

26th August 1938

# THE LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

---

Volume V, 1938

*(26th August to 9th September, 1938)*

---

## EIGHTH SESSION OF THE FIFTH LEGISLATIVE ASSEMBLY, 1938



PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI.  
PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, SIMLA.  
1938

# Legislative Assembly.

## *President :*

THE HONOURABLE SIR ABDUR RAHIM, K.C.S.I.

## *Deputy President :*

MR. AKHIL CHANDRA DATTA, M.L.A.

## *Panel of Chairmen :*

MR. S. SATYAMURTI, M.L.A.

DR. SIR ZIAUDDIN AHMAD, C.I.E., M.L.A.

SIR H. P. MODY, K.B.E., M.L.A.

MR. A. AIKMAN, C.I.E., M.L.A.

## *Secretary :*

MIAN MUHAMMAD RAFI, BAR.-AT-LAW.

## *Assistants of the Secretary :*

MR. M. N. KAUL, BAR.-AT-LAW.

KHAN SAHIB S. G. HASNAIN, B.A. (upto 15th August, 1938).

RAI BAHADUR D. DUTT (from 16th August, 1938).

## *Marshal :*

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

## *Committee on Petitions :*

MR. AKHIL CHANDRA DATTA, M.L.A., *Chairman.*

MR. A. AIKMAN. C.I.E., M.L.A.

MR. M. S. ANEY, M.L.A.

SYED GHULAM BHIK NAIRANG, M.L.A.

MR. N. M. JOSHI, M.L.A.

# CONTENTS.

VOLUME V.—26th August to 9th September, 1938.

PAGES.	PAGES.
<b>FRIDAY, 26TH AUGUST 1938—</b>	
Starred Questions and Answers . . . . . 1053—90	<b>WEDNESDAY, 31ST AUGUST, 1938—contd.</b>
Statements laid on the Table . . . . . 1090	Unstarred Questions and Answers . . . . . 1338—42
The Muslim Dissolution of Marriage Bill—Discussion on the motion to refer to Select Committee not concluded . . . . . 1090—1124	Statements laid on the Table . . . . . 1342—47
<b>MONDAY, 29TH AUGUST, 1938—</b>	
Starred Questions and Answers . . . . . 1125—65	Motion for Adjournment re Demolished Siva Temple in the Queen's Gardens of Delhi—Ruled out of order . . . . . 1347—52
Unstarred Question and Answer . . . . . 1165—66	The Motor Vehicles Bill—Discussion on the consideration of clauses not concluded . . . . . 1352—92
The Commercial Documents Evidence Bill—Appointment of Mr. Y. N. Sukthankar to the Select Committee . . . . . 1166	<b>THURSDAY, 1ST SEPTEMBER, 1938—</b>
The Destructive Insects and Pests (Second Amendment) Bill—Introduced . . . . . 1166	Starred Questions and Answers . . . . . 1393—1417
The Motor Vehicles Bill—Discussion on the motions to consider and to circulate not concluded . . . . . 1166—1205	The Motor Vehicles Bill—Discussion on the consideration of clauses not concluded . . . . . 1417—70
<b>TUESDAY, 30TH AUGUST, 1938—</b>	
Starred Questions and Answers . . . . . 1207—48	<b>FRIDAY, 2ND SEPTEMBER, 1938—</b>
Unstarred Questions and Answers . . . . . 1248—51	Starred Questions and Answers . . . . . 1471—91
Election of Members to the Standing Committee on Pilgrimage to the Hedjaz . . . . . 1251	Unstarred Questions and Answers . . . . . 1491—92
The Motor Vehicles Bill—Discussion on the motions to consider and to circulate not concluded . . . . . 1251—96	Resolution re—
<b>WEDNESDAY, 31ST AUGUST, 1938—</b>	
Starred Questions and Answers . . . . . 1297—1338	Implementing the Recommendation of the Indian Sandhurst Committee—Adopted as Amended . . . . . 1493—1534
	Financial control of Military Expenditure—Discussion not concluded . . . . . 1535—40
	<b>MONDAY, 5TH SEPTEMBER, 1938—</b>
	Members Sworn . . . . . 1541
	Starred Questions and Answers . . . . . 1541—80
	Unstarred Questions and Answers . . . . . 1580—82

