

Wednesday, 27th January, 1932

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**THE  
LEGISLATIVE ASSEMBLY DEBATES**

(OFFICIAL REPORT)

**VOLUME I, 1932**

*(25th January to 17th February, 1932)*

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**THIRD SESSION**

OF THE

**FOURTH LEGISLATIVE ASSEMBLY,  
1932**



CALCUTTA: GOVERNMENT OF INDIA  
CENTRAL PUBLICATION BRANCH  
1932

# Legislative Assembly.

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## *Deputy President :*

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RAI BAHADUR D. DUTT.

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CAPTAIN HAJI SARDAR NUR AHMAD KHAN, M.C., I.O.M., I.A.

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DIWAN BAHADUR HARBILAS SARDA, M.L.A.

MR. B. SITARAMARAJU, M.L.A.

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# LEGISLATIVE ASSEMBLY.

Wednesday, 27th January, 1932.

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

## QUESTIONS AND ANSWERS.

### COST OF THE RAILWAY COURT OF INQUIRY.

65. \*Dr. Ziauddin Ahmad: (a) Will Government be pleased to state the total cost of the Court of Inquiry direct and indirect up to the end of January, 1932? What would be the total cost by the time the work is finished? When will the Court finish its work?

(b) Was the Court appointed for the satisfaction of Government, the employees of the railway, or the public?

(c) Are Government aware that the railway employees have no confidence in this Court?

(d) Have Government seen the statement of the President of the All-India Railway Federation about it?

The Honourable Sir Joseph Bhoré: (a) The Court of Inquiry is expected to finish its work by the end of this month. The total cost of the Court is estimated at Rs. 46,000.

(b) The Court was not appointed in order to satisfy the claim of any particular interest, but in order to obtain an impartial report on the matters referred to it.

(c) and (d). No.

Dr. Ziauddin Ahmad: Have not the Government seen the statement issued by the President of the Railway Federation?

The Honourable Sir Joseph Bhoré: My reply to that is, "No."

Dr. Ziauddin Ahmad: Then I will send a copy of it for the benefit of the Honourable Member.

The Honourable Sir Joseph Bhoré: I should be very much obliged to the Honourable Member.

### GRIEVANCES OF MUSLIM WATERMEN ON THE NORTH WESTERN RAILWAY.

66. \*Dr. Ziauddin Ahmad: (a) Has the attention of Government been drawn to the article on "Muslim Watermen in the North Western Railway" published in the *Eastern Times*, dated the 12th December, 1931?

(b) What action, if any, have Government taken to remove the grievances?

**Sir Alan Parsons:** (a) Yes.

(b) The matter is within the competence of the Agent and I am bringing it to his notice.

#### APPOINTMENT OF INDIANS TO HIGH OFFICES AND TO ADVISORY COMMITTEES ON RAILWAYS.

67. **\*Khan Bahadur Haji Wajihuddin:** Has the attention of Government been drawn to the leading article published on page 2 of the daily *Hamdam* of Lucknow in its issue, dated the 11th December, 1931, under the heading "*Railon ka naqis intisam kabil islah hai*" and will Government please state whether they propose to consider the advisability of appointing Indians in the high offices and to make nominations to the Advisory Committees (on the various lines of the Railways) on the lines suggested in the said article? If not, why not?

**Sir Alan Parsons:** Government have not seen the article referred to.

#### ABOLITION OF THE OFFICE OF TRANSPORTATION SUPERINTENDENT, GREAT INDIAN PENINSULA RAILWAY AT NAGPUR.

68. **\*Khan Bahadur H. M. Wilayatullah:** (a) Will Government be pleased to state when the office of the Transportation Superintendent, Great Indian Peninsula Railway, was created at Nagpur?

(b) Is it a fact that this office was created by splitting the office at Bhusaval which previously did the present transportation work?

(c) What is the total cost per year of this office including the amount spent over house rent for the residence of the staff and for housing the office?

(d) Have Government considered the possibility of abolishing this new office in these days of financial stringency?

(e) Do the railway authorities propose to make inquiries as to whether the work in the new office is extremely light?

**Sir Alan Parsons:** (a) With effect from the 1st July, 1930.

(b) Yes.

(c) The total annual cost is estimated to be about Rs. 65,000 and is more than covered by savings effected elsewhere in the Transportation Department of the Great Indian Peninsula Railway.

(d) It would not be economical to do so.

(e) No.

#### DISPOSAL OF INTEREST ACCRUING ON SAVINGS BANK DEPOSITS AND WAR BONDS HELD BY MUSLIMS.

69. **\*Khan Bahadur H. M. Wilayatullah:** (a) Is it a fact that orthodox Muslims did not draw the amount of interest accruing on their Postal Savings Bank deposits and War Bonds?

(b) Did Government make inquiries from leading Muslims and Muslim institutions to ascertain their wishes regarding the disposal of the amount?

(c) Will Government kindly state what the general opinion was regarding the disposal of the amount? Has the money been disposed of accordingly? If not, will Government kindly state what they intend to do with the amount?

**The Honourable Sir George Schuster:** (a) Government understand that some Muslims do not draw interest on postal savings deposits and Government securities.

(b) Yes.

(c) Divergent opinions were expressed and Government decided to continue the present practice in the absence of any response to the offer to constitute a special fund. I would refer the Honourable Member to Mr. Brayne's reply to the Honourable Sir Haroon Jaffer's question No. 118 on the 12th September, 1927, in the Council of State, which reply indicates the action which Government were willing to take.

**Dr. Ziauddin Ahmad:** Is it not a fact that the exact amount under this head is shown by Government in the Budget or at some other place? What is the sum standing in this account?

**The Honourable Sir George Schuster:** I shall be glad if my Honourable friend will give me an opportunity to inquire into this matter. According to my recollection, there is no place in the Government accounts where this sum is shown.

#### HOSPITALS FOR BRITISH AND INDIAN TROOPS AT KAMPTEE.

70. **\*Sir Hari Singh Gour:** (a) Will Government be pleased to state the number of Indian and British troops stationed at Kamptee?

(b) Are there two separate hospitals there—one for the British and another for the Indian troops?

(c) If so, what is the cost of maintenance of each?

(d) How many indoor and how many outdoor patients were served in each hospital during the last two years?

(e) How many beds are maintained in each; and how many of them are occupied on an average daily?

**Mr. G. M. Young:** I lay on the table a statement giving the information.

#### Statement.

(a) In December last, there were 25 British Officers, 656 British other ranks, and 630 Indian officers, other ranks and followers in Kamptee.

(b) Yes.

(c) As the cost-accounting system is not now in force it would not be possible to ascertain the cost of maintaining any single hospital without an undue expenditure of time and labour. It is estimated that in 1926-27 the cost of the British Military Hospital at Kamptee was about Rs. 1,23,000 and that of the Indian Military Hospital about Rs. 44,000.

(d)

#### *British Military Hospital—*

Indoor patients—687 in 1930 and 549 in 1931.

Outdoor patients—1,371 in 1930 and 1,436 in 1931.

*Indian Military Hospital—*

Indoor patients—145 in 1930 and 227 in 1931.

Outdoor patients—1,177 in 1930 and 1,459 in 1931.

These figures do not include private servants and their families.

(e) 64 beds in the British Military Hospital and 35 beds in the Indian Military Hospital.

The average numbers of beds occupied daily in the British and Indian Military Hospitals at Kamptee are 16 and 8, respectively.

**AMALGAMATION OF THE HOSPITALS FOR BRITISH AND INDIAN TROOPS AT KAMPTEE.**

71. **\*Sir Hari Singh Gour:** (a) Is it a fact that the Railways which employ both Europeans and Indians have a single hospital in places like Nagpur?

(b) And is it a fact that an Indian medical officer is in its charge?

(c) Is it a fact that the Chief Medical Officer of the Great Indian Peninsula Railway is an Indian?

(d) What objections are there to the amalgamation of the two hospitals at Kamptee and elsewhere?

**Mr. G. M. Young:** (a) and (b). The information has been called for and will be furnished to the Honourable Member in due course.

(c) I am informed that an Indian officer had the appointment in an officiating capacity for nearly 4½ months in 1931.

(d) The policy of Government is to amalgamate British and Indian military hospitals wherever possible, and there are now 40 combined military hospitals in India. In certain stations, however, the distance between the British and Indian barracks is so great that amalgamation would entail hardship on the sick and an increase in transportation charges. There would also be additional expenditure in the erection or extension of buildings. At Kamptee the distance between the two hospitals is about three miles.

**Sir Hari Singh Gour:** In that case may I beg to inquire why a single hospital should not have a lorry to carry the passengers from one hospital to the other in Kamptee?

**Mr. G. M. Young:** I thought that the point of my Honourable friend's proposal was that there should be one hospital.

**Sir Hari Singh Gour:** Yes. I think the Honourable Member did not understand my question. The distance between the British regimental quarters and the Indian regimental quarters in Kamptee is not three miles but less than a mile. That being the case what difficulty is there to have a single hospital for the British and the Indian Regiments in view of the fact that the Honourable Member will find that both these hospitals have got a very small number of beds, under 20 or 25?

**Mr. G. M. Young:** I have explained the reasons in my answer to the main question. Amalgamation would entail hardship on the sick, and an increase in transportation charges. There would also be additional expenditure in the erection or extension of buildings.

**HOSPITALS FOR BRITISH AND INDIAN TROOPS IN MILITARY STATIONS.**

**72. \*Sir Hari Singh Gour:** (a) Will Government be pleased to state whether the dual system maintained at Kamptee is also observed in other military stations in India?

(b) If so, will Government name the stations and state the costs of the two hospitals for the British and Indian troops, the beds occupied in each and the number of patients treated during the years 1929-30 and 1930-31?

**Mr. G. M. Young:** (a) Yes.

(b) As stated in my reply to part (c) of question No. 70, it is not possible to give the cost of each hospital, but I will furnish the Honourable Member with a statement giving the other information desired.

**ORGANISATION OF AN INDIAN INDUSTRIES FAIR.**

**73. \*Sir Hari Singh Gour:** (a) Is it a fact that the eighteenth British Industries Fair is announced to be held under the auspices of H. M. Department of Overseas Trade between February 22nd and March 5, 1932?

(b) Is it a fact that such fairs are annually held in France and the "Paris Fair" is one of them?

(c) Will Government please state whether they have striven to hold similar fairs in India? If so, when, and with what result? If not, why not?

(d) Do Government now propose to arrange holding of similar fairs in order to popularize the products of Indian industry?

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

(b) The Government of India have no information.

(c) and (d). The development of industries is normally a provincial transferred subject and the Government of India have not, therefore, undertaken the promotion of fairs in India nor do they propose to do so.

**Sir Hari Singh Gour:** Is there a Member of the Executive Council in charge of industries in the Government of India? If so, what does he represent?

**The Honourable Sir George Rainy:** Undoubtedly, Sir. But the fact remains that the development of industries is a provincial transferred subject.

**Sir Hari Singh Gour:** May I beg to inquire as to what are his functions if he is in charge of the industries and has no industries to control?

**The Honourable Sir George Rainy:** I doubt if this question arises out of the answer I gave, but if the Honourable Member desires the answer, perhaps he will give notice.

**Sir Hari Singh Gour:** The question has arisen out of the main question already put, namely, question No. 73.

## LAWRENCE SCHOOLS IN INDIA.

74. \*Sir Hari Singh Gour: (a) How many Lawrence Schools do Government maintain and where, and what is their purpose?

(b) How much do they cost?

(c) Are they debited to military account? If so, under what head; if not, to what account are they debited?

(d) How many of the parents of children in each of these schools are officers or soldiers on the Active List in the regular Army in India?

(e) How many of these are stationed in places where there are no Army schools?

Mr. G. M. Young: (a) Government maintains the Lawrence School at Sanawar, and contributes towards those at Ghora Gali, Mount Abu and Lovedale.

Their purpose is to provide education for the orphans and children of British soldiers and ex-soldiers.

(b) and (c). The cost to the Central Government as taken in the Army Estimates for the year 1931-32 under Head II-A (ii), minor heads (e), (f), (g) and (m) (10) was as follows:

Sanawar	...	Rs. 2,86,800
Ghora Gali	...	Rs. 11,440
Mount Abu	...	Rs. 33,550
Lovedale	...	Rs. 2,80,000
(d) Sanawar	...	73
Ghora Gali	...	64
Mount Abu	...	16
Lovedale	...	78
(e) Sanawar	...	14
Ghora Gali	...	6
Mount Abu	...	1
Lovedale	...	4

Sir Hari Singh Gour: Would it not be cheaper in such cases to transfer these boys and children of the soldiers and ex-soldiers to the already established European schools on the other hills?

Mr. G. M. Young: The question of obtaining economies by using either the Lawrence Schools or the military schools but not both, is at present under consideration.

## SCHOOLS FOR THE CHILDREN OF BRITISH SOLDIERS.

5. \*Sir Hari Singh Gour: (a) How many schools are provided for the education of the children of British soldiers; and what is their cost?

(b) How many of the schools are in the hills and what is their cost?

Mr. G. M. Young: (a) and (b). There are 54 schools in the plains and 24 in the hills. The latter are open for the summer months only. The

number in the plains varies slightly, as Army Commanders are empowered to open or close detachment schools according to requirements. The cost of each class of school cannot be readily ascertained, but the total cost for the year 1930-31 was about Rs. 5½ lakhs.

APPOINTMENT OF MUSSALMANS TO GOVERNMENT OF INDIA DEPARTMENTS.

76. \*Seth Haji Abdoola Haroon: (a) Has the attention of Government been drawn to an article under the heading "Clerical Staff in Government of India", which was published in the *Eastern Times* of Lahore in its issue of the 20th November, 1931?

(b) Will Government please state whether the figures of strength of the various departments shown therein are correct and, if not, will Government please lay on the table a statement showing in detail the correct figures?

(c) What are the reasons that led the authorities to make such differentiation between Hindus and Mussalmans as regards the strength of the clerical establishment?

(d) Do Government realize that the existing proportion of Muslims in the various departments of the Government of India is inadequate, and if not, what action do they propose to take to bring about number of Muslim employees sufficiently up so as to maintain the equilibrium in comparison with other communities in the departments mentioned above?

The Honourable Sir James Crerar: (a) I have seen the article referred to.

(b) The figures are substantially correct, but the percentage of Hindus against item 2 should be 59.26 instead of 60 and that of Muslims against item 16, 16.8 instead of 15.8. If the Honourable Member will refer to the annual statements from which the figures have been taken for a few Departments only, and which are available in the Library of the House, he will find that the position from the Muslim point of view is not so unfavourable for the Government of India establishment as a whole, as the article suggests.

(c) and (d). As has already been explained, the policy of Government is to prevent the undue preponderance of any one community in the services. As the orders of 1926 reserving 1/3rd of the permanent vacancies for minorities can only be given effect to when vacancies for direct recruitment occur, the correction of under representation must necessarily be gradual. A perusal of the annual returns showing the communal composition of the clerical staff, which have been prescribed with a view to ensure that practical effect is being given to the policy of 1926, will however show that in most of the offices in question the percentage of Muslims has increased since 1926.

MUSLIM ASSISTANT SURGEONS ON THE NORTH WESTERN RAILWAY.

77. \*Seth Haji Abdoola Haroon: Will the Honourable Member for Railways please state:

(a) the total number of assistant surgeons on the North Western Railway and the number of Muslims among them; and

(b) the total number of sub-assistant surgeons and the number of Muslims among them?



**Sir Alan Parsons:** With your permission, Sir, I propose to reply to this and the following question together.

I have called for certain information from the Agent, North Western Railway, and will communicate with the Honourable Member on its receipt.

#### APPOINTMENTS ON THE NORTH WESTERN RAILWAY.

†78. **\*Seth Haji Abdoola Haroon:** Will the Honourable Member for Railways please state:

- (a) whether it is a fact that appointments on the North Western Railway are made through Selection Boards;
- (b) if the answer to part (a) above be in the affirmative, whether the same procedure is adopted in the recruitment of assistant surgeons;
- (c) how many Selection Boards have been held since the inauguration of the new scheme;
- (d) whether there are any instances of recruitment without Selection Boards; if so, what the total number is of such appointments made, giving also the number of (i) Hindus, (ii) Muslims, (iii) Sikhs; and
- (e) whether there are any instances of appointments having been made in a hurry first and placed before the Selection Board for formal approval subsequently and if so, the total number of such appointments made, giving the number of (i) Hindus, (ii) Muslims, (iii) Sikhs?

