree to the principle in the Select Committee which the Honourable the Mover has in mind. There is nothing to prevent you in the Select Committee from changing the principle of the Bill; there is nothing to prevent you from changing even the Preamble (*An Honourable Member*: "No, you cannot change it.") No, you can do it if you have a majority in the Select Committee. You can shape it outright; there is nothing which prevents you from doing it, though I admit that the Honourable the Home Member is right in so far as tradition has it that going into Select Committee means accepting the principle. I am quite willing to concede that he cannot go into it because he believes that it means the acceptance of the principle of the Bill. But, then, he should not mind at least other Members of the House going into the Select Committee. He should have suggested, "We are not going into the Select Committee, but I do not mind your going into the Select Committee with your friends and placing this Bill before us in an altered form and we may perhaps accept it". But, then, Sir, he is fighting altogether shy of the idea of a Select Committee.

Now, let me come to his last observation that the time is not opportune. I think it is the most opportune time and for obvious reasons. Sir, we have been flooded both from Whitehall and in this country, both by the

Prime Minister and as high an authority as we could have in the neighbourhood of Delhi—we have been flooded with what? With sympathetic statements, with conciliatory suggestions, followed by, if not complete, but more or less conciliatory actions. At such a time it is but legitimate that a measure of this kind should be brought forward. For instance, all over the country section 144 is applied and is defeating the purpose which is being, I admit, with the very best of intentions, inaugurated here and in Whitehall. It is, therefore, the most opportune time for us to discuss the inopportune character, the inopportune nature and the inopportune manner in which section 144 is being misapplied. At any rate, the Government of India ought to use their influence. I have been reading in the *Hindu* of Madras most horrid things. I have been reading to-day the discussion in the Madras Legislative Council, and my attention has been drawn to this matter by men whom you cannot by any account describe as anything but sweetly reasonable men and friends of Government. Sir, things are going on out in the country which show that the opportune move of the Government towards conciliation, however unsatisfactory so far, and however much I hope it will be satisfactory very soon, the opportune move of the Government is really being defeated in a manner not very satisfactory, and I must say, most unstatesmanlike. Sir, if the Government could not accept the motion, I should have at least expected the Honourable the Home Member to say that during this transitional stage as it were, during this negotiation stage—I would rather put it like that—section 144 would not be used for the purposes for which it has been used. On the other hand, he has throughout maintained, and maintained uncompromisingly and maintained relentlessly, that section 144 is one of the beauties of the Statute-book—a beauty who should not be shorn of her good looks, but who should remain in the same beautiful form, though fat, fair and fifty. Sir, once again, I ask the Honourable the Home Member to consider the advisability of substituting what I may call an accessible halfway house between the High Court on the one side and the district officer on the other, namely, the Sessions Judge. I would ask the Honourable the Home Member once again to ponder over the suggestion. It is not asking for too much. He may claim that a Magisterial decision must not be tampered with by the Sessions Judge. He may claim that section 144 has not been abused by those who have applied it under certain circumstances. But we claim on this side that it has been grossly abused. Therefore, the best thing for the Government as well as for ourselves is to think of a compromise. He ought to understand that there is a great feeling in the country on this matter, and the best thing for him is not to take an uncompromising view at all in view of what he has in mind, namely, the settlement of the political issue, and what we have in mind, namely, to help in that settlement. Therefore, Sir, it is necessary that he should take a kinder attitude in this matter, a more statesmanlike attitude, because I maintain that all over the country section 144 has been misapplied, has been abused. He may not concede it; he may not even suggest it; but he cannot consider that the suggestion which comes from this side of the House, being, as I imagine, in possession of the manner in which it has been used or abused out in the country—I do not think that he can dismiss our statement as a figment of the imagination. Therefore, I would very earnestly put it to him that he should concede to this halfway house between the irresponsible district officer on the one side and the High Court on the other, namely, the Sessions



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Judge. I hope and trust that the Honourable the Home Member will once again consider this matter, and when this Bill comes before this House for further discussion he will have something better to say on this matter, something more consoling to the people of this country, both to those who are lawyers and who have to appear in law courts to plead how it has been misapplied, and those who have not gone to the law courts at all but have simply defied the section and taken the consequences in their boycott of law courts. It is highly necessary that a section which arms the executive officer with an authority almost unquestioned, at any rate, not immediately questionable until the High Court reviews it—it is absolutely necessary that that section should be considered in the light in which I have presented it.

\* The Assembly then adjourned till Eleven of the Clock on Thursday, the 5th February, 1931.