MONDAY, 5TH SEPTEMBER, 1938— <i>contd.</i>	PAGES.	WEDNESDAY, 7TH SEPTEMBER, 1938—	PAGES.
Motions for Adjournment re—		Starred Questions and Answers . . . . .	1745—71
Rate war between Messrs. Turner Morrison and Company and Messrs. Scindia Navigation Com- pany in the Haj Traffic— Ruled out of order . . . .	1582—83	Motion for adjournment re Alleged sacrilege com- mitted by the Police in a Simla Mosque—Ruled out of order . . . . .	1771—72
Condition of Indians in Burma—Adopted . . . .	1583, 1618—42	The Motor Vehicles Bill—Dis- cussion on the considera- tion of clauses not con- cluded . . . . .	1772— 1819
Remarks by Mr. President on the Point of Order whether an Honourable Member, who is on the Panel of Chairman, can take the Chair while the Deputy President is in the House . .	1583—86	THURSDAY, 8TH SEPTEMBER, 1938—	
The Repealing and Amending Bill—Introduced . . . .	1586	Member Sworn . . . .	1821
The Motor Vehicles Bill—Dis- cussion on the considera- tion of clauses not con- cluded . . . . .	1586— 1618	Starred Questions and Answers . . . . .	1821—63
TUESDAY, 6TH SEPTEMBER, 1938—		Unstarred Questions and Answers . . . . .	1863—65
Starred Questions and Answers . . . . .	1643—93	Statement re preparation of summaries of opinions on Bills . . . . .	1665—66
Unstarred Questions and Answers . . . . .	1694—95	Statement re criticism of Presi- dent's Rulings . . . .	1866—67
Statements laid on the Table . .	1696—98	The Motor Vehicles Bill—Dis- cussion on the considera- tion of clauses not con- cluded . . . . .	1867— 1910
The Motor Vehicles Bill—Dis- cussion on the considera- tion of clauses not con- cluded . . . . .	1698— 1743	FRIDAY, 9TH SEPTEMBER, 1938—	
		Starred Questions and Answers . . . . .	1911—48
		Statements laid on the Table . .	1948—51
		Message from the Council of State . . . . .	1951
		The Muslim Dissolution of Marriage Bill—Discussion on the motion to refer to Select Committee not con- cluded . . . . .	1951—88



# LEGISLATIVE ASSEMBLY.

*Friday, 26th August, 1938.*

The Assembly met in the Assembly Chamber at Eleven of the Clock, Mr. President (The Honourable Sir Abdur Rahim) in the Chair.

## STARRED QUESTIONS AND ANSWERS.

### (a) ORAL ANSWERS.

#### EXONERATING THE POSTAL DEPARTMENT FROM COMPENSATION FOR LOSS OF INSURED COVERS CONTAINING HALVES OF CURRENCY NOTES.

508. \*Mr. Brojendra Narayan Chaudhury : With reference to the amendments to Post Office rules notified in the Gazette of India, dated the 16th April, 1938, exonerating the Postal Department from compensation for loss of insured covers containing halves of currency notes, will the Honourable Member for Communications please state :

(a) the reason for withdrawing this privilege enjoyed by the public ; and

(b) for how long this privilege was granted ?

The Honourable Mr. A. G. Clow : (a) and (b). I do not think the old rule, which was in force for about 26 years, can properly be described as a privilege. An examination of the legal position showed that the insurer of half currency notes was able to secure, in virtue of his insurance, no more than he could obtain without insuring, and the obligation to insure half notes and the liability to pay on such notes if insured were simultaneously withdrawn.

Mr. Brojendra Narayan Chaudhury : How long was this privilege granted ?

The Honourable Mr. A. G. Clow : I have said for 26 years.

#### CLOSING OF CERTAIN BRANCH LINES OF RAILWAYS AND CONTEMPLATED TAX ON CRUDE OIL.

509. \*Mr. Brojendra Narayan Chaudhury : (a) Will the Honourable the Railway Member please state if Government have decided that Branch Railways should be closed in consonance with the Mitchell-Kirkness report and the Wedgwood report as there is no hope of their thriving against road competition ?

(b) If so, what lines have been listed for closure and when will they be closed ?

( 1053 )

(c) Is the Honourable Member aware that the Mitchell-Kirkness report remarks that the bus is well able to compete over a 50 mile through service and probably more by stages in the service ?

(d) Has any inquiry been made recently as to whether since the writing of the report, bus machinery (particularly advent of crude oil bus), bus-owners' resources and organisation have not improved and that the 50 miles limit no longer holds good ?