#### REVERSION TO PREVIOUS APPOINTMENTS OF CERTAIN ASSISTANT SURGEONS ON THE NORTH WESTERN RAILWAY.

79. **\*Seth Haji Abdoola Haroon:** (a) Will the Honourable Member for Railways please state whether it is contemplated to revert the I. M. D. Assistant Surgeons on the North Western Railway to their previous department?

- (b) If so,
  - (i) since when,
  - (ii) how many have been reverted since then; and
  - (iii) whether the Honourable Member is prepared to take necessary steps to send them back as early as possible in the interest of economy?

**Sir Alan Parsons:** (a) No.

(b) Does not arise.

#### RESOLUTION RE IMPERIAL BANK OF INDIA.

**Mr. T. N. Ramakrishna Reddi** (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, the Resolution which has been moved in the Simla Session the discussion of which had been adjourned for want of quorum reads:

"This Assembly recommends to the Governor General in Council that a Committee of Inquiry be appointed to enquire into the working of the Imperial Bank in all its various branches."

The Imperial Bank is the creation of a statute of the Legislature in 1920. The forces that were responsible for amalgamation of the three banks at that time had their origin in the great war. Before the war

†For answer to this question, see answer to starred question No. 77.

these Presidency Banks were commercial rivals with each other and with regard to Government business they were co-operating. When the war came these three banks vied with each other to come to the help of the Government by floating loans, treasury bills, etc., and thus helped Government to a large extent. After the war, the Government thought that there was no use of allowing these banks to be commercial rivals while they were all united in the business concerning Government, and further the Government thought that it would be very good for the industrial and banking development of the country if it placed the Government treasury balances with one centralised bank instead of distributing, then among three banks as they had existed. And so the matters were discussed and finally the Imperial Bank Act, 1920, was passed. But actually the Bank came into working about January 1921. Under the Act certain privileges were given to the Imperial Bank as also certain restrictions were placed on its working. The most important of the privileges is to deposit all cash balances of Government with the Imperial Bank without taking any interest at all. This is a very important privilege because at times the Government balances come to the tune of 20 crores. So, these 20 crores or something less will be deposited in the Imperial Bank without Government taking any interest at all. In return for that the Bank has to do the treasury business of the Government and also to carry on the loan policy of Government and the Bank also shall undertake, within a period of five years, to open as many as 100 branches in all the important towns. The Bank has fulfilled this opening of 100 branches within the specified time. Certain restrictions were also placed on the Bank, namely, that the Bank should not compete with foreign exchange banks and further it should not borrow money outside India and also it should not lend money for more than six months. All these restrictions were placed on it on the principle that when the Bank has Government balances, it should not venture on risky transactions. With all these privileges and restrictions the Imperial Bank came into existence. At that time the Government expected many benefits to arise out of the working of the Imperial Bank of India Act. The Government expected, and the country also expected, that with the starting of these new branches in all the important towns, it would attract large amounts of deposits from the local people which were lying dormant in hoards. In up-country they also thought that these branches would help the indigenous banks in times of financial difficulty. It was also expected that these branches would help the growth of industrial, agricultural and joint stock banks in up-country. They also thought that with large Government balances remaining in the hands of the Bank, the Bank would help the country in times of financial stress. These banks it was also thought would also help Indians in training in the science of banking and also provide them with appointments in the banks. We have to consider whether these expectations raised about the working of the Imperial Bank have been realised after its work for over ten years. I may say at once that this privilege of Government placing all their money balances with the Bank was for ten years and these ten years have now lapsed.

Now, Sir, with regard to the first expectation that the Bank would attract large private deposits, experience shows that it has been an utter failure. In the year 1920, i.e., the year when it came into existence, private deposits were existing to the extent of 78 crores and then they gradually deteriorated. In the year 1921 they were 65 crores, in 1922,

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57 crores and so on, until in the year 1929 there were 72 crores. Thus there is a gradual deterioration in the deposits of money in the Imperial Bank and its branches throughout the country, in spite of the fact that there were nearly 165 branches. There were 100 branches opened after the Act and there were already 65 before the Act. In spite of the fact that there were so many branches established and the banking facilities were taken to the very doors of persons the private deposits showed no increase but on the other hand they have been deteriorating. So there must be some very valid and important grounds for this deterioration and it is worth while inquiring into those grounds.

Then, Sir, with regard to the second expectation, that is, helping the growth and development of indigenous banks, we may see whether the Imperial Bank is coming to the rescue of such banks in days of financial distress. With regard to that there were innumerable complaints made against the way in which this Imperial Bank, with all the prestige of its being a Government bank and with all the facilities which it has got of having crores of rupees of treasury balances remaining with it without interest, has used these privileges to crush the indigenous banking movement. There are many instances of this. I do not want to weary the House with quoting all of them but I will quote one or two instances that were stated before the Banking Inquiry Committee. This is what we find in the Majority Report in volume I at page 105:

"The following is an extract from the Report of the Bengal Committee:

"In the mofussil it has been stated that the branches of the Imperial Bank evince a lack of sympathy in their attitude towards the indigenous bankers. Evidence has been received from two firms in Dacca that the local branch of the Imperial Bank refuses to rediscount *hundis* bearing the endorsements of even the firms of highest repute in Dacca town. A complaint has also been made that the Imperial Bank does not afford any special facility or consideration even to the old, reliable and substantial Indian firms."

Then in volume II, page 16, the following evidence has been recorded:

"The Imperial Bank except in a few instances has never sympathetically looked upon the struggling Indian banks but has at every opportunity entered into competition with them at times, even in an unscrupulous manner; and to expect them to co-operate with Indian banks except when it benefits them is useless."

In volume III, at page 419, this is what a witness says in answer to a question:

"They (meaning Branches of the Imperial Bank) don't help other Indian banks. If they stop with doing their legitimate duties, then nobody has any complaint, but they are really going out of their way in several respects. They threaten the customers of the Indian joint stock banks by asking the former not to co-operate with the latter on pain of losing facilities from the Imperial Bank."

There are many other instances which I will not weary the House by quoting, but these are typical of the instances. Then, Sir, with regard to the third expectation, that of helping indigenous industries and agriculture, I have to state that in the matter of advancing money for capital expenses to industries or for permanent improvements in connection with agriculture, the statute itself prohibits the Bank from lending for more than six months and so no useful purpose is served by the Bank lending money for such a short period for industrial or agricultural enterprises. The Majority Report of the Banking Inquiry Committee says at page 269:

"The Imperial Bank of India which is the biggest Indian joint stock bank that might be of some assistance in this direction."

—that is, in the matter of advancing loans to industries and agriculture—

"is debarred by statute from giving loans to industrial companies for capital expenditure, by the limitation of six months on the period of loans that may be granted by it, and by a prohibition against lending money on the security of industrial shares or immovable property. Even as regards floating capital secured by liquid assets, the Bank insists on a margin of something like 30 per cent., with the result that industries have to provide not only the whole of the capital required for financing the fixed assets but also 30 per cent. of the capital required for financing the floating assets. This attitude of the banks in India, added to the shyness of Indian capital, acts as a damper on the industrial development of India."

Then, Sir, with regard to the granting of loans even for these six months, there are various instances brought to the notice of the Banking Inquiry Committee where they have shown racial discrimination. In this connection I may state that even though the Imperial Bank is considered to be a national bank, yet the non-Indians have invested more in the share capital than the Indians. Non-Indians have contributed to the extent of 284 lakhs whereas Indians have contributed 275 lakhs. Further, it is mostly if not entirely governed and managed by non-Indian Directors; and so we find that this racial discrimination in the matter of granting loans to Indians has been going on. With regard to this the Majority Report states on page 271:

"Some complaints have been made about racial discrimination on the part of the officers of the Imperial Bank of India when considering applications for credit. It has been suggested that the European managers of the Bank on account of their methods of living and social habits have greater opportunities of coming in closer personal contact with European clients than with Indians and that this personal information and contact result in more favourable treatment being accorded to European concerns than to Indian concerns. It is further generally believed that the Bank lends to European concerns more freely than to Indian concerns and that several Indian concerns which took the Bank's assistance have had bitter experience. It has been suggested that while non-Indian concerns get fuller assistance from the Bank, the assistance rendered to Indian concerns is very small and falls much short of the actual requirements of the concern."

In Vol. I, Part II of the Minority Report, they quote a passage from the External Capital Committee's Report by Mr. Goswami. It reads thus:

"I should like to express the common belief,—for which I know there is a good foundation in actual facts,—that racial and political discrimination is made in the matter of credit, and that Indians usually do not receive in matters of credit the treatment that their assets entitle them to, while, on the other hand, British businessmen have frequently been allowed larger credit than what on ordinary business principles they ought to have got. This is a matter for inquiry."

Sir, this is also a matter for inquiry. I might point out that this evidence is borne out by certain facts. For instance, the non-Indian deposits in the Imperial Bank, both current and fixed amount to 828 lakhs, while the advances given to non-Indians come to about 11 crores 70 lakhs; the Indian deposits amount to 38 crores 81 lakhs, whereas the Indian depositors are given advances to the extent of only 30 crores and 38 lakhs. Thus in the case of non-Indians they are getting advances in excess of their deposits, whereas in the case of Indians they are not getting loans even to the extent of their deposits. This is really a very serious matter, Sir, and it requires careful consideration and inquiry.

Then, Sir, with regard to the last hope which the Government raised of training Indians in banking habits and to hold higher posts in the Imperial Bank, let us consider for a moment how far the Bank have fulfilled our expectations in this respect. Government looked forward for

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the opportunity the Imperial Bank would afford to train Indians in all its various branches, and they thought that gradually Indians would be trained in the science of banking and that they could be appointed in large numbers in higher posts. But what do we find, Sir? There are now on the staff of the Imperial Bank 43 Indian staff officers as against 80 Europeans, and during the year 1925 there were fresh appointments made of 32 Europeans and 14 Indians on the staff of the Imperial Bank, and ever since that time some more appointments were made, namely, 23 Europeans as against 17 Indians. Thus it will be seen that though there were some appointments of Indians made, yet side by side with those appointments of Indians more Europeans have been brought in. I therefore urge that at least until a larger proportion of Indians is brought into the management, the non-Indian recruitment must be stopped. It must be remembered that the Bank exists not merely for earning dividends for its shareholders, but it exists for the development of the country resources, for teaching banking habits to the people of the country, and also for helping the country generally in its agricultural and industrial development. It is because the taxpayer's money is deposited in the Bank to the extent of nearly 20 crores, Indians naturally expect that these funds should be utilised for the industrial and agricultural development of the country, and not merely for paying larger and larger dividends to its shareholders. The Bank is declaring nearly 16 per cent. dividends to its shareholders. Sir, the Act is also somewhat defective in that respect, because it does not fix any maximum amount of dividend to be paid to the shareholders so that any dividend that is earned over and above that maximum should be utilised for the training of Indians in the science of banking and also to provide funds for sending Indians to foreign countries like Germany, England and France where, it is an admitted fact, banking has developed to a very great extent, while India does not provide such a vast field for training in the science of banking. There is absolutely no provision in the Act for earmarking a certain amount for financing industries, and so the Act should be amended in such a way as to enable the Bank to give direct help to indigenous industries or to give advances to industrial banks to help the industries of the country. Further more, Sir, I strongly suggest that the Act might be so amended to as enable the Imperial Bank to place a part of its aggregate resources at the disposal of agricultural and co-operative banks so that these small banks might advance money to agriculturists and relieve them from their indebtedness. These are the things which the Committee that might be appointed might go into.

Then with regard to some of the restrictions placed on the Imperial Bank, the most important restriction is that it is not allowed to do exchange business. At present that is entirely managed by the foreign exchange banks; all the exchange business that is done in India is in the hands of foreign banks; and the one bank which could effectively compete with all these foreign banks and which could provide facilities for Indians is the Imperial Bank, which however has been precluded from entering into the exchange business. So much so, that all the important exchange business is in the hands of foreigners. The reason why this restriction has been imposed on the Imperial Bank is, it is alleged, that the large cash balances of the Government are lying with it and that they ought not to take any risks which would be entailed, if the Bank were allowed to do exchange business. But, Sir,

the Government themselves and the Secretary of State as well carry on exchange business by the operation of the sale and purchase of Council Bills, and so when responsible authorities like the Government and the Secretary of State do exchange business, there is no reason why the Imperial Bank should be debarred from doing this sort of business. Another reason why the Imperial Bank is precluded from doing exchange business is, it is again alleged that the Bank will have cash balances of other exchange banks with it, and so it ought not to compete with other exchange banks, but that, to my mind, is no valid reason. Is the Indian trade to be left entirely to the facilities offered by the foreign exchange banks? The total volume of foreign exchange business in India aggregates to something like six hundred crores, and all this is left in the hands of foreign exchange banks. I therefore think, Sir, that this restriction imposed on the Imperial Bank should be removed, and this is also a point for the consideration of the Committee. Sir, I do not want to take up any more time of the House. As the ten years' period agreement has also expired, it is time to consider how best we can amend the Act so as to make the Imperial Bank serve the needs of the country more effectively than it has been doing, and also to remove the suspicion and distrust of Indians. Further, there is the question of a Reserve Bank

**Mr. President:** The Honourable Member has only two minutes more.

**Mr. T. N. Ramakrishna Reddi:** I am concluding. If a Reserve Bank is at all to be established then the question is what should be the position of the Imperial Bank. There cannot be two State banks existing side by side. So in order to consider all these things, a committee is absolutely necessary to go into the working of the Imperial Bank in all its various branches and to submit recommendations with regard to the changes which should be made in the constitution of the Imperial Bank. With these words, I move the Resolution that stands in my name.

**Mr. Lalchand Navaraj (Sind: Non-Muhammadan Rural):** Sir, this is a subject to which I have devoted some attention from the year 1928 when I entered this Assembly. This Resolution is a very modest one asking for an enquiry into the affairs of the Imperial Bank. It cannot be denied that the Imperial Bank is the largest bank now in India. It also cannot be denied that it has been created by a statute. It also cannot be denied, as has been stated by my Honourable friend on my right in detail, that the Bank enjoys many privileges and many benefits from the Government which any bank can enjoy. It has large balances of Government with it without any interest. The loan policy of the Government is conducted through it. In one word, I may say that all the coffers of the Government are in its hands and as I will show you presently, the Bank is not responsible to the people; it is not responsible to the Government either. To allow such a bank to carry on its activities with Government money and to carry on in this bad manner is I think a thing which should be immediately remedied. It also cannot be denied that there are large deposits made by the people of this country with this Bank, and therefore, the Bank is responsible to the Government as well as to the people.

Now, with regard to its responsibilities, I think its main responsibilities have been described by my Honourable friend, the Mover of the Resolution. He has said that one of the obligations on the Bank was that it

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should help the country in a time of financial stringency and distress. I ask whether it has justified itself on that ground and whether that object has been served. I answer that question with a positive "No." Take the instance of the recent bank failures in India. The Peoples' Bank of Northern India failed, but it has since then shown that it can be revived, and if the Imperial Bank had come to its assistance, that bank would not have failed. That is a typical instance of the failure of the Imperial Bank to do its duty. Then come to the training of Indians in banking business. I am sorry to say that in that direction also they have failed. They have not trained Indians to such an extent or even to an appreciable extent, so that Indians can carry on banking business independently. The next point refers to the employment of Indian officers in their branches. Here there has been a total failure. There are very few Indian officers in the higher posts. The Governors of the Bank and the officers of the Bank who carry on the administration refuse to admit that the public or the Government have any hand in directing or even advising them that the number of Indian officers should be increased.

Then, as regards administration itself, I think it is a total failure. Their own establishments, their own shroffs, their own clerks and others are all dissatisfied with the way in which the administration is being carried on. I will show you that there are certain restrictions placed on those people, which are of an inhuman character. Sir, in 1928 when I entered this Assembly, on the 6th September, I asked questions pointing out that the administration of the Bank was far from satisfactory and whether the Government was going to help the country in improving it. I asked whether it was not a fact that the Imperial Bank was holding its office from 9-30 A.M. to 7-30 P.M. Then I asked if it was not a fact that the shroffs in the Imperial Bank had to submit a letter of responsibility for deficit of cash arising in their absence while going on leave for a short period. You can understand how inhuman it is, how absolutely wrong it is. Again I pointed out with regard to the salaries of the employees that there was not a proper method adopted to meet that question. What was the reply to all these questions? I, as a representative of the people, came to this House and asked Government to give us help. And what help did the Government give? This is the reply that was given by the Government. "Government have no information and they are not at liberty to enquire into the matters alleged as the Imperial Bank of India is not a Government institution." If it is not a Government institution, if it has no responsibility to Government, if it wants to work in a way that Government could not expect to get any information or correct their methods, let the Government withdraw all the money that they have deposited with the Imperial Bank, and then see if they don't come to their senses. Pass a Bill or make an enquiry, be satisfied and then legislate suitably. The point was not left there but it was pursued, and in 1929, Mr. Vidya Sagar Pandya asked in the Assembly:

"In view of the state of affairs in the administration of the Imperial Bank of India, as disclosed in starred question No. 199 by Mr. Lalchand Navalrai on the 6th September, 1928, do Government propose to take steps to secure powers under the renewed agreement to take cognisance of such affairs."

Now, we know that there is an agreement between the Imperial Bank and the Government of India, and what is required is to make the agreement of such a nature that the Imperial Bank may not say that no one can

question their business and their authority. Then the Honourable Sir George Schuster, for whom I must say I have much respect, was himself absolutely powerless and the reply he made was this:

"With reference to the first part of the Honourable Member's question I must point out that it is not a case of anything having been disclosed by Mr. Lalchand Navarai's question in this Assembly. Certain allegations were made in that question but so far as the Government is concerned, these allegations have been in no way established."

Well, I am very sorry but I will ask the Honourable Member, who happily is present to-day, whether he has made any inquiry into those allegations since. Government to our knowledge have not made any inquiries. They are not prepared to help the country by making the Imperial Bank responsible to us. I therefore ask the House to pass this Resolution in order to compel the Government to have legislation on this point or at least to make an inquiry to find out if these allegations which they say are not established are true or not. I assert they are true. Then the Honourable the Finance Member began consoling us by saying:

"Moreover since the existing agreement with the Imperial Bank of India does not terminate until 1931 the question of its renewal or of the conditions which might be attached to such renewal has not yet become a practical issue."

Is it not a practical issue now, I ask? We have passed the year 1931. The agreement has to be made. Therefore this is the fittest time to accept the Resolution of my friend, Mr. Reddi. This was not all the effort made. The controversy has been carried on up till now. In 1929 Mr. B. Das, who is always active on this side of the House in attempting to get things set right, actually put in a private Bill. That was a Bill to amend the Imperial Bank of India Act. He did it with the object of making an agreement with the Bank to the effect that if they meant to be profitted by Government money, they should undertake to be responsible to the Government for their mismanagement. Now, we know how difficult it is to have a private Bill passed through the House. It was introduced but it has not seen the light of day yet. In 1925 Mr. Goswami put certain questions with regard to the staff of the Bank and the Honourable Sir Basil Blackett replying on the 24th February, 1925, said that no departure from the arrangements provided for in the Imperial Bank of India Act can be made unless the Act is amended, I say, let the Government undertake to amend the Act. In subsequent years questions were asked if the Government of India had been approached by the Governors of the Imperial Bank for the renewal of their contract and if so had they reached any conclusions regarding the renewal of the contract and other questions. The answer was:

"Under clause 16 of the agreement between the Imperial Bank and the Government, the agreement may be terminated on the 27th January 1931 or at any time thereafter by either of the parties giving notice of their desire to terminate it and if such notice is given the agreement will cease to operate 12 months after the giving of the notice. In the absence of any such notice by either party, the agreement automatically remains in force. The earliest day on which the Imperial Bank could give 12 months' notice of the termination of the agreement would be the 7th January, 1930. No such notice has yet been received from the Bank. The Government of India could give 12 months' notice of the termination of the agreement on the 27th January, 1930 or any subsequent date. They have considered whether such notice should be given but have decided not to do so for the present. There are many reasons why it is difficult to make a final decision at the present stage pending the Report of the Banking Inquiry Committee and the Report of the Statutory Commission".

**Mr. President:** The Honourable Member's time is up.



**Mr. Lalchand Navalrai:** Then I submit that no reasons have been shown why the contract should not be changed and the responsibility of the Imperial Bank secured. With these words, I support the Resolution.

**Mr. Muhammad Azhar Ali** (Lucknow and Fyzabad Divisions: Muhammadan Rural): Having some experience of co-operative banking in India, I have found that the Imperial Bank of India does not in any way help to meet the needs of the co-operators in India. I was at one time acting as Manager of one of the Central Banking Unions and I wanted the Imperial Bank to discount the notes of the Co-operative Bank. The Allahabad Bank of Lucknow was prepared to discount these notes but the Imperial Bank of India did not. My submission is that the Imperial Bank holds very great deposits of Government money which comes from the landlords and tenants and still no help is given by the Imperial Bank to the co-operative societies in India. I have also found in my own experience that the Imperial Bank of India does not give the same consideration to all the sections of the people. It makes a sort of discrimination between one community and another. I know there is discrimination in favour of the relatives of the Treasurers of those banks. I myself went to the Agent of a Bank and asked him whether he could take any other class. He asked me to provide a proper candidate. I provided him with an undergraduate who knew mathematics very well and was a good accountant, but to my great surprise I was told only the next day that the boy could not be taken in for reasons best known to him. There will not be other instances wanting if only a proper inquiry is made such as that suggested by my friends, Mr. Navalrai and the Mover of the Resolution. Such racial, or whatever discrimination you may like to call it, is found everywhere, if I mistake not. As regards other points, I do not wish to take up your time any more, but I am sure that, if inquiries are made, there will be many complaints brought forward about the working of the Imperial Bank. With these remarks, I sit down.

**The Honourable Sir George Schuster** (Finance Member): Sir, I have listened with considerable interest to the speeches which have been made on this matter, but the speakers will not I hope take it amiss if I say that I had hoped to get something of more interest from their speeches than what I have actually received. Most of the points which have been made are points which are very familiar to us; and I think I may say that practically all of them were put before the Central Banking Inquiry Committee from various sides and have been dealt with in some way or other in the Report of that Committee. I make that remark because it is relevant to the line which I shall take in dealing with this motion. There is really only one question which Honourable Members have got to ask themselves, and that is whether the present moment is an appropriate one to initiate a full-dress inquiry into the working of the Imperial Bank. The point I would put to the House is that the present moment is not an appropriate moment for doing that. There are three main reasons for my taking that line. The first is that, as I have already indicated in my remarks, a great deal of the subject-matter which has been dealt with in this debate, and which forms the ground on which the motion has been moved, has been dealt with in the Report of the Central Banking Inquiry Committee. The Government now have that Report under their consideration. I am sure Honourable Members will appreciate that we in the Finance Department are in considerable difficulty about taking

up all these points as expeditiously as we should like just at the present time; but I can assure Honourable Members that that Report is being very seriously studied in my Department. Point by point, we are taking up the recommendations and suggestions that they have made. We are discussing them with the Imperial Bank where the latter are concerned, and we shall in due course put our conclusions before this House and before the public. Therefore, that is one of the reasons why I say that the present moment is inopportune for starting a second inquiry. The subject-matter has very largely already been dealt with by the Central Banking Inquiry Committee.

The second reason which I would put forward just now is that, however much we try to keep down expenditure, these inquiries do cost a very great deal of money. It is very easy, when any point comes up, to say, "Let us have an inquiry into it"; and I myself must confess that I have been rather prone in the past to lend an ear to suggestions of that kind. But I have learnt by bitter experience how much these inquiries cost, and I am becoming very doubtful in my mind whether that expenditure is always justified. One gets a large number of voluminous reports. By the time they are received, the Government are fully occupied with other affairs. The attention of the country is occupied with other affairs, and reports on which so much money has been spent receive but scant consideration. These reports of the Banking Inquiry Committees, the whole banking inquiry itself in fact, afford an instance in point. I myself do not regret having initiated that inquiry. I believe that in the future the evidence that has been collected by the provincial Banking Inquiry Committees and the Central Banking Inquiry Committee will prove a store of knowledge of very great value to the country. But I would ask Honourable Members opposite to put it to themselves,—how much attention has the result of those labours received from the public just at this time when everyone's mind is turned to big political developments, to the immediate troubles in the country, or to the impending constitutional changes in the near future? Would an inquiry into the Imperial Bank now receive any more attention, and can we, in our present financial stringency, really justify ourselves in spending a great deal of money on a further inquiry? That is the practical point which I would put before this House. It applies with equal force to all Members on whatever side they sit. I do not put it as a debating point, but as a practical consideration which deserves everybody's attention.

Then, the third point I would put to the House is this. We shall have in the course of the future, I myself hope in the very near future, to consider the whole question of setting up a Reserve Bank in India. I have never disguised from this House my own feeling that that is a step which ought to be taken as soon as it possibly can be taken; and we on this side do not intend to be put off by any difficulties in tackling that question. Well, when that question comes up, the whole question of the Imperial Bank will have to be considered. When that is considered, we shall have before us a great volume of evidence and recommendations such as have been collected as a result of the recent banking inquiries. We shall have before us all the points which have been made in debates in this House when the question of the Imperial Bank comes up, and of course we shall have before us the conclusions which were reached by the Committee of the Legislature which considered the future of the Imperial Bank together with the Reserve Bank when the matter was discussed

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in 1927. I would put it to the House that we shall have before us all that is really necessary to enable Government and this House to form an opinion on the matter of what ought to be the future of the Imperial Bank; and the very nature of the speeches which I heard to-day, the very nature of the points which have been raised, convince me that I am right when I say that there is really nothing new which would be brought out by any inquiry which could be set up now. The Honourable Member who moved this Resolution in fact reinforced all his points by quoting from evidence which had been put before the Central Banking Inquiry Committee. I ask him, what further inquiry can possibly throw any further light on those points? That, Sir, is my main line for dealing with this particular motion. I do not wish to take up the time of the House to-day in dealing in detail with the various allegations that have been made about the conduct of its affairs by the Imperial Bank; but I would like to correct certain misunderstandings which I think may arise from the remarks that have been made on the other side. For example, my Honourable friend who moved this Resolution referred frequently to the very large balances which the Government of India deposit with the Imperial Bank free of interest. He referred on several occasions to a figure of 20 crores. Now I would remind my Honourable friend that although there may be occasions when the Government balance with the Imperial Bank has—for instance shortly after the issue of a large loan—risen to figures something like 15 crores or 16 crores or possibly even 20 crores, that does not represent the scale of the balances which the Government keeps with the Bank; and it is of no use to the Bank to have balances which suddenly rise to that figure because the Bank cannot make any use of money the possession of which it cannot rely upon. The only thing that matters to the Bank is the figure of the minimum balance—the minimum balance which the Government as an average keeps with them. That is what matters to them; that is the figure on which they can rely, and that figure has been settled in agreement between the Government and the Bank. I have not the papers with me, but I think I am correct in stating that the figure is something like 7 crores, and I would inform the House that very shortly after I myself arrived in this country, I had occasion to go into that matter very carefully and to consider what was a fair sum to settle as the minimum balance which the Government should maintain in order to give the Bank an adequate recompense for the services which the Bank is under obligation to undertake for the Government. We fixed the figure on which we are now working as being a figure which represented an adequate *quid pro quo* to be given by the Government to the Bank for the services which the Bank has got to perform. It may conceivably be argued that we have erred on the side of being too generous. On the other hand, according to the Bank, we erred in the other direction. They argued that we ought to keep a very much larger sum with them. Personally, I think the arrangement that we arrived at was a fair arrangement. Therefore, I want to put it to the House not only that the sum of 20 crores, which has been mentioned as the free Government balance, is totally inaccurate and a totally misleading statement, but also that the Bank is not in a privileged position in the sense that it is receiving anything like a free gift from the Government. It is a business arrangement. They give us

certain benefits and services on their side and we give them certain benefits and services on ours and the two are supposed to balance.

**Mr. Lalchand Navaijai:** Let them give you responsibility also.

**The Honourable Sir George Schuster:** I have failed to understand what my Honourable friend means when he talks about responsibility. "Responsibility" is a word which is very often used in this House in connection with a particular form of government. It implies a government which carries on its work in responsibility to a public electorate. The analogy of a government has no sort of application to the Imperial Bank. The Imperial Bank is a private institution and the Directors and the Governors of the Imperial Bank are primarily responsible—I would even say exclusively responsible—to their shareholders. They have to carry on their business in a way which will ensure profit to their shareholders and the stability of the Bank. They have also certain obligations to the Government, and their responsibility extends to conducting their business in such a way that they should be able to fulfil these obligations. I have no hesitation in saying that in the conduct of their business, the responsible officers of the Bank, so far as I have known them, have never failed in a sense of this responsibility. And I would put it to the House as a general answer to a great deal that has been said in the course of this debate, that the way in which the Imperial Bank has co-operated with the Government and has rendered assistance to the public throughout the very difficult months of last summer and autumn is a very excellent answer to practically all the charges which have been made against them. We often hear instances quoted of failures of banks which might have been avoided if the Imperial Bank had, so it is said, stepped in to help them at the right time. I should like to make a remark in that connection and that is that when all these matters are being discussed, my own impression, coming as an outsider, is that businesses in India are very apt to feel that they have a ground of complaint if somebody from outside does not help them to avoid failure. In England, I venture to say that a man who runs a business regards himself as responsible for avoiding failure; he does not look to others to help him out, nor does he think that he has a grievance either against Providence or the Government if he makes mistakes and fails to avoid their consequences. Here there seems to be a general tendency to think that if anybody gets into difficulties, either the Government or some institution like the Imperial Bank must help them out. I think it is a very dangerous tendency and, when Honourable Members talk about responsibility, I would ask them to apply that doctrine to the people who are conducting business and to try and spread abroad in the country a feeling that every man who runs a business is ultimately and solely responsible for his own success or failure. But that perhaps has taken me into rather wider issues. Coming back to the point on which I was talking, namely, the part which has been played by the Imperial Bank, I would ask Honourable Members to appreciate that it is not only the failures which matter. If they would inquire under the surface, they would find cases where failure had been avoided and therefore the public heard nothing about the crisis which might have occurred. If they would inquire under the surface, particularly in connection with what has happened during the last few months, I think they will find that the Imperial Bank acting, as I said, in co-operation with the Government, has always been ready to give its help in cases where help was really deserved. And the very fact that in connection with the recent crisis there were no serious banking failures, is, I maintain,

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conclusive evidence of the point which I am making, that the Imperial Bank has not failed in its responsibility as the leading Bank in the country.

I would just like to refer to one passage from the Central Banking Inquiry Committee's Report in connection with the point as to whether the Bank is in such a position of receiving benefits from the Government that Government have the right to step in and impose upon it a policy which its Directors on its merits as a commercial proposition would not themselves undertake. I am referring to paragraph 532 on page 372 of the Central Banking Inquiry Committee's Report. They are dealing here with one of the questions which has been raised in the present discussion, namely, the Indianisation of the staff. And they quote figures on page 372 which show what advances the Bank have made in the recruiting of the Indian staff. Then they refer to a certain condition which they have recommended in another passage that should be imposed upon the Bank. They go on to say:

"While we consider such a condition justifiable in connection with the grant of any special concessions to the Imperial Bank of India, we do not think it necessary to make any recommendation to cover the interim period before the establishment of the Reserve Bank. If the privilege of the free use of Government balances and other concessions now enjoyed by the Imperial Bank of India is a consideration in favour of the proposal of the further Indianisation as urged by witnesses, it is also to be remembered that these privileges are not given without a *quid pro quo* and that the Imperial Bank of India has to incur a large expenditure on account of the staff employed for carrying on Government Treasury business."