(e) Is the Honourable Member aware that on the Grand Trunk Road in the Punjab and the United Provinces buses are running on even 200 miles service and more and the road being parallel and close to Railways are competing with Railways ?

(f) Do Government contemplate reviewing the position of Railways as to whether in the face of rapid improvement of science, it is at all possible and economical in the long run to the nation (i.e., the people as opposed to the Government exchequer) to maintain passenger and light goods service of the Railway against bus and lorry by restrictive legislation ?

(g) Do Government contemplate additional tax on crude oil to the same extent as on petrol ?

(h) Are Government aware that the consumption of crude oil is only half of petrol for generation of the same power ?

**The Honourable Mr. A. G. Clow :** (a) Each case is being examined on its merits.

(b) It is intended to close the Agra-Bah Railway from the 1st January, 1939.

(c) Yes.

(d) The range of bus competition tends to lengthen.

(e) Yes.

(f) The position of railways is constantly under review. I regret I am not clear as to the precise point of information which the Honourable Member is seeking in the latter part of the question, and I am unable to accept the implications of the statement made in it.

(g) This part of the question should have been addressed to my Honourable colleague in the Finance Department.

(h) Government are aware that the fuel consumption of a diesel engined road vehicle may be appreciably lower than that of a petrol engined vehicle of equivalent horse power.

**Mr. Brojendra Narayan Chaudhury :** May I have a list of railways which are being examined ?

**The Honourable Mr. A. G. Clow :** I have not got that here. I do not know what others are being examined. I have given only one in respect of which a decision has been reached.

**Mr. Brojendra Narayan Chaudhury :** May I have the names of the railways which are being examined ?

**The Honourable Mr. A. G. Clow :** I cannot give the Honourable Member particulars of those which are under consideration.

**Mr. Brojendra Narayan Chaudhury :** Will the Honourable Member lay a list on the table of the House ?

**The Honourable Mr. A. G. Clow :** No, Sir. I cannot promise to do that at this stage. It is not always desirable to announce beforehand a list of those under consideration as it might create unnecessary perturbation.

**Mr. Badri Dutt Pande :** Is it a fact that the Hardwar-Rishikesh line is being closed ?

**The Honourable Mr. A. G. Clow :** No decision has been reached.

**Mr. Lalchand Navalrai :** What is the policy of the Government ? To increase the railways or decrease them ?

**The Honourable Mr. A. G. Clow :** The policy is to decrease them where they become obsolete, and to increase them where they are likely to become profitable.

**Mr. M. Ananthasayanam Ayyangar :** May I know whether, as in the case of the Punjab, the Railways in other provinces have undertaken bus service ?

**The Honourable Mr. A. G. Clow :** I do not think that arises out of this question. I have answered that question earlier.

**Pandit Lakshmi Kanta Maitra :** With regard to this particular line, may I know whether Government have closed it down because it was uneconomical or it was dangerous to public safety ? Which considerations have induced Government to close down the Agra-Bah Railway ?

**The Honourable Mr. A. G. Clow :** Because we were losing money.

**Pandit Lakshmi Kanta Maitra :** So it was uneconomical ?

**The Honourable Mr. A. G. Clow :** It was distinctly uneconomical.

#### THROUGH BOOKING WITH SHILLONG OUT-AGENCY OF THE ASSAM BENGAL RAILWAY.

510. **\*Mr. Brojendra Narayan Chaudhury :** Will the Honourable the Railway Member please state :

- (a) if representations from Assam Chamber of Commerce and other parties have been received by the Railway Board, complaining against the refusal by the Eastern Bengal Railway authority of through-booking with Shillong out-agency of the Assam Bengal Railway, *via* Sylhet ;
- (b) how the representations have been dealt with ; and
- (c) whether it is correct as stated in the petition of the Assam Chamber, that " the general Railway practice is to allow freedom of booking by alternative routes and through booking with foreign Railways is freely permitted for this purpose " ?

**The Honourable Mr. A. G. Glow :** (a) Representations have been received only from the Assam Chamber of Commerce.

(b) The matter was taken up with the Eastern Bengal Railway Administration who are arranging to allow through booking from stations on that railway to Shillong Out-Agency *via* Sylhet.

(c) Yes.

**PERSONS AND CATTLE RUN OVER BY THE ASSAM-BENGAL RAILWAY TRAINS IN THE SURMA VALLEY.**

511. **\*Mr. Brojendra Narayan Chaudhury :** (a) Will the Honourable Member for Railways please state the number of persons and cattle run over by the Assam Bengal Railway trains in the Surma Valley since the last Session of the Assembly ?

(b) Is it a fact that the Sylhet-Silchar Express train of 11th July ran over and killed a person near Moglabazar, but the driver did not stop the train, and that the corpse was noticed and picked up by the next train coming from the opposite direction ?

(c) Is it a fact that on the night of 9th July the Surma Mail ran over and killed a person near Chhakapon Station ?

(d) Is it a fact that on 3rd July at about 2 P.M. the Up passenger train ran over and killed a person near the level crossing at Karimganj station ?

(e) Is it a fact that a cow or a bull or bullock was run over and killed between Nilambazar and Kayasthagram stations on 6th June and that the driver did not care to disentangle the carcass from the wheel till he reached the next station ?

(f) Is it a fact that on 6th May a person was run down and killed by the evening down train near Dhalai bridge ?

(g) Do Government intend to direct a special enquiry into the causes of frequency of fatal accidents as above at least six in a small Railway area within two months ?

(h) Has prosecution been launched against the drivers or guards in the above cases ? If not, why not ?

**The Honourable Mr. A. G. Glow :** (a) During the period from 1st April to 31st July, 1938, nine persons and twenty six head of cattle were run over.

(b) After the passage of 266 Down train on the 11th July, 1938, an old man, believed to be a beggar and to be deaf, was found to have been run over between Moglabazar and Sylhet Bazar stations.

(c) Yes, the train was No. 268 Down Mixed.

(d) An old man was run over and killed within Karimganj station limits by No. 206 Down Mixed train at 12-40 hours on the 3rd July, 1938.

(e) A calf was killed at Kayasthagram station. I am not in possession of particulars regarding the latter part of the question.

(f) One man was run over by 208 Down Mixed train between Bhanugach and Shamsbernagar stations at 19-43 hours on the 6th May, 1938, when he was attempting to cross the railway line in the face of an approaching train.

(g) No. Each case as it arises is the subject of an enquiry and reports of all fatal accidents are sent to the Provincial Governments concerned.

(h) No. Some of the cases are still being investigated by the police, but there is no reason to believe that either in this case or in others the drivers or guards are responsible.

**Mr. Brojendra Narayan Chaudhury :** I have not got an answer to the second part of (b) :

“but the driver did not stop the train and that the corpse was noticed and picked up by the next train coming from the opposite direction ?”

**The Honourable Mr. A. G. Clow :** I have not got particulars about that. The driver would not run over a man and fail to stop if he realised that he had run over him.

**Mr. Brojendra Narayan Chaudhury :** My allegation is that the driver who caused the accident failed to stop the train to pick up the corpse ?

**The Honourable Mr. A. G. Clow :** In that case, he probably did not see the accident.

**Mr. Brojendra Narayan Chaudhury :** Will the Honourable Member kindly enquire into this ?

**The Honourable Mr. A. G. Clow :** Does the Honourable Member assert that the driver did see the man run over and that he did not stop the train ? If the Honourable Member asserts that he failed to notice the man, I am quite willing to take it from him.

**Mr. N. M. Joshi :** May I ask whether fencing is not necessary according to the Indian Railways Act ?

**The Honourable Mr. A. G. Clow :** It is not, as far as I am aware.

**Mr. N. M. Joshi :** May I ask whether Government have enquired as to how many of these cases were due to there being no fencing ?

**The Honourable Mr. A. G. Clow :** I do not think the cases of fatal accidents are due to absence of fencing in any way.

**Mr. K. Santhanam :** Is it a fact that the Central Advisory Committee for Railways has recommended that, whenever there is a fatal accident, there should be a judicial enquiry into the matter ?

**The Honourable Mr. A. G. Clow :** I believe they did. I have not got the facts before me.

**Mr. K. Santhanam :** Have the Government of India accepted that recommendation and taken action thereon ?

**The Honourable Mr. A. G. Clow :** No, Sir.

**Mr. T. S. Avinashilingam Chettiar :** In view of the fact that there were nine accidents in the course of four months on one particular railway, may I enquire what steps Government have taken to enquire into the matter and see that such accidents do not happen in future ?

**The Honourable Mr. A. G. Olow :** Unfortunately it is not possible to prevent people trespassing and most of these lamentable accidents are due either to people trespassing or to their neglecting the ordinary safety precautions.