I quote that as a typical case where they have dealt with a particular recommendation and taken the line that at present the Bank is not enjoying special benefits from the Government which justify Government in imposing conditions on the Bank which they would not themselves adopt on its merits as a commercial policy. I do not think that it is necessary that I should take the time of the House any further in dealing with the detailed points that have been brought up in the course of this discussion. Before I conclude I will summarise again the three points that I have made in justification of the Government's attitude that the present is not an opportune moment for inaugurating an enquiry of this sort. My points are these: first, that the matter has been fully dealt with in the Central Banking Enquiry Committee's Report, secondly that a good deal of expenditure would be involved which we are not justified in undertaking just now; and thirdly that the whole matter will have to be considered *de novo* in connection with the great problems which will arise when we come to deal with the question of setting up a Reserve Bank in India, and that when that time comes we shall have before us sufficient data on which to deal with all the points to which an enquiry now could be directed. On these grounds I oppose the Resolution.

**Mr. T. N. Ramakrishna Reddi:** Sir, I do not propose to reply to all the points raised by the Honourable Member *serialim* as I do not want to press this Resolution to a division. I have brought this Resolution forward just to express the widespread feeling in the country with regard to the working of the Imperial Bank, and if Members have been impressed with the remarks, then I am satisfied. In view of the assurance given by the Honourable Member that this question is receiving the serious consideration of Government and that the points raised in this debate will be taken into consideration when this question is dealt with, I do not press it to a division.

**Mr. President:** The Resolution proposed runs:

"This Assembly recommends to the Governor General in Council that a Committee of Inquiry be appointed to enquire into the working of the Imperial Bank in all its various branches."

The question is that that Resolution be adopted.

The motion was negatived.

## RESOLUTION *RE* CHIEF JUSTICES OF HIGH COURTS.

**Mr. President:** The next Resolution stands in the name of Lala Hari Raj Swarup. As he is absent, I call upon Sir Hari Singh Gour to move the same.

**Sir Hari Singh Gour:** (Central Provinces Hindi Divisions: Non-Muhamadan): Sir, I move:

"This Assembly recommends to the Governor General in Council to convey to His Majesty's Government that in the opinion of this House the Chief Justice of an Indian High Court shall be a Barrister, a Vakil, or an Advocate, and not a member of the Indian Civil Service."

I know that Honourable Members in this House may not feel quite familiar with the subject matter of this Resolution. I shall, therefore, briefly recapitulate for their information the leading facts which underlie this Resolution. Under the Government of India Act, 1915, which is the Government of India Act now in force, section 101, the constitution of the High Courts of India is given, and *inter alia*, it is provided in clause 4 that not less than one-third of the Judges of High Courts, including the Chief Justice but excluding the Additional Judges, must be such Barristers, or Advocates as aforesaid and that not less than one-third must be members of the Indian Civil Service. Ever since the constitution of the Indian High Courts, this clause has been understood to mean, and on that understanding it has been applied that the Chief Justice of the Indian High Courts shall either be a Barrister or an Advocate.

The term Advocate was used in the special sense described in clause 3 (a), namely, a Member of the Faculty of Advocates in Scotland. I shall, therefore, for the purpose of my argument point out that ever since the constitution of the Indian High Courts under the Government of India Act, the Chief Justice of the Chartered High Courts has always been drawn from amongst the ranks of Barristers and Advocates of the Faculty of Advocates in Scotland. In 1921, my friend Mr. Iswar Saran moved a Resolution in this House giving effect to the view of the members of the Vakil Bar to the effect that the Indian Bar should be made an autonomous Bar and the distinction between Barristers and Vakilis which had hitherto prevailed should as far as possible be eliminated. The Bar Council's Committee was appointed, and as the members of the legal profession would be aware, that Committee drew up recommendations which were given effect to by the Government of India by eliminating as far as possible all practical differences between the English Barristers and the Indian Vakilis, both of them being made eligible to become Advocates of the Chartered High Courts, particularly of the High Courts of Calcutta and Bombay where the original side was till then the sole monopoly of the English Barrister. Following upon that Resolution and the action taken, one of the Members of this House, Mr. Rangachariar, tabled a Resolution which came up for discussion on 19th

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February, 1924. The purpose of that Resolution was that the office of Chief Justice of the Chartered High Courts should not be confined merely to a Barrister, and that as Vakils were then entitled to be enrolled as Advocates, it was only natural and reasonable that the provisions of section 101 (4) of the Government of India Act should be so relaxed as to permit of the appointment of the Vakil Advocate to the high office of the Chief Justice of a Chartered High Court. The Honourable Sir Malcolm Hailey, on behalf of Government, gave an assurance that the matter was being considered by the Government of India and that due steps would be taken. Thereupon the Resolution was withdrawn. After consideration of the matter promised by Sir Malcolm Hailey, the Government of India some four years later caused to be introduced in the British House of Commons a measure the effect of which was that not only Vakil Advocates but members of the Indian Civil Service were to have become eligible to the office of Chief Justice of the Chartered High Courts. This naturally created an alarm throughout the length and breadth of the country that while they were trying to redress one grievance they were trying to put in by a side track as it were the members of the Indian Civil Service, which was resented by all the members of the legal profession, and if I mistake not, by all the commercial communities in this country. That question was very ripe when the Simon Commission were taking evidence in this country, and fortunately for us the Honourable the Chief Justice of Bengal was at that time under examination; and Honourable Members will find several pages devoted to this question in the printed extract at page 413 onwards as regards the view which the Chief Justice of Bengal took on this very momentous question. I put to him two questions and my questions were these. I said:

"Under the Government of India Act you have the apportionment of the Judgeships of the High Court, one-third from the Bar, one-third from the Civil Service, and one-third from elsewhere. Now is it not a fact that in Bengal the judicial branch of the Indian Civil Service is getting more and more reduced in view of the policy of Indianisation and the establishment of the Provincial Civil Service?"

In other words, a very large number of appointments of District Judgeships which were formerly held by members of the Indian Civil Service became thrown open to and were held by members of the Provincial Civil Service and by direct recruits from the Bar with the result that it became increasingly difficult to fill in even one-third of the Judgeships of the High Court from the Indian Civil Service. Lest I should be misunderstood or misrepresent the Honourable the Chief Justice of Bengal I should like to read two passages from his replies to these questions.

**The Honourable Sir James Orerar** (Home Member): Will the Honourable and learned gentleman tell us exactly what the substantive and relevant part of the Chief Justice's opinion was?

**Sir Hari Singh Gour:** That is just what I am reading. My question to him was question No. 117, and this is the reply which he gave:

"It is the policy of Government more and more to fill the Sessions Judge's posts with people who are not from the Civil Service and their declared policy is to make the numbers of such people I have forgotten whether it is 40 per cent., or 60 per cent. In my judgment it will not be right when that policy is carried out to have a reservation of so much as one-third for the Indian Civil Service members who are no longer to be the only cadre from which Sessions Judges are to be drawn."

Then Lord Burham interjected a question which is question No. 124:

"Would that not lead to further Indianisation of the High Court?"

And the reply was:

"That is difficult to say. In this province we are now coming to a time at which the senior I.C.S. Sessions Judges are mostly Indians. Indians have been members of the I. C. S. for a good many years and quite a large number of our most senior I. C. S. Sessions Judges are Indian gentlemen. So that I do not think there is very much as regards that, but it may tend to a little more Indianisation than otherwise. My own idea is that this one-third principle had better be abandoned."

That is the decided opinion of the Chief Justice of Bengal and that opinion is based upon the fact that while in the past the District and Sessions Judgeships were filled by the members of the Indian Civil Service, they are being largely filled, and increasingly largely filled, by members drawn from the Provincial Civil Service and members directly recruited from the Bar. Now, that being the position, it stands to reason that when you have a smaller number of members, when this ratio of one-third must sooner or later be abandoned if the view of the Chief Justice of Bengal is followed—and I think it is a very sound view—then you will have a very small number of men drawn from the Indian Civil Service to become Puisne Judges of the High Court. Then, if you are to relax the condition which has been put in section 101 (4), you will have a very narrow circle for selection from the Indian Civil Service for the high office of Chief Justice of a High Court. That is the first point, a question of practical moment, but that is not all. The most important consideration that must have weighed with the draftsmen of the Government of India Act and with the British Parliament is to keep the judiciary absolutely and as far as possible independent of the executive. As is pointed out in another question,—it is a long question and a long reply and therefore I do not wish to tire the House by reading it,—but in my question to the Honourable the Chief Justice I pointed out that the High Court has got the power of supervision, direction and control over the subordinate judiciary; and that the Chief Justice, as head of the High Court, if the Chief Justice is drawn from the Bar, would be able to take that detached and impartial view, uninfluenced and unaffected by the view of the executive, in carrying out a purely judicial policy by controlling the subordinate judiciary and partially influencing the decisions of that subordinate judiciary. I think that was the underlying policy, and ever since the dawn of British rule in this country the Chief Justice of a High Court has always been a professional man drawn from the Bar, and I do not see any reason why this salutary principle which we find enshrined in the Statute should be departed from. Honourable Members will see that in 1928, when that Parliamentary Act was before the House of Commons, the Bar Associations all over India took the earliest opportunity of cabling to the then Secretary of State, Lord Birkenhead, against the reactionary recommendation of the Government of India to the effect that the Chief Justiceships should be open alike to members of the Vakil Bar as well as to the members of the Indian Civil Service; and throughout the country Resolutions were passed to the effect that if you are going to let in both, the Vakil Bar would be quite content to let section 101(4) of the Government of India Act remain in spite of the injustice that it causes to the members of the Indian Bar. The pressure and volume of public opinion in this country was so great that in the House of Commons the Under Secretary of State had to abandon the



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Bill, and that Bill died a natural death. Therefore, Sir, in the short historical retrospect I have given, I have pointed out that the Chief Justice of a Chartered High Court has always been a professional man drawn from the Bar, while we on this side are unanimous that the distinction between a barrister, a vakil and an advocate should be eliminated so that all alike, so long as they are members of the Bar,—and they are all members of the Bar,—all members of the Indian Bar, whether barristers, advocates or vakils, should be eligible for appointment to the Chief Justiceship of the Court. We draw a line, and we are as strongly opposed now as we were in 1928 to the appointment of a member of the Indian Civil Service to the high office of Chief Justice of the Indian High Court. That, in substance, is the Resolution for which I want the unanimous support of the House. I need hardly point out to Honourable Members that the whole of the Government of India Act is now in the melting pot, and if I mistake not, the Franchise Committee or some other Committee have recommended the establishment of a Supreme Court in India. Now, that Supreme Court in India will be drawn purely from the Bar, because it will be the translation of a court sitting in England known as the Judicial Committee of the Privy Council operating in India, and if a member of the Indian Civil Service becomes the Chief Justice of the High Court, we shall have broken in upon a long and honourable tradition of the Indian High Courts and an encroachment is possible upon the sacred domain of the Supreme Court that we are about to establish in this country. Honourable Members will probably remember—and if they don't they may take it from me—that during the long and glorious history of the Judicial Committee of the Privy Council dealing with Indian appeals, there has never been an occasion when a member of the Indian Civil Service has been appointed to that office, and I am sure if such an attempt had been made it would have been not only resented in this country but would have been resented by the English Bar Council as an encroachment upon their ancient privilege that all judicial appointments must and shall be held by professional men and not by service men. So far as the judiciary of England and the Colonies is concerned, it is a matter of common knowledge that the judiciary in all the major Colonies of the British Commonwealth as the judiciary in England, including the subordinate judiciary known as the County Council Judges, is drawn from the professional men. You will never find a single example of a member of the Home Civil Service or Colonial Civil Service appointed to discharge the duties of a judicial office, any more than you will find a member of the Home or Colonial Civil Service appointed to be the Civil Surgeon of a district. Now, Sir, everything is possible in India; but Members on this side of India must unite in their view that law has now become a highly technical and scientific profession, and we do not want amateurs to dabble in such a highly scientific and technical subject as law. Therefore, I ask Honourable Members on these Benches to support this Resolution.

Let me summarise in a few words what I have said so far. In the first place, I want your support on the ground that it has been the invariable practice and it is embodied in the present Government of India Act that the Chief Justice of a High Court shall be a barrister or an advocate and that no departure should be made from that practice. In the second place, this provision of the Government of India has been inserted after due deliberation by the British Parliament, and time has

shown the usefulness and wisdom of its insertion in the Government of India Act. In the third place, if you were to permit inroads by the members of the Indian Civil Service upon these high judicial appointments, you will not be able to get the same class of men today and in the near future as were available in times past when the Indian Civil Service had the monopoly of subordinate judicial posts such as those of District and Sessions Judgeships. Fourthly, I submit that the time has now come when, in view of the great complexity of the Indian law, in view of the numerous decisions that the High Courts give from day to day, you require specialists in close touch not only with the Statute law but the leading case-law, and a professional Judge should be placed at the head of the judiciary. Fifthly, you must remember that the judiciary is the palladium of the peoples' rights. It stands midway between the executive and the people, and you must therefore preserve the integrity, the impartiality and independence of the highest judiciary in this country, and that detachment, independence and impartiality can only be safeguarded by drawing a man who is not associated with the executive service. Lastly, I say that we have now come to a stage when we want that this restriction as regards the one-third for the members of the Indian Civil Service should be removed. As I have pointed out, that is the opinion of a high judicial authority, and if it were not his opinion, that is the opinion of the representatives of the people of this country. While we are anxious, therefore, to see that the technical branch of the law is placed in the hands of experts, we cannot make a departure that the head of the technical department should be any but a lawyer. On these grounds I commend this Resolution to the favourable consideration of the House.

**Mr. President:** Resolution moved:

"This Assembly recommends to the Governor General in Council to convey to His Majesty's Government that in the opinion of this House the Chief Justice of an Indian High Court shall be a Barrister, a Vakil, or an Advocate, and not a member of the Indian Civil Service."

To this Resolution notice of an amendment\* has been received from Mr. Bhuput Sing. Before calling upon him to move the amendment, I should like to draw his attention to the fact that in one part of his amendment he tries to expand the scope of the motion. I will draw his attention to Standing Order 33, which says that an amendment must be relevant to and within the scope of the motion to which it is proposed. As the Honourable Member wishes to widen the scope of the Resolution by including the other Judges of the Indian High Courts, I would ask him, if he wishes to move his amendment, to move it without those words.

**Mr. Bhuput Sing** (Bihar and Orissa: Landholders): I do not want to move the amendment.

**Mr. President:** The whole of the amendment?

**Mr. Bhuput Sing:** Yes, Sir.

**Raja Bahadur G. Krishnamachariar** (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): Sir, I have listened with very great interest to the speech of my Honourable friend Sir Hari Singh Gour, but so far I have

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"This Assembly recommends to the Governor General in Council to convey to His Majesty's Government that in the opinion of this Assembly the posts of Chief Justices and other Judges of Indian High Courts should hereafter be reserved for Indian Barristers, Vakils, and Advocates."

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not been able to understand the occasion for moving this Resolution at all. The interesting retrospect which with his personal experience he has given to this House brings us to the point that a Bill which was attempted to be introduced and passed in the House of Commons has been rejected (Sir Hari Singh Gour: "Not rejected")—I suppose technically it was not rejected, at any rate it is not alive, it is dead, or it is in a moribund condition until somebody revives it some day,—I do not know when, probably in the Greek kalends. At any rate, we are exactly in the same position—I understand, I am talking subject to correction,—I understand, that we are in the same position as we were when the Government of India Act was passed. Now, you make a recommendation when there is a necessity for doing so, or when there is an occasion for doing so. I do not see any necessity at all for this Resolution, because at present, taking the opinion of the Chief Justice of Bengal himself, there is a very good chance of Indian members of the Indian Civil Service being called upon to fill up judgeships in the High Court. You cannot say in that numerous body of highly educated civil servants there is not a single man who could not occupy the post of Chief Justice with sufficient independence to direct, to control and to superintend the subordinate judiciary. I know in certain matters the Indian civil servant is not quite a *persona grata*, not certainly with me—I have got a good deal of grievance against him. But what I do submit is that the distinction which is now attempted to be created in a state of things which does not seem particularly to call for any alteration is a matter which I have not been able to understand. I am entitled to say that. I do not understand,—I quite admit—I do not understand why this Resolution was moved. Even now if my Honourable friend could enlighten ignorant people like myself, inexperienced people like myself and say why he is troubling this House with this long Resolution I should be greatly obliged for it; probably it will cut short my speech. I do not want to speak merely for speaking's sake because the Statute requires a barrister to be appointed and the Government of India are already committed to extending the right to Vakils and Advocates.