**Mr. Brojendra Narayan Chaudhury :** Are there fences all along the line ?

**The Honourable Mr. A. G. Olow :** Not everywhere.

#### BALANCES BELONGING TO INDIANS IN IRAN.

512. **\*Mr. T. S. Avinashilingam Chettiar :** Will the Foreign Secretary state :

- (a) whether (in continuation of his answer to starred question No. 226, dated the 14th February, 1938) Government have received replies to their representation to His Majesty's Government regarding the balances belonging to Indians in Iran which they are unable to bring over ;
- (b) if so, to what effect ; and
- (c) what is the extent of Indian funds in Iran which is so tied up ?

**Sir Aubrey Metcalfe :** (a) and (b). The Honourable Member is referred to the reply given by the Honourable Sir Muhammad Zafrullah Khan to his starred question No. 1195 in the meeting of the 6th April, 1938. I have nothing to add to that reply which correctly represents the present position.

(c) The information is not available.

**Mr. T. S. Avinashilingam Chettiar :** May I know whether they will call for that information ?

**Sir Aubrey Metcalfe :** It is not available ; we could not get it. Nobody is going to say exactly what their funds involved are.

**Mr. Manu Subedar :** Have Government received any representations from commercial bodies on the subject ?

**Sir Aubrey Metcalfe :** No ; not recently.

#### INCIDENCE OF PERSIAN GULF EXPENDITURE.

513. **\*Mr. S. Satyamurti :** Will the Secretary for External Affairs please state :

- (a) whether Government are aware that since 1929-30 the Public Accounts Committee have been asking that the question of the incidence of Persian Gulf expenditure should be considered ;
- (b) the reasons for the delay on the part of Government in settling this question ;

(c) whether Government have represented, or propose to represent to the British Government that Indian interests in the Persian Gulf are very small and that the entire expenditure should be borne by His Majesty's Government; and

(d) if not, why not?

**Sir Aubrey Metcalfe :** (a) Yes.

(b) A settlement in which two parties are involved cannot be decided by unilateral action on the part of one party to the settlement. The arrangements for division of expenditure in the Persian Gulf are at present regulated by a Convention arrived at between His Majesty's Government and the Government of India in 1904 and this Convention cannot be altered without the consent of both parties.

(c) No. The Government of India do not admit that Indian interests in the Persian Gulf are negligible.

(d) Does not arise.

**Mr. S. Satyamurti :** With reference to part (b), may I know whether the answer means that while this Government have been doing their best, the delay of nearly eight years after the Public Accounts Committee has made its recommendation is entirely due to His Majesty's Government's unwillingness to come to any settlement in this matter?

**Sir Aubrey Metcalfe :** That, I think, asks me for an expression of opinion. It is not for me to apportion blame between His Majesty's Government and the Government of India.

**Mr. S. Satyamurti :** I want to know the facts. I want to know the reasons for the delay and whether the Government of India have been doing their best, or whether they themselves acquiesce in this delay by not pressing the question adequately on the attention of His Majesty's Government?

**Sir Aubrey Metcalfe :** Whether the Government of India are pressing the matter adequately or not is surely a matter of opinion.

**Mr. S. Satyamurti :** I want to know what the Government of India are doing? I have not asked for their opinion: I am asking whether the Government of India have pressed, with all the pressure which they must exercise in view of the fact that the Public Accounts Committee of eight years have been pressing again and again upon the Government whether they are pressing this on His Majesty's Government with all the force at their disposal?

**Sir Aubrey Metcalfe :** I cannot say more except that there has been and still is correspondence going on with His Majesty's Government on the matter.

**Mr. S. Satyamurti :** Have the Government of India pointed out to His Majesty's Government that the Indian Legislature is impatient in the matter in view of the fact that the matter has been pending for over eight years?

**Sir Aubrey Metcalfe :** The views of the Indian Legislature have certainly been brought to the attention of His Majesty's Government.

**Mr. S. Satyamurti :** With reference to clause (c), my Honourable friend said that Indian interests are not negligible. I am asking what are these Indian interests which the Government consider are not very small ?

**Sir Aubrey Metcalfe :** I submit that that is a question which I cannot answer in answer to a supplementary question.

**Mr. S. Satyamurti :** But it arises out of the question.

**Mr. Manu Subedar :** May I ask whether Government will assure this House that in view of the present financial difficulties of the Indian budget this year, and this matter becoming more urgent, they will represent to His Majesty's Government accordingly ?