Sir, in the olden days the Indian Law Reports teemed with decisions of Judges who belonged to the Indian Civil Service. In Madras there was a Judge by the name of Mr. Holloway, whose judgments are quoted even today with very great authority and respect. I have no doubt that there are other Civilian Judges in other parts of the country who are equally eminent. Therefore, my point is this. Don't make a distinction, but make it a convention, unless you find that the trouble is so great that the civil servant always becomes an ubiquitous occupant of the Chief Justiceship, interfering here, interfering there, and interfering everywhere. I understand the contention to be that if you are a member of the Indian Civil Service, you won't allow the Judgeship to become an independent position. I do not want to say anything which might be considered as an attack upon any Judge anywhere, but it seems to me that a few instances might be quoted where the Indian public had been attacking other than Civilian Judges and saying that they were not sufficiently independent or that they did not uphold the independence of the judiciary in important matters; at any rate quite recently where the people and the Government came into conflict. Therefore, it is not a question of being a member of the Indian Civil Service, or of a particular race or a particular nationality. It depends upon the temperament, the environment, and the upbringing of the men who belong to this service or who are appointed to

this service. I submit that this Resolution being premature need not have been moved at all, but having been moved, and my friend, who has been very anxious to transfer the Judicial Committee to India as well as to have all these appointments for the members of my profession—I hope I am entitled to say that,—having aired his views, and the House having heard what he has got to say, I think this Resolution ought to be withdrawn.

**Mr. Jagannath Aggarwal** (Jullundur Division: Non-Muhammadian): Sir, I was rather surprised when my Honourable friend the Raja Bahadur spoke about the necessity or the occasion for this Resolution. In fact, I rubbed my eyes, and the cheers from the opposite Benches confirmed me in that impression, that the Raja Bahadur was sadly mistaken; as a matter of fact, I wondered if the Raja Bahadur had been awake all these months. Little need I remind the Raja Bahadur that the constitution of the Government of this country, High Courts included, is in the melting pot. Several committees are deliberating on this matter and several important Members of this House—one of them I see opposite, and another in that quarter—were very recently engaged in London in the work of framing a constitution including the constitution of a Supreme Court and of High Courts, for this country. And my learned and Honourable friend the Raja Bahadur, for whom I have the greatest regard and esteem, has got so used to being ignored along with other Members of this House in the framing of this constitution—that is part of the slave mentality—that he wonders why this Resolution has been brought in. I hope the House will pardon me if I remind him that this is the most opportune moment when a question like this should be taken up. It is in the fitness of things that it is there, and I hope that my Honourable friends opposite will also realise that it is not premature, that it is not misplaced, and that this is the proper time to take it up.

As to the merits of the Resolution itself, I have great pleasure in supporting it, and my reasons are briefly these. As at present constituted, the Government of India Act, section 101 (4), provides:

“Provided that not less than one-third of the judges of a High Court including the Chief Justice but excluding additional judges, must be such barristers or advocates as aforesaid. . . .”

This has been construed from the time of the Regulating Act when the Supreme Court of Calcutta was constituted up to the present day, as meaning—and, Sir, this is an important point and I wish to emphasise it—as meaning that the Chief Justice of a High Court must always be a barrister. Whether this interpretation is justified by the exact words or by the language used is not for me to consider. It will be dangerous for any one to hazard a contrary opinion where the highest law officers of the Crown in England and in India have not dared to put a contrary interpretation upon it. Nobody has been able to say that you can under the present section appoint any one other than a barrister as a Chief Justice. Therefore, according to convention which my Honourable friend wants, according to practice, according to the language of this Statute, for 150 years since the establishment of British rule in this country the Chief Justice has always been a barrister. If that is so, those who want a change must justify it. Now, Sir, what is the change that we want? This high post, reserved for members of the English and Scottish Bar from days of old, is now sought to be thrown open to other members of the Indian Bar. I will presently justify to you this change, but I would like to ask Government where is the person who has advocated in public—not

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in official archives—but in public, to the outside world the introduction of a change that this high post should be thrown open to the members of the Indian Civil Service? No agitation in that connection, no demand in that connection has ever gone forward from any commercial body, from any legal body, or any other public body.

Now, Sir, the reason why I say that one change is justified and there we stop and the other change is not justified is shortly this.

1 P.M.

The Chief Justice of a High Court holds a position in the constitution of this country which means that the Court over which he presides has to hold the scales even not only between subject and subject but at times between the executive Government and the subject. He has to uphold the constitution, to interpret the constitution and at times to prevent any encroachment by the executive on the rights of the people, and in the future constitution this question of the interpretation of the constitution will become still more important. If that is so, it becomes all the more important that a person holding this important office should be free from all leanings towards the executive, from any unconscious bias that a life of executive work may have imparted to it. I do not for one moment suggest that members of the Civil Service have not up till now been able to discharge the duties of their high office in the various High Courts efficiently and properly. There have been a number of Civilian Judges for whom one could have the highest respect, but that is not the question. It is not a question of individual merit. It is a question of a fundamental principle, and that fundamental principle is the independence of the judiciary from executive control. What is more, it is not only the actual interference that should be avoided; they should not even have the semblance of being under executive control. The influence of the executive services should be absolutely out of it. The High Courts are not to be converted into a department of the executive Government. If you are at liberty to appoint civil servants after three years experience as District Judges to the high office of Chief Justice, then the High Courts can be converted into departments of Government. The main point underlying this proposition is that men of an independent profession shall be placed in charge of these posts and there we stop. Now, Sir, this important aspect of the question was brought out quite recently when a Bill was introduced into the British Parliament in 1928 by Lord Birkenhead. That Bill proposed to throw open the office of Chief Justice not only to vakils and others but also to Civilian Judges. I submit that the provision throwing open the post to Civilian Judges was not justified. I submit with all respect that this is not a racial question at all. The Civilians may rule the whole country, but this is the one department which should be free from Civilian encroachment. All sections of the community supported the demand of the Indian people that this office should not be thrown out to Civilians. I would particularly draw the attention of the House to what the leading European papers then said. I wish to read to the House a few extracts and I hope that my learned friends in that part of the House will take particular note of it and support me, because I attach particular value to the support from those quarters, from gentlemen who do not belong to the legal profession. The *Pioneer* in dealing with this Bill introduced by Lord Birkenhead, wrote:

"In dealing with a measure vitally affecting the profession to which he belongs, it might have been expected that Lord Birkenhead would have been able to avoid mistakes. But His Lordship has blundered badly over the Indian High Courts Bill

which he introduced in the House of Lords towards the end of last month. The idea of the Bill is to equalise the position under the Government of India Act of barristers, advocates and pleaders as respects qualifications for appointment as Judges of High Courts and the proportion of such judges required to possess special qualifications. These objects are excellent and are in accordance with wishes widely expressed by the legal profession in this country."

Then it goes on to state:

"The Bill seeks to open the post of Chief Justice to members of the Indian courts who have not the qualification of barrister. It is explained in a cable which Sir J. B. Kanga, Advocate General of Bombay (who was Knighted on the King's birthday) has, as President of the Bombay Bar Association, sent to the Secretary of State. This cable expresses 'great surprise that the Bill, while throwing open the office of Chief Justice to advocates and pleaders also makes civilian judges eligible for the said post. This is a grave departure from established law and tradition for more than a century that the Chief Justice must be a member of the Bar and not a civil servant'. The protest is thoroughly justified. The obvious objections to a civil servant being the Chief Justice need not be reiterated."

This was in 1928, and I hope nothing has happened since then to change the view held by those whom the *Pioneer* represents. Now, Sir, I shall give you a quotation from the *Times of India* which says:

"The constitution of the High Courts in India is now governed by section 101 of the Government of India Act of 1915. . . . This proviso has always been understood to require that the Chief Justice must be a barrister and in practice up to now none other than a barrister has ever been appointed to be the Chief Justice of any of the High Courts in India. This was perhaps necessary while the pleader bar was in its infancy and the association of the English barrister with Indian High Courts has been most beneficial to the development of the latter inasmuch as it was through the English barristers, on the bench and at the bar in Indian High Courts, that the great principles and traditions of the High Courts of Justice in England came to be established here. But times have now changed; the pleader bar has grown strong and produced great lawyers of the type of Dr. Rash Behari Ghosh and Sir Bhashyam Iyengar in all the High Courts. It has been felt for some years past that there is really no substantial reason for excluding the pleaders or advocates of the Indian High Courts from aspiring to the office of Chief Justice. The question assumed prominence in Bombay recently when but for the statutory bar, the late Sir Lalubhai Shah who was the senior puisne judge and had acted as Chief Justice more than once would have been appointed to the great office. The question was raised in the Legislative Assembly and the Government accepted the recommendation that the section be so amended as to remove the bar. Now a Bill is to be introduced in Parliament for amending the section but it goes much further than any body in India asked for. If the section is amended as proposed the office of the Chief Justice will be open not only to pleaders but also to members of the Indian Civil Service. This is in the opinion of the profession would make the remedy much worse than the disease. Sir Lalubhai Shah, it is said, felt so strongly on the point that he stated he would rather go without any amendment than that it would lead to the door being thrown open to civilians as well. There are very cogent general reasons for excluding members of the Civil Service from holding the office of the Chief Justice. It is essential for the independence of the High Courts in India that the Chief Justice should not be a member of the permanent services. With a civilian at its head there would be a danger of the High Court becoming a mere department of Government. In fact there has been strong agitation in the past against the appointment of civilians to be Judges of a High Court. Their appointment is undoubtedly an anomaly arising out of the peculiarities of Indian administration. However, it is not on the ground of fitness that the appointment of civilians to the post of Chief Justice is to be opposed. It must be recognised that there have been great civilian judges and at the present day some of the ablest of our judges are civilians. It has also to be recognised that the civilian judges of the High Courts have never, so far as we know, agitated for the office of the Chief Justice being thrown open to them. The proposed amendment is, therefore, all the more amazing. It may be due to inadvertence. If it is deliberate, it seems inexcusable."

These are weighty pronouncements. I need not refer to various other expressions of opinion from Indian quarters.

**Mr. President:** The Honourable Member has only one minute more.

**An Honourable Member:** What about the *Statesman*?

**Mr. Jagannath Aggarwal:** I could not lay my hand on the paper, but I think the *Statesman* also supported me in this connection. I have great pleasure in supporting the Resolution and I hope the House will carry it.

The Assembly then adjourned for Lunch till Twenty-Five Minutes Past Two of the Clock.

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

**Sardar Sant Singh (West Punjab: Sikh):** Sir, I rise to support the Resolution so ably put forward by the leader of my party, Sir Hari Singh Gour. I do not know what attitude the Government are going to adopt in relation to this Resolution, but judging from the remarks and the reception given to the remarks of Raja Bahadur while he was speaking on this Resolution, I find that this side of the House should expect opposition from the Government quarters. But before the Government commits themselves to any attitude on this question, I may be permitted to remind them of what their predecessors said in the course of debate on similar Resolutions when they were moved in this House and in the Council of State. When Diwan Bahadur Rangachariar moved a Resolution for the removal of the distinction between barristers, vakils and pleaders, it was given out by the Honourable the then Leader of the House that the Government were in sympathy with that Resolution and that they would take the necessary steps to get the Government of India Act amended for the removal of the distinction. The same question came up in the Council of State in the year 1927 on a Resolution moved by the Honourable Mr. Ramadas Pantulu from Madras. The Government attitude in the Council of State then was very favourable to the Resolution. I may be permitted to read a portion of what Mr. H. G. Haig, the Home Secretary, then said:

"Whatever may have been the original intention of the section, Sir, the Government of India are in entire agreement with my Honourable friend that it is not reasonable to differentiate against vakils in this manner, and they have already addressed the Secretary of State in the sense recommended."

Similarly, when the same Resolution was moved in that august assembly on the 15th February, 1928, by Sir Phiroze Sethna, the same attitude was adopted by the Government in the matter. Now it may be said that on that occasion no question arose whether members of the Indian Civil Service were or were not eligible for the post of Chief Justice of a High Court. But to such a question my reply would be that, if it is true that the Government of India, before committing themselves to the principles of these Resolutions, consulted the Secretary of State for India on the subject, then it is probable that the nature and scope of the contemplated amendment of the Government of India Act must have been decided upon. In such a case the Government of India will open themselves to the charge of suppressing the truth from the Members of this House as well as from those of the Council of State if they now take up the attitude of opposition. Therefore, I would submit, with all due respect, that the Government of India stand committed to the limited interpretation of section 101 as put forward by the present Resolution before this House.

Coming to the merits of the case, I would ask one question. What is the attitude of the Government in this matter? Do they want that the administration of justice in this country should be under a department of the executive authority? Do they want the executive authority to reign supreme even in matters where the administration of justice is concerned? I may remind Honourable Members while on this point that it is not only necessary that justice should be done, but it is also an essential feature of good government that the people should feel that justice has been administered to them. You cannot say, while sitting as Judges that you have done substantial justice between man and man, between the executive and the subjects, but you should inspire a corresponding feeling in the people that justice has been done to them. In order to make them feel like that, they should feel confidence in the fountain of justice, without having a shred of suspicion that the Judge who has administered justice is not capable of administering justice, or has not been brought up in the institutions where legal training and justice predominate. Now my submission would be that if you want to inspire people with confidence in the purity of justice, it is absolutely essential that the Chief Justice of a High Court should be a gentleman brought up in the traditions of law, and in an atmosphere of independence. My Honourable friend the Raja Bahadur wants to know what is the occasion for bringing forward such a Resolution, when as a matter of fact no Bill is pending before Parliament and that there is no reason to suppose that the Government intend to depart from the Statute or convention that the Chief Justice of a High Court should be a barrister, a vakil or a pleader. The answer has been furnished to Raja Bahadur by my friend, Mr. Jagannath Aggarwal, who has told him that the occasion is the constitution-making that is going on at this time wherein is included the constitution-making of the High Courts. At the same time I would like to inform him, and I speak subject to correction, that Lord Sankey is contemplating that in the future structure of the High Courts the office of Chief Justice should be open to the members of the I. C. S. cadre. Well, of course, I speak subject to correction and would expect the Honourable the Home Member to deny it if it is wrong. If this be so, then the occasion has arisen for this Assembly to come and make it clear to the authorities that be that Indian opinion would not tolerate this amendment of the Government of India Act. In this particular case the opinion given out by the various newspapers and the various bodies is very germane. In a meeting held on July 16th, 1928, by the Sheriffs of Bombay, Sir Joseph Kay, who presided over it, made the following remarks:

"He (Sir Joseph Kay) declared this was not a racial question, nor was there any feeling that barrister judges were better than civilian judges, many of whom had been very distinguished judges. What was involved was the principle of keeping quite separate and apart the executive and the judiciary, and it was submitted that the judiciary should be perfectly independent of the Government. . . . To his mind it would be a great disaster if anything was hastily done which would in one iota destroy the confidence which the people of India always had in the impartial administration of justice by High Courts, which had always stood for a true and correct rendering of law."

This Resolution was unanimously carried. The meeting was composed of both Indians and Englishmen.

**Mr. N. N. Anklesaria** (Bombay Northern Division: Non-Muhammadan Rural): Was there any I. C. S. man in the meeting?

**Sardar Sant Singh:** You ought to know better, should you not?



[Sardar Sant Singh.]

Then there was another meeting in which Sir Chimmanlal Setalvad moved a Resolution which tells very strongly against this innovation if it is contemplated. It ran thus:

"This meeting of the citizens of Bombay begs to draw the attention of the Government of India and the Secretary of State to the fact that the Indian High Courts Bill, now before Parliament, introduces a far-reaching change in the wholesome tradition and law in force for over a century, by making civilian judges eligible for the office of Chief Justices of High Courts; this meeting is strongly of opinion that a change of this character in the present law should not be carried through without giving an ample time to the public opinion in India to express itself."

Whilst speaking on this Resolution, Sir Chimmanlal Setalvad said:

"One thing which made for the stability of the British Government in India was the public faith and confidence in the administration of justice in High Courts."

**Mr. President:** May I draw the Honourable Member's attention to the fact that he has got only two minutes more?

**Sardar Sant Singh:** I will finish my speech soon. Sir, similarly, the *Hindu* remarked:

"As we have already pointed out, it is undesirable, in the interests of sound judicial administration, that civilians should become Chief Justices, because they have not been nursed in the traditions of the Bar. Moreover, the duty of upholding the majesty of law is best entrusted to those who have devoted their whole life to the service of law and justice."

I have not been able to get at the opinion expressed by the *Statesman* of Calcutta then, but I find in an article published in the *Tribune* of 20th June, 1928, which is a quotation from the *Statesman* the following:

"One feels tempted to ask with the *Statesman* is England not dishonest?"

Now, taking this to be the feeling of the country in regard to this innovation in the Government of India Act, I submit that this Resolution should be accepted by the Government as put forward now. I therefore support the Resolution.

**Mr. S. G. Jog** (Berar Representative): Sir, I think it is my duty to give expression to my feelings on the subject as it is a question of vital importance to the profession to which I have the honour to belong. I must also congratulate the leader of our party, Sir Hari Singh Gour, for having given us the history of the case and having placed sufficient material before us. Even after hearing the history of the case, my friend Raja Bahadur Krishnamachariar could not understand or would not understand the propriety of this Resolution. It is generally said that wisdom goes with age, but I am sorry to find that in this particular case it has failed my Honourable friend.

**An Honourable Member:** It has gone out!

**Mr. S. G. Jog:** I hope it will come back soon. After hearing the history of the case, it is really surprising to me how my friend the Raja Bahadur could not see the danger in it. A Bill has already been introduced and when an attempt was made to redress one wrong, a definite attempt was made to introduce another evil along with the innovation. An attempt was made to take away all the differences between the barristers, the advocates and the vakils for eligibility for the appointment of the High Court Judge. Instead of redressing that grievance, another evil was attempted

to be introduced and that was to throw open the appointment of the High Court Chief Justice to the I. C. S. people. Somehow or other the whole thing was fortunately dropped, but the danger is still there. As prudent men, I think that we should take necessary precautions to avert the danger that threatens us now. I think my friend Raja Bahadur Krishnamachariar is aware of the maxim that you cannot dig a well when you feel thirsty. You have got to make previous preparations and keep water ready so that whenever you feel thirsty you can drink water out of it. My friend, Sardar Sant Singh, has also told us most convincingly—I know not the source of his information—that in the new constitution an attempt will be made for introducing the I. C. S. element and making it eligible for the posts of the High Court Judges. With this warning before us, I think the discussion of this Resolution is not merely an academic one, but I think it is necessary that we should take definite steps to avert the danger. The Resolution as it is worded is a very innocent one, and I will appeal to the Treasury Benches not to look at it from the racial or communal or any other point of view or as a question between the Governors and the governed. There is nothing of that sort in it. The I. C. S. people as a class have been styled the “steel-frame” of Indian administration, and I have not lost any respect for that class as a body of efficient administrators in other departments. But now we are concerned with the administration of justice. So far as the administration of justice goes, the I. C. S. people who work from below as Magistrates and also as executive officers are unfit to administer the responsible duties of a Chief Justice. When I say this, I do not mean to cast any slur or condemnation on the I. C. S. class or caste as it may be called. If anybody tells me that as I am a pleader, I am therefore unfit to hold the post of a doctor, there is no condemnation in it. I am certainly unfit to carry on the duties of a doctor.

So also in this case having worked as magistrates and administrators you have rendered yourselves ineligible and in a way unqualified to hold the post of Chief Justice. If you look at it from this point of view, I think you ought to agree to this Resolution that you are not in any way sufficiently qualified for holding the post of a Chief Justice. Therefore I support this Resolution and I request you all to join in supporting this Resolution.

**The Honourable Sir James Crear:** Mr. President, I am confident that the Honourable and learned gentleman from Nagpur who moved this Resolution will be neither surprised nor disappointed at the fact that I should rise to oppose it, because for the last five or six years since the subject matter of this Resolution has attracted attention, the attitude of the Government of India has been consistent. It is, that, while they recognise that some changes in the law regulating the constitution of High Courts might now reasonably be made, they should be made on the general basis that all those who are qualified to be Judges of High Courts should, without any invidious distinction, be regarded as eligible for selection to the post of Chief Justice. For my own part equally I am neither surprised nor do I feel any resentment that the Honourable and learned gentleman should have made himself responsible for this Resolution. He belongs to that very eminent body of public servants, the Bar. We know that the Bar in all parts of the world is a very close corporation, and in proportion as it discharges useful and invaluable public services, it also naturally enough has a very high consciousness of its own merits. It is

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very jealous of its own privileges and it does not regard, with a very indulgent or encouraging eye, any ambitions, any proposals, any suggestions which might conceivably appear to trespass on or invade the territory which it is disposed to regard as its own. Now, Sir, while that may very naturally be the attitude of the Bar and I, for my part, take no exception to it, I must demur to the plea made by the Honourable Member. I accept as natural the arguments which he and his friends have urged, as emanating from very distinguished representatives of the Bar; but when he implied that the line of argument which he pursued was the only one which could reasonably be pursued in the public interests of the country, I say I demur. On the contrary I venture to say that I can approach this question from a somewhat more detached point of view and I do claim that in the few remarks which I shall have to make upon the Resolution, the sole principles to which I shall appeal are the proper administration of justice and the general public interests of the country, and not the interests of any particular class whatever. That the Honourable Member should have made a very strong appeal on behalf of the Bar is, I say, a circumstance to which I take no exception. He has himself entered the ancient and venerable portals of one of our Inns of Court. He has participated from the fountain-head in all those great traditions of British jurisprudence upon which the jurisprudence of this country is founded. I share with him the respect and admiration with which he speaks of that tradition. He speaks as a Barrister, and I sometimes wonder whether in the seclusion of the Bar Library at Nagpur the Honourable and learned Member has not sometimes cast a longing, lingering look behind. I have myself frequently heard from very distinguished Indian Barristers that they themselves hold very strongly the view that the Chief Justiceship of all the High Courts in India should continue to be reserved for Members of the Bars of Great Britain. I have heard that very strongly urged. The Honourable and learned Member laid before the House what I think to be an alarmist estimate of the consequences against which this Resolution is presumably directed as a cautionary or as a preventive. He suggested that some years ago, when a Bill was before Parliament having the effect of throwing open in the matter of eligibility the office of Chief Justice to all puisne judges, he suggested that, at that time, the whole of this country was thrown into a state of the deepest alarm and apprehension. He suggested that there was a prospect of the judicial firmament of this country being disturbed by the intrusion of destructive meteors and comets, of the rising of baneful stars which would destroy the atmosphere of calm and stability in which the judicial luminaries of this country have hitherto directed its legal destinies. I think the Honourable Member has attempted to convey to the House an unduly pessimistic view of the position. The Honourable Member, besides having contributed some very weighty treatises to the jurisprudence of this country, has also interested, entertained and edified large sections of the public with other literary works in a lighter vein. He has written a volume entitled "Random Rhymes" and another entitled "Passing Clouds", and I would venture to suggest to the Honourable Member that it would be well for him to recapture some of the cheerful, but nevertheless considered, optimism in which he wrote "Passing Clouds". I would ask him to believe with me that the apprehensions which he so vehemently expressed in moving this Resolution are after all "passing clouds". I am the more encouraged in that view because I observed that

the Honourable and learned Member, who is a very experienced and able advocate, took the course which is commonly taken by an advocate who is not very deeply impressed with the validity of his own case. The Honourable Member devoted two-thirds of his interesting, eloquent and learned speech to two issues, one of which is in no way relevant to the issue before the House and the other, if it is relevant at all, is relevant in the sense that it is completely repugnant to the terms of the Resolution which the Honourable Member seeks to induce this House to endorse. I share to the full the Honourable Member's expressed admiration for that great tradition of British jurisprudence on which the jurisprudence of this country is based. It is in fact largely the consciousness of that fact, it is largely the practical considerations which flow from recognising that fact, that we have the law as it is at present, (somewhat obscurely I admit), stated or as it is at present interpreted, in the terms of the Government of India Act. And the practical consideration and one of the most important factors is this, that, quite apart from what may be the actual contents of a system of jurisprudence, the terms of the statute law, the effect of case law and so forth, it is of the utmost importance that the administration of that code of law should be conducted in accordance with the great tradition which lies behind it. The advocates of the existing state of the law have urged over and over again with great force, with great pertinence and with great learning, that it is of the utmost importance to India that in her High Courts of Judicature there should be maintained a direct contact, not only with the contents and the principles of British jurisprudence but with the spirit and the tradition in which it has been administered and with the practice of the Bench and of the Bar. The Honourable Member endorses that proposition with great fervour. Sir, I am not concerned to controvert it; but I venture to point out that, in proportion as the Honourable Member expended his eloquence, his learning and the fruits of his experience on this issue, he has impaired the contention which he lays before the House in his Resolution. Now, I do not propose, as I said, to detain the House at great length. I will only advert once more to the fact that from the Honourable Member's own speech I could extract some of the most powerful arguments against the acceptance by this House of the Resolution. But I will pass on to considerations which are perhaps a little more pertinent to my own argument, and what I should like to point out to the House is this. It will be commonly agreed that it is of the greatest moment to the proper administration of justice in this country not only that that contact, that direct continuity with the traditions of British jurisprudence should be maintained, but there should be represented on all the highest courts of judicature in this country the widest measure of judicial experience that is possible. That I think is a position which will not be controverted even by the Honourable and learned gentleman from Nagpur. And what follows from that consideration? Our High Courts mainly sit and do justice at the headquarters of the province or of the Presidency of which they are the supreme judicature. But by far the greater part of the judicial administration of this country arises not within the original jurisdiction of these High Courts or within the territorial limits of the cities in which their Benches are situated, but it arises up-country, in the mofussil. Civil suits are tried by an infinite number of civil courts; the greater part of the most important criminal business in the country comes in the first instance before the magistrates and the Courts of Session. The District Courts try in the first instance all the most important cases of civil litigation arising

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outside headquarters towns. And there is no body of Judges who obtain a more intimate and a more close acquaintance with that enormous proportion of the whole body of legal business transacted in this country than the Judges drawn from the ranks of the Indian Civil Service, and I may add, of that other very worthy and trusted class of public servants which has been singularly neglected by Honourable Members opposite, the Judges of the Provincial Civil Service. I maintain, Sir, that it is of the greatest importance to the most vital interests of this country that that vast body of judicial experience should not be excluded from the highest Benches of Judicature in the land. And though I acknowledge with grati-

3 P.M. tude that very few Honourable Members opposite have any words of individual disparagement of the Judges drawn from the ranks of the Indian Civil Service or the Provincial Service, nevertheless a very serious implied general disparagement has been cast upon Judges drawn from implied general disparagement has been cast upon Judges drawn from those sources, many of whom, as the Honourable gentleman from Madras pointed out from his own experience, can challenge both in their judicial knowledge, their judicial experience, their judicial ability and their independence the most eminent Judges drawn from any other source whatsoever. I must, in particular, repel the suggestion that the presence of Judges drawn from the Indian Civil Service in the High Courts of India has in any way impaired the complete independence of these High Courts. I deny, Sir, that any Honourable Member opposite who has used that argument in general terms is capable of giving a single instance on the floor of this House to substantiate his contention.

Let us now follow that argument a little bit further. Sir Hari Singh Gour in the course of his speech made a plea which I presume he intended to be a plea of general equity that, "All shall be treated alike so long as they are members of the Bar". Why not take the proposition on to a somewhat higher plane and say that all should be treated alike so long as they are members of the same High Court? I think, Sir, that that at any rate is a reasonable proposition; and I, for one, cannot accept for a moment the suggestion that this House should commit itself to an invidious distinction against one class of Puisne Judges of the High Courts in this country who have deserved extremely well of the country in the past, and who I am confident will continue to deserve extremely well in the future. The Honourable and learned gentleman in the course of his argument appealed to authority. He quoted at some length certain evidence given by the present Chief Justice of Calcutta. That he has appealed to so eminent an authority is a very proper thing to do. But, Sir, he made his quotations from the evidence of that eminent authority in that selective manner with which I confess I have been more than once confronted in arguments addressed by the Honourable gentleman to this House. And on this particular point as to whether or not all Puisne Judges, all persons now qualified to be Puisne Judges of the High Courts in India should be eligible at any rate for appointment to the post of Chief Justice, what did the present Chief Justice of the High Court of Calcutta say? He said this:

"As regards the question of whether other persons should become Chief Justice, I go no further than this that I think that persons who have been Judges of a High Court for not less than 5 years might be made eligible to be promoted to be Chief Justice. Whatever be the path through which they came into the High Court, if they have been Judges of the High Court, say, five years or some period like that, I do not think that they should be excluded from the chance of being Chief Justice."

Now, Sir, of all the evidence given by the Honourable Sir George Rankin before the Statutory Commission, none was so pertinent as this to the question immediately before the House, and I suppose it was the Honourable and learned Member's ancient experience and his own conception of the arts of advocacy that led him to the singular conclusion that it was as well that the House should not be presented with that particular item of evidence.

**Sir Hari Singh Gour:** Sir, may I interrupt the Honourable the Home Member? The learned Chief Justice of Bengal very unequivocally stated that the present reservation of one-third of the posts to members of the Indian Civil Service is no longer justifiable.

**The Honourable Sir James Crerar:** The Honourable and learned gentleman at the outset of his speech complained that the Bill introduced in the House of Parliament side-tracked the issue. The Honourable Member having moved in this House a Resolution relating to the eligibility of Puisne Judges for the office of the Chief Justice, it is evidently now his intention to draw a very redolent red herring in the form the question of the proportions in which the Courts should be constituted, and which is totally irrelevant to the issue before the House. I am not, however, surprised that the Honourable Member should have endeavoured to divert the attention and the intelligence of this House from an issue which he finds so difficult to support save by expedients of this kind.

**Mr. B. N. Misra** (Orissa Division: Non-Muhammadan): Sir, I had no intention to take part in this discussion, but the term "Chief Justice" as it is understood in the English language is known in Sanskrit as *Prad Bibek*. That means in the widest sense a man whose knowledge has been sharpened to such an extent that he may be called a man possessing broad and independent views on any question, and not a man possessed of what is commonly known as the slave mentality of a public servant, or whose mentality has been framed throughout his service in the interest of public service. *Prad Bibek* or the Chief Justice is entrusted with the most onerous duties, that is the duty of maintaining the legal lore, and he should not be impeached in any way as regards his mentality or training. He is supposed to have held throughout his life independent and broad views, and it is only the profession that retains or gives a man that independence which service, whatever kind it may be, will never give. Sir, our main objection has been to the mentality of the civil service. There may be very good civil servants so far as their loyalty to their service or to their masters is concerned, but so far as their knowledge of men and things is concerned, so far as their legal knowledge is concerned, I doubt very much whether a man from the civil service, barring perhaps a few rare and honourable exceptions, can be found to fill the post of Chief Justice of the High Courts in India. I do not mean to cast any reflection on the civil servants of India; they have rendered good service in their own way to their masters. My point is that to fill the post of Chief Justice only men from the legal profession who have had their training at the Bar should be selected. This is invariably the case in England, in the Colonies and in the Dominions, and there they never select a man from the service. It is our most sad experience that in this country, however eminent, however learned, however well versed in law they may be, no Indians have so far been selected to fill the post of Chief Justice of a High Court, and only white men have always been selected to fill that

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post. Why, Sir, there are any number of very brilliant and distinguished vakils, pleaders, advocates and barristers in the Indian Courts from whom a suitable selection can be made to fill the post of Chief Justice. Indians of proved merit and ability in the legal profession are not wanting who can distinguish themselves as Chief Justices of High Courts. We all know that Indians have filled very high and equally responsible positions with credit to themselves and advantage to the country in other spheres of life. I cannot say why for the position of Chief Justice suitable Indians who have had experience at the Bar should not be recruited, and why white men should be regarded as superior to Indians and chosen to occupy the posts of Chief Justices. Sir, in making the appointment of Chief Justice there should be no considerations of race or colour, because we want only pure and unalloyed justice and justice alone. Therefore, Sir, I appeal to all Members of this House without any distinction of caste or race to support this Resolution.

**Mr. Amar Nath Dutt** (Burdwan Division: Non-Muhammadan Rural):

Sir, I had no mind to take part in this debate, because it appeared to me that the Resolution was so very reasonable that it would appeal to every one in this House, and that there would not be found a single individual who would oppose a Resolution of this character, and therefore I did not care to attend to the debate in this House nor to listen to what fell from the Honourable the Mover, and I came here only towards the latter end of the speech of the Honourable Sir James Crerar and I only heard a portion of his speech. After hearing him it appeared to me that it were better if the Honourable Sir James Crerar had not taken up the brief on behalf of the members of a service of which he himself is a brilliant luminary. He will excuse me, and I beg of the members of the Indian Civil Service to excuse me if I say that they may be very eminent administrators, but there is a class of men who are better fitted than they—I do not mean that they are not fitted at all, I do not go to the length of saying that—but I submit that they will appreciate that there is a class of men, *viz.*, the trained lawyers who are better fitted to hold the posts of Chief Justice and Puisne Judges. My own idea is, and I beg to be excused by the members of the Heaven-born service if I give out frankly what my opinion is about the members of the judiciary recruited from the Civil Service and why judges should be solely recruited from the Bar. If you are pleased to compare the judgments of the subordinate judiciary, I mean the munsifs and sub-judges, you will find that whenever their judgments have been upset by Civilian Judges of the High Court—and they have been upset more by Civilian Judges than by others—you will find that the Privy Council has restored the judgment of the sub-judge and reversed the judgment of the Civilian Judge. And if my Honourable friend Sir James Crerar would ask me to point out such instances, I think I can lay my hands on no less than one hundred such reported cases. For the information of the Honourable Sir James Crerar, who himself was a distinguished Sessions Judge, that his idea that members of the Indian Civil Service make very good Sessions Judges is not correct. I shall give him one or two examples which will convince him that there may be exceptions in one or two cases where they have acquitted themselves well, as Judges, but they had been failures in most cases. I know of a Judge who had to dispose of an uncontested probate case. Certain formal evidence had to be gone into, but as soon as the petition was put before him he at

once recorded an order "Probate granted", without waiting for an affidavit or *ex parte* evidence. Another brilliant Judge who adorned the High Court Bench afterwards—I hope Sir George Rainy will kindly excuse me, probably he knows him—summoned *chirodin*—that is how they dispense justice. (An Honourable Member: "What is *chirodin*?") When the pleader said they always did it—which translated in Bengali would be *chirodin koriache*. He at once ordered summons *chirodin*. Unfortunately my experience of Civilian Judges has been like that. I can cite amusing stories here for the delectation of the Members of the House, but I do not want to waste the time of the House. Also I think it will not be proper to draw an indictment against an able body of administrators—who may not be good lawyers and good judges, but are good and efficient administrators. I for one have my admiration for that able body of administrators, but at the same time I cannot agree to their being judicial officers. We have found that District and Sessions Judges, who are recruited from sub-judges, have acquitted themselves much better than the Assistant Magistrates.

I think the brief that was taken up by the Honourable Sir James Crerar on behalf of the service to which he belongs need not have been taken up. Every one in this House knows whether they make really good judges on the High Court Benches, or even as District and Sessions Judges. My Honourable friend knows that, but if there is a policy on the part of the Government to restrain and curb the independence of the judiciary, that is another thing. Tell us plainly that, and we shall go away satisfied. But if you say that they are really good judges, I for one could not subscribe to that opinion.

The only bedrock, upon which the foundation of your Empire depends, is the administration of justice and people have still faith in that. And if you bring in a Judge from the Members of the Civil Service who have spent their whole life as executive officers and for a few years as a Sessions Judge and then make him a Puisne Judge of the High Court or a Chief Justice, I submit the quality of justice will suffer. Lawyers who have been trained in the profession of law from their earlier years certainly are expected to discharge the duties of a judge far better than one who had not that training. I hope that the Honourable Sir James Crerar will not deny that. There may be exceptional cases where the Civilian Judges have acquitted themselves very well, but they are very few, and that would not justify us in drawing a conclusion to the effect that the post of Chief Justice should go to them. So, I think in the interests of better administration of justice and preservation of law and order, of which my Honourable friend is at present the custodian, they will also support us in this matter. Open up if you like two or three berths for your meritorious civil servants in other directions, but do not lower the quality of the administration of justice in the land, I mean British justice in this land, by bringing in a class of men as the head of the judiciary when they are hardly fitted to discharge the duties that are expected of a Chief Justice. With these few words I beg to support the Resolution without meaning any disparagement to those there who are laughing, and some of whom have acted as District and Sessions judges and probably expect to become High Court Judges.

**Mr. Muhammad Yamin Khan** (Agra Division: Muhammadan Rural): I had no idea of taking part in this debate to-day, but as the debate has



[Mr. Muhammad Yamin Khan.]

taken a particular turn, I have thought it my duty to explain my position so that I may not be misunderstood when I give my vote. I do not agree with my Honourable friend, who has just now spoken about the Civilian Judges, that they are really so bad as he seems to think. My vote when it is cast in favour of the Resolution will not be on that account, nor on those other grounds on which the Honourable Member who has just finished his speech has based his reasoning. I have found many Civilian Judges to be very efficient and on many occasions much better Judges than those who have been recruited from the Bar. Munsifs and sub-judges are recruited from amongst the vakils and there are District and Sessions Judges who come from the Civil Service. I have appeared in the courts of both, and I can safely say that so far as judgments go, there can be no comparison. On questions of knowledge of law, one may be superior to the other, but the qualification for a Judge is not simply that he should know all the rulings by heart. He must have shrewdness and intelligence to come to right conclusions, an unbiassed and open mind and things like that. I have never found the majority of Civilian Judges, as alleged, lacking in these qualities. There have been some Civilian Judges who have not been efficient Judges. At the same time you will also find many munsifs and sub-judges who were lacking in these qualities. My learned friend will say that the munsifships were applied for by people who were failures in their own profession and that is the reason why you cannot compare the two classes. Now, circumstances have changed. There are better prospects for a man who enters as a munsif. He can go up to the Bench of a High Court. Now if you read the rulings of the different High Courts you will be convinced that the rulings of Civilian Judges are so good as to elicit the admiration of any lawyer. As a matter of fact, the whole thing depends upon the intelligence of the man himself. I have sometimes found a Joint Magistrate so efficient a Judge that if I had the power I would place him on the High Court Bench. On the other hand I have found a Commissioner with about 30 years service who delivered a judgment one day and after three days changed the whole thing. There have been individual cases like that. So I do not agree with the sweeping remarks of my learned friend Mr. Amar Nath Dutt that Civilian Judges are all bad. While giving my vote to this Resolution, I do not wish to associate myself with the arguments that he brought forward, and that is why I want to make my position clear. My reason is that the Chief Justiceships of the High Courts are really and primarily meant for the men who have been trained in the profession as barristers. That has been the practice in England and nobody can say that the English High Court Judge has ever been wanting in his judicial capacity because those Judges are recruited from amongst men who were very efficient as lawyers and who have distinguished themselves in their profession. The independence of the High Court Judges in England comes out of the fact that they knew the ins and outs of how the cases are really worked up. When they appear in the courts they come to know the whole thing inside out and that is why they act independently. The Civilian has not got this benefit. He never appears on behalf of a client and he is never in charge of the preparation of a case. From the beginning he is accustomed to decide cases and he has not had the training which a man in the profession has to go through. That is the chief criterion and this innovation which has been brought about has deprived the legal profession of its privileges enjoyed for a very long time. For a long time the barristers should have

been recruited in larger numbers. The Public Services Commission, of which the leader of the Independent Party was a member, made a recommendation that most of the District Judges should be recruited from amongst the barristers. That recommendation has been altogether ignored by the Government. There is a great deal of feeling amongst the members of the Bar that these posts are chiefly monopolised by the Civil Service and the Bar are deprived of their due share. It is the Civil Service that makes the rules and they make rules in order to suit themselves. They do not give a proper share of the posts to the members of the profession. This recommendation, although nominally accepted, has not been given effect to simply because the voice of the Bar could not reach the inner circles of the body which really had to do with their rights and privileges. There was only one privilege which had been up to now enjoyed by the members of the Bar, and that is that the Chief Justices should be recruited from amongst the members of the Bar. It may be felt that there is an injustice to the Civilians that they cannot become High Court Judges, but in spite of it this privilege should not be taken away from the Bar which had enjoyed it for the last 150 years. Their privileges should be enlarged rather than curtailed, and this has been the fight that has been going on. On this ground I would not give away the privileges which had been enjoyed by my profession, just as my Honourable and learned friend the Home Member would like to safeguard the interests of the service to which he belongs. With these few words I support the Resolution which has been moved.

**Sirdar Harbans Singh Brar** (East Punjab: Sikh): Sir, I should like to join in supporting the Resolution moved by my Leader on one or two grounds. I personally consider that it is of national importance in a country ruled by a bureaucratic system of government that the people should feel that at least they can expect justice from the highest tribunal in the land. It is not a question whether the Judge who sits on the Bench will give an impartial judgment or will treat fairly every case that comes before him, but what is of importance is that the parties to the case should feel safe in their minds; and it has been on these grounds that in England the people have become so law-abiding. The judiciary has nothing to do with the executive; it is completely independent of it from beginning to end. The people feel that the judiciary, being recruited from the Bar, has nothing to do with the executive and can take a detached view of everything that comes before it. It is that which has made the English judiciary so praiseworthy. We see the difference between the magistracy and the judiciary in India. The judiciary—the subordinate judiciary I mean—being under the High Court which is administered not by an executive officer but by a person recruited from the Bar either in England or in India, takes a much more detached view in their daily administration than we find in the case of the magistracy. Recently we had a case reported in the Press from the United Provinces which had been decided by a District Magistrate. The case went on appeal to the High Court, the decision was upset, and when the file was sent back to the District Magistrate, he wrote strong remarks against the High Court Judge on that file which I do not want to repeat because the person concerned afterwards tendered an apology for fear that the High Court might take some action. We have seen such examples of Magistrates being actuated by political considerations in other provinces as well because they belong to the executive service and are only responsible to the head of the executive. Thus, from the very nature

[Sirdar Harbans Singh Brar.]

of their training in the service, they find it difficult to administer impartial justice, not deliberately, but such a mentality is developed in them as to preclude them from taking an impartial view of a case; much less in a political case. At any rate even when they do take an impartial view, the accused however do not feel safe in their hands, knowing that they being members of the steel-frame service so much admired by Mr. Lloyd George some years ago, in his Oxford speech, a service which after all only keeps the people in chains, cannot forget that they being under the executive, their duty is to administer what the Government wishes them to, to keep law and order in some rough sense; but when they join the judiciary, we find a very noble change, because then they feel that now they are more responsible to the head of the judiciary who has nothing to do with the executive service and that they take in their judgments only the view that they should take as judicial officers and nothing else. I think therefore that it is of the utmost importance that the people should enjoy that right of feeling within themselves that they shall get impartial justice from the highest tribunal in the land. Well, the I. C. S. may feel that now that the provinces are going to get autonomy and there is going to be responsibility at the centre, there are not many high places left for them for promotion, as the Executive Councillorships will cease to be held by them either here or in the provinces. And thus they want to open the door for themselves to the high places of promotion, even more coveted than Executive Councillorships, that of Chief Justices. Nevertheless I contend that everyone will agree that the man in the street should feel and the judiciary itself should feel that it enjoys the confidence of the people at large, and the people who are parties to their cases should feel that they will have justice from the courts of law. From that point of view I would strongly recommend to my fellow-Members in this House not merely that the profession of barristers or lawyers should benefit by it but that from the general and broader viewpoint the public at large should be enabled to have confidence, in the judiciary, and therefore the present practice should remain whereby a Chief Justice is recruited from the Bar and not from the I. C. S.

**Mr. N. N. Anklesaria** (Bombay Northern Division: Non-Muhammadan Rural): Sir, I take it that the I. C. S. man is sought to be excluded from the Chief Justiceship merely and solely because he is an I. C. S. man. I mean that even if an I. C. S. man qualifies himself as a barrister, he is to be excluded from a Chief Justiceship because, in addition to his degree of a barrister, he commits the high misdemeanour of having obtained qualifications as an I. C. S. man. I say, Sir, that is a patently unsound position, and it is sought to be supported by several arguments of prejudice and not one of merit. It is said that an I. C. S. man labours under a certain unconscious bias which he derives from the traditions of his service. So far as I could follow my Honourable friends on the other side, not a single specific instance was cited of an I. C. S. Judge having displayed this unconscious bias, and I think such an instance could not possibly be adduced. So far as I have experience of the Bombay High Court, I can say that the names of Mr. Justice Fawcett, Mr. Justice Beaman and Mr. Justice Batty are names which command universal respect and regard at the Bar; and I have still to learn, Sir, that the justice which a Puisne Judge administers is something different from the justice which a Chief Justice has to administer. No doubt, in

addition to qualifications as a Judge, a Chief Justice should have some administrative capacity as head of the administrative department of the High Court, and I think in this direction an I. C. S. man certainly, to put it colloquially, scores a little over a mere lawyer who has had no administrative experience. Then, it is said that the I. C. S. men should be debarred from the Chief Justiceship because many public meetings of lawyers and others have said so. To that my answer is that all these public meetings have passed simply *ex parte* judgments, and it is strange that lawyers who are trying to support this motion should have tried to give weight to judgments which, they know, labour under the statutory disqualification of being liable to be vacated when the real facts are known. Lastly, it has been said that the I. C. S. men should not be appointed Chief Justices because certain newspapers, including the *Statesman* have said so. Well, Sir, at the Simla Session last year my Honourable friends on the other side of the House, who have now cited newspapers as their authority, were prepared to indict the *Statesman* for having written something which they called "nonsense" about Kashmir. That is my answer to that argument. Sir, so far I have been able to follow my Honourable friends on the other side, these are all the arguments that have been adduced by them in support of the proposition that the I. C. S. man as an I. C. S. man should be disqualified from the Chief Justiceship. That being the case, I think the fate of this Resolution should not be in any doubt.

**Mr. B. R. Puri** (West Punjab: Non-Muhammadan): Sir, when I first read section 101 of the Government of India Act I was at a loss to understand what good reason there could possibly exist for excluding the I. C. S. men from the Chief Justiceship. On the face of it, it seemed as if there could not have been any good or solid reason justifying their exclusion. If a person, be he an I. C. S. or an outsider, is good enough to be a Judge of the High Court, *a fortiori* I do not see how he is debarred from occupying the office of a Chief Justice. That was the first thought that occurred to me. At the same time, I had a perfect faith in the wisdom of the British Parliament and I was fully convinced that there must be some very solid reason why the Parliament as far back as 1861 had deliberately laid down a provision in which they expressly excluded a certain class of public servants from occupying the office of the Chief Justice. Although, as I have submitted, on the face of it there does not appear any good reason behind it, yet having regard to the fact that it was enacted by an eminent Legislature which has stood the test of the time for very nearly a century, I thought that this exclusion must be based on some good reason. Now, the issue before the House is being fought, I regret to say, on somewhat wrong lines. I have been carefully listening to the very eloquent speech from the Honourable the Home Member. But I am afraid he got into a side-track. He tried to justify the eligibility of the Civilians on their merits. Now, who ever has denied that Civilians have contributed some very good examples of judicial ability, sense of impartiality and sense of honesty? We have had on the High Court Bench some remarkably clever and able Civilians. But that is not the point before us. I am willing to admit that from amongst the Bar, while, on the one hand, we claim that we have contributed illustrious lawyers, there may have been at the same time a few failures too and, equally, there may have been some failures in the category of the I. C. S. people. But that is neither here nor

[Mr. B. R. Puri.]

there. We do not say that Civilians should be excluded because they are incompetent; we do not say that they are not honest; we do not say that they should not be given this high office because they do not possess the same sense of responsibility as the lawyers do. That would be an entirely wrong line on which to argue one's case. We say that, while you are fully competent to occupy that position, as a *matter of policy* in the High Courts there should be at least one office, that is the Chief Justiceship, which should not be associated at all with any administrative or executive department. That, I submit, is the real point upon which this issue ought to be fought. We have been arguing the case as if lawyers are superior. Some lawyers are superior to some Civilians and some Civilians are no doubt superior to some lawyers. Man for man one is as good as the other, or, to put it conversely, one is as bad as the other. But these are not the considerations upon which, as I have submitted, the decision of this issue hangs. The only point upon which we should proceed to consider the case is whether as a matter of policy and in order to inspire the confidence of the people you should not say that, while in the judicial subordinate service the Civilians or other people connected with the executive Government are employed to perform judicial duties, yet so far as the administration of justice is concerned it is placed under the control of a person who is dissociated with Government and who has had absolutely nothing to do with the administrative or executive sides of it. Having regard to this consideration, I think we should accept the Resolution.

**An Honourable Member:** I move that the question be now put.

**Mr. President:** I accept the closure. The question is:

"That the question be now put."

The motion was adopted.

**Sir Hari Singh Gour:** Sir, I do not wish to take many minutes in my reply. I am afraid that as this debate has proceeded, the question seems to have developed into one of the superiority of the Civil Service *versus* the Bar. If Honourable Members will recollect my speech, they will remember that I have not said one syllable against the Indian Civil Service or in favour of the Bar. All that I have said is that the law which is the Parliamentary Act of 1861 and which has been re-enacted from time to time and which is the law of the land today, restricts the appointment of the Chief Justice of the High Court to a barrister or an advocate. Therefore, those who want to change this law have a heavy burden to discharge in showing why this hoary piece of legislation, which has been in practice for over a century, should now be altered. That is the question. The Honourable the Home Member has twitted me for having advocated the retention of a privilege of the Bar. Those who have read the Agenda Paper will find that I am only a vicarious spokesman of the Member in whose name this Resolution stands. And the fact that I have taken this task upon myself is due entirely to the accident that I am occupying this position to which you have elected me.

**Sir Lancelot Graham** (Secretary, Legislative Department): Who is "You"?

**Sir Hari Singh Gour:** My friends on the Opposition Benches.

**Sir Lancelot Graham:** Address the Chair.

**Sir Hari Singh Gour:** Apart from that accident, as the Honourable the Home Member has introduced a somewhat fallacious argument calling the Bar a close corporation, I feel tempted to retort by reading to the House a description of his own service given by the President of the Public Services Commission in India. At page 196, the Indian Statutory Commission precis of evidence describes the Indian Civil Service thus:

"By virtue of its position it obtained powers, privileges and emoluments which appertained to no other body in India. Like all other powerful bodies, it developed a strong corporate sense and corporate traditions. As a select body it jealously guarded admission to its ranks by methods other than those by which the main body was recruited. Amidst infinite individual diversities it developed a type which is as recognisable in India as certain well marked types are recognisable in England. Those who were most envious or critical of its special position were unable to deny the basis of superiority on which that position was founded."

If that is not a description of a close corporation and a caste, I pause to consider what else could be a close corporation. As for the Bar being a close corporation, the Bar has justified its existence as a tribunal of the people and has administered even handed justice ever since the days when it was called into existence. I am not giving you this as an expression of my opinion. No less a man than Viscount Bryce, who toured all over the British Empire and who wrote these two volumes on the "Modern Democracies", justifies judicial appointments given to the Bar in the following words. At page 425 of volume 2 he says:

"A review of the judicial branch of Government in the countries already examined suggests, except as regards some States of the American Union, nothing to discredit democratic government, for it has provided justice, civil and criminal, at least as good as did any of the European monarchies or oligarchies, and better than did most of them. In Canada and Australia public opinion has been vigilant. Barristers protected from politics to the Bench have, when, once they take their seat there, breathed an atmosphere so saturated with the English traditions, now two centuries old, of judicial impartiality and independence that they have very seldom yielded to partisan sympathies or party pressure. It has also been a benefit that in these countries they have been invariably selected from the Bar, with their former associates in which they maintain social relations, undisturbed by political differences, and to whose good opinion they are sensitive. Nor has the Bar been without its influence on the Government of the day in deterring it from appointing, in satisfaction of party claims, persons whose capacity or character fell below the accepted standard."

Sir, this is a signal tribute to the impartiality, to the fair-mindedness and independence of the Members of the English Bar, and, I say that when you have not only in England but in all the far-flung Dominions of the British Commonwealth the judiciary entirely drawn from the Bar, it is not merely an accident but it is the result of experience gained for the last two hundred years, that has been crystallised in section 101 of the Government of India Act. We have been told that the Members of the Bar are anxious to preserve these high offices for Members of their own professions. Those who live in glass houses must be careful not to throw stones at others, for have we not Schedule III of the Government of India Act, which runs thus: "Offices reserved for the Indian Civil Service".

**The Honourable Sir James Ormerod:** It is by an Act of Parliament, not by executive orders.

**Sir Hari Singh Gour:** Be that an Act of Parliament, I am claiming the same right for the Members of the Bar. I wish there was another schedule appended to the Government of India Act: "Offices reserved for the Members of the Indian Bar." Then there would have been some equality and a comparison between the members of my Honourable friend's distinguished service and the humble members of my profession, who have to struggle in this country without any reservation and without any privileges, would have been justified. Sir, I have held, and I feel that so far as the members of my profession are concerned they have justified their appointment before the bar of public opinion not only in this country but in England and over all the British Dominions and that tradition of the English Bar has radiated throughout the length and breadth of this civilised globe. It is that tradition that I wish to perpetuate in my own motherland. I am also jealous of the privileges of the members of that profession not because I for one moment under-rate the importance and the value of the corporate character of the members of the Indian Civil Service, but because I feel that these four or five appointments that are to be practically reserved to the members of the legal profession tend to keep up that high degree of integrity and independence which is so necessary in the interests of the litigant of this country. If you are to take away this allurements from the legal profession, the standard of the profession is likely to go down. In the same manner if you are to take away all reservation from the members of the Indian Civil Service, there will be speedy passages at home and half the members will disappear from this country, it is for that reason I ask you to support this motion. We have been told by some of the Honourable Members that the expression "including" is an ambiguous expression which finds a place in section 101 of the Government of India Act. I am a student of Indian Law and I find before me the first Regulating Act of 1773, in clause 13 of which the following occurs:

"That it shall be lawful for His Majesty by Charter or Letters Patent under the Great Seal of Great Britain to enact and establish a supreme court of judicature at Fort William aforesaid to consist of a Chief Justice and three other Judges being Barristers in England or Ireland."

Sir, when you laid the foundation of British rule in this country you did it upon the pillars of English Barristers and not upon the Civil Service. The Supreme Court, that great tribunal of the people, that palladium of the people's justice, was entirely manned by the English Bar, and it was an encroachment upon that privilege of the English Bar when the Indian Civil Service in 1861 took away some of the appointments which before that Regulating Act were reserved for members of the English Bar. And when the Chief Justice of Bengal was speaking of section 101 of the Government of India Act—my friend has got his evidence before him—what he said is what I have just now quoted that he wanted that this reservation for the Indian Civil Service should be removed from the Statute-book. And if you remove this reservation of one-third of the members of the Indian Civil Service from the Statute-book, then you will not have any reservations in the High Court for that service and necessarily no reservation for the office of Chief Justice. But that apart, I based my claim upon the undoubted fact that in the wisdom of Parliament these appointments have been reserved to the members of the English Bar, and when I am in favour of the enlargement of the provisions of that section, I am not breaking in upon that principle but contend that a member of

the legal profession may just as well be a barrister or an advocate or a vakil. They belong to the same class; but when my friend on the other side wishes to enlarge the terms of section 101, he breaks in upon the radical principle of that section by introducing the provision that non-lawyer and non-professional Judges shall be treated on the same footing as professional Judges. Sir, it is one thing to be conversant with the theory of law and quite a different thing to be conversant with the practice of law. And whatever may be said of the ability and competence of the members of the Indian Civil Service, they cannot lay any claim to the practice of Indian law; and if you allow the practice of Indian law as a vital qualification for the discharge of judicial functions, then I say the members of the Indian Civil Service are out of court. But that is not the question. We are not dealing here with the larger question which underlies the enactment of section 101 of the Government of India Act. I ask the House to support a very narrow motion, the motion being that the present provisions of the Government of India Act, which have been in existence for over a century, shall continue to remain in the future constitution of this country. Could anything be more just? Could anything be more equitable? Has my friend said anything against it? He has not. I leave it at that.

**The Honourable Sir James Orerar:** Sir, with your permission I should like to say a very few brief words in reply.

**Mr. President:** Very well.

**The Honourable Sir James Orerar:** Sir, after the elaborate explanation of my Honourable and learned friend that it was by sheer accident that he came to move his Resolution, it was perhaps somewhat misconceived and even ungracious on my part to have been at so much pains to follow the elusive anfractuosities of his argument. I perhaps ought to have contented myself with assuring him of my deepest and most respectful sympathy in the accident in which he finds himself so uncomfortably involved. But I think that a somewhat worse accident has overtaken the debate in consequence of what has just now fallen from my Honourable friend, because, if the House has listened attentively to his final words, it must be afflicted with an extraordinary sense of the whole of this debate being a great misunderstanding. I am almost led to the desperate theory that the Honourable and learned gentleman did not read through the terms of the Resolution which he moved. He has made in the most eloquent terms the following plea, that the present provisions of the Government of India Act regulating the constitution of the High Courts of India, having produced in the past High Courts which have commanded the respect of the whole country not only for their learning, not only for their legal acumen and subtlety but also for their independence of the executive authority, that for these and many other cogent and weighty reasons, that law should remain unaltered. Has it escaped his attention that the Resolution which he asks this House to endorse does propose a very material and a very substantial change in the law? Had the argument been that the law should remain unaltered, I would have myself freely admitted that there was very much to be said for it. That is not the Honourable gentleman's proposition. The Honourable gentleman's proposition is not that the law should remain unaltered but that it should be altered, and it is in respect of one part of the alteration which the Resolution proposes that I took objection. The Government of India have long been prepared to recognise



[Sir James Crerar.]

the claim which has been so eloquently supported on the other side of the House that members of the Indian Bar as distinct from those who have also qualified as members of the Bars of Great Britain should be regarded as eligible for the post of Chief Justice. It surprises me that it should now be imputed to me that I am opposing that proposition. I have maintained all along, and I made it clear in the first sentence of my speech, that in that proposition the Government of India fully concur and have long urged the admission of that upon His Majesty's Government, and that His Majesty's Government agreed to it. What I did object to was that an invidious and unwarranted discrimination should be made among those who, and by the common consent of that great body of the public in India who are most concerned with the proper administration of the law, have earned their position and have justified their position.

Truly, Sir, there is one point on which I should like to express my satisfaction. During the whole course of this debate I acknowledge that nothing has been said in disparagement of the honesty, the integrity and the ability of the Indian Civil Service; and I hope that I was equally clear in my expressed desire at the outset to embark upon no disparagement of the Bar. Indeed I endeavoured in my humble way to pay my tribute to the Bar. And therefore it is somewhat unfortunate, it has certainly not been in any way my intention, nor, I think, my fault, that the debate has to some extent developed on the lines of some kind of competition between the Bar and the Indian Civil Service. That is really entirely remote from our purposes; it is really entirely remote, I should imagine, from the intentions of those who hold the views intended to be expressed in this Resolution. The true fact of the matter, the real issue is that which my Honourable and learned friend from the Punjab, Mr. Puri, has stated in a very lucid and very temperate manner. He said it was not a contest as between the ability, the integrity, the experience and the knowledge of law of two different classes of men. It was really a question of public policy. It was a question of whether one particular method of appointment or another would be best calculated to secure that the presiding officers of the High Courts in India should be removed from the faintest suggestion of partiality, bias or subservience. I am perfectly prepared to appeal to that principle. I am perfectly prepared to accept the Honourable Member's perfectly correct statement of what is really involved in this. And I say that judged by precisely that criterion of eligibility to the great office of Chief Justice on the grounds of ability, of knowledge of law, of experience of personal integrity, of the most complete independence of spirit and of the most complete determination to maintain the standard of justice free from any invasion or deflection by any improper influence whether executive or political, the category of Judges whom this Resolution proposes specifically, unwarrantably and invidiously to exclude are entitled precisely to the same acceptance, the same degree of confidence and the same protection, as any other category, of the Puisne Judges of the High Courts.

**Mr. President:** The question which I have now to put is that:

"This Assembly recommends to the Governor General in Council to convey to His Majesty's Government that in the opinion of this House the Chief Justice of an Indian High Court shall be a Barrister, a Vakil, or an Advocate, and not a Member of the Indian Civil Service."

The Assembly divided.

## AYES—46.

Abdul Matin Chaudhury, Mr.  
Aggarwal, Mr. Jagan Nath.  
Ahmed, Mr. K.  
Anwar-ul-Azim, Mr. Muhammad.  
Azhar Ali, Mr. Muhammad  
Bagla, Lala Rameshwar Prasad.  
Bhuput Sing, Mr.  
Das, Mr. A.  
Das, Mr. B.  
Dudhoria, Mr. Nabakumar Sing.  
Dutt, Mr. Amar Nath.  
Fazal Haq Piracha, Shaikh.  
Ghuznavi, Mr. A. H.  
Gour, Sir Hari Singh.  
Harbans Singh Brar, Sirdar.  
Ismail Ali Khan, Kunwar Hajee.  
Jog, Mr. S. G.  
Lahiri Chaudhury, Mr. D. K.  
Lalchand Navalrai, Mr.  
Maswood Ahmad, Mr. M.  
Misra, Mr. B. N.  
Mitra, Mr. S. C.  
Muazzam Sahib Bahadur, Mr.  
Muhammad.

Mudaliar, Diwan Bahadur A.  
Ramaswami.  
Mujumdar, Sardar G. N.  
Murtuza Saheb Bahadur, Maulvi  
Sayyid.  
Neogy, Mr. K. C.  
Pandit, Rao Bahadur S. R.  
Parma Nand, Bhai.  
Puri, Mr. B. R.  
Raghubir Singh, Kunwar.  
Rastogi, Mr. Badri Lal.  
Reddi, Mr. T. N. Ramakrishna.  
Sant Singh, Sardar.  
Sarda, Diwan Bahadur Harbilas.  
Sen, Pandit Satyendra Nath.  
Shafee Daoodi, Maulvi Muhammad.  
Shah Nawaz, Mian Muhammad.  
Singh, Kumar Gupteshwar Prasad.  
Singh, Mr. Gaya Prasad.  
Sitaramaraju, Mr. B.  
Suhrawardy, Sir Abdullah.  
Uppi Saheb Bahadur, Mr.  
Wilayatullah, Khan Bahadur H. M.  
Yamin Khan, Mr. Muhammad.  
Ziauddin Ahmad, Dr.

## NOES—40.

Abdul Qaiyum, Nawab Sir Sahibzada.  
Acott, Mr. A. S. V.  
Allah Baksh Khan Tiwana, Khan  
Bahadur Malik.  
Allison, Mr. F. W.  
Anklesaria, Mr. N. N.  
Azizuddin Ahmad Bilgrami, Qazi.  
Bajpai, Mr. R. S.  
Banerji, Mr. Rajnarayan.  
Bhore, The Honourable Sir Joseph.  
Clow, Mr. A. G.  
Cosgrave, Mr. W. A.  
Crerar, The Honourable Sir James.  
Dalal, Dr. R. D.  
Fox, Mr. H. B.  
French, Mr. J. C.  
Graham, Sir Lancelot.  
Gwynne, Mr. C. W.  
Heathcote, Mr. L. V.  
Lal Chand, Hony. Captain Rao  
Bahadur Chaudhri.  
Macqueen, Mr. P.

Moore, Mr. Arthur.  
Morgan, Mr. G.  
Mukherjee, Rai Bahadur S. C.  
Noyce, Sir Frank.  
Parsons, Sir Alan.  
Rainy, The Honourable Sir George.  
Rajah, Rao Bahadur M. C.  
Rama Rao, Diwan Bahadur U.  
Roy, Mr. S. N.  
Ryan, Mr. T.  
Sahi, Mr. Ram Prashad Narayan.  
Santos, Mr. J.  
Schuster, The Honourable Sir George.  
Scott, Mr. J. Ramsay.  
Seamen, Mr. C. K.  
Sher Muhammad Khan Gakhar  
Captain.  
Studd, Mr. E.  
Sykes, Mr. E. F.  
Young, Mr. G. M.  
Zulfiqar Ali Khan, Sir.

The motion was adopted.

**Mr. President:** I should like to ask Honourable Members whether they desire that I should call upon the mover of the next Resolution to place his Resolution before the House at this hour (*Cries of "No, no."*)—order, order,—or whether they wish me to adjourn the House now till to-morrow. (*Cries of "Adjourn."*) I take it that the House wishes to adjourn now. The House stands adjourned till 11 o'clock tomorrow morning.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 28th January, 1932.