**Sir Aubrey Metcalfe :** Representations have been made and His Majesty's Government are fully aware of the financial position of the Government of India.

**Mr. T. S. Avinashilingam Chettiar :** When was the latest representation made ?

**Sir Aubrey Metcalfe :** I would have to have notice of that : approximately about six or seven months ago.

**Mr. T. S. Avinashilingam Chettiar :** Are the Government satisfied that they are making any progress in these negotiations ?

**Sir Aubrey Metcalfe :** That is a matter of opinion.

**Mr. T. S. Avinashilingam Chettiar :** How often have the Government of India addressed His Majesty's Government on this matter during the last eight years ?

**Sir Aubrey Metcalfe :** I should have to have notice of that.

#### REDUCTION IN THE PRICE OF POST CARDS.

514. **\*Mr. S. Satyamurti :** Will the Honourable Member for Communications please state :

- (a) whether, in view of the decisive vote of the House during the last four years on the Finance Bill, Government have considered or are prepared to consider the question of reducing the value of the postcard to six pies ;
- (b) the reasons why Government have not so far agreed to make this change ; and
- (c) the latest calculations made by Government on the financial results of such a change ?

**The Honourable Mr. A. G. Clow :** (a) Government are not prepared to anticipate any statement that may be made on next year's budget.

(b) The Honourable Member is referred to the debates which have taken place on the subject.



(c) About Rs. 59½ lakhs annually if the existing traffic remained unaffected.

**Mr. S. Satyamurti :** With reference to the answer to clause (a), may I know whether this matter is left entirely to the Finance Member to decide as part of his budget, or whether the department for which my Honourable friend is responsible examines the question and makes any recommendations to the Finance Member ?

**The Honourable Mr. A. G. Clow :** The question is examined both in the Posts and Telegraphs Department and in the Communications Department. The Finance Member is responsible for saying what the decision of the Government of India is.

**Mr. S. Satyamurti :** With reference to clause (c), my Honourable friend says the figure would be 59½ lakhs if there is no change in the traffic. May I know whether Government have taken into consideration in calculating this estimated loss the probable increase in traffic by the reduction of the price of postcard ?

**The Honourable Mr. A. G. Clow :** The figure I gave was the figure on the assumption that the traffic remained unaffected. Quite clearly there would probably be an increase in the number of postcards sent, but there would also be a decrease in the number of letters sent.

**Mr. N. M. Joshi :** May I ask in view of the fact that the Government of India are making a loss of about 11 lakhs on the Air Mail, whether they will take steps to abolish the Air Mails and save that money so that ultimately after some years they will be able to reduce the price of the postcard ?

**The Honourable Mr. A. G. Clow :** The answer is in the negative.

**Mr. N. M. Joshi :** May I ask the reason ?

**Mr. President** (The Honourable Sir Abdur Rahim) : Next question. You cannot have a debate on this.

#### REVENUE AND EXPENDITURE UNDER THE TELEGRAPH DEPARTMENT.

515. **\*Mr. S. Satyamurti :** Will the Honourable Member for Communications please state :

- (a) the latest figures of revenue and expenditure under the Telegraph Department ;
- (b) whether Government have examined or propose to examine the question of reducing this difference between revenue and expenditure under the Telegraph Department either by retrenchment in expenditure or by increase of revenue ; and
- (c) whether Government have considered the separation of the Posts and Telegraphs Department for all revenue and expenditure purposes ?

**The Honourable Mr. A. G. Clow :** (a) The latest figures of revenue and expenditure available are the provisional figures for the year 1937-38. These are :

(i) Revenue Rs. 2,51,69,000,

(ii) Expenditure Rs. 2,68,06,000.

(b) The question has received the most careful consideration of the Department and of Government for a number of years and the action taken has considerably reduced the gap between expenditure and revenue.

(c) The Postal and Telegraph Branches of the Department have already been separated from each other for the purpose of maintaining separate commercial accounts of revenue and expenditure for each Branch.

**Mr. S. Satyamurti :** With reference to the answer to clause (b) of the question, may I know what the latest arrangement was for reducing expenditure or increasing telegraph revenue, and what the resultant savings were ?

**The Honourable Mr. A. G. Clow :** I do not think I can remember which was the last economy but we are always looking for small economies.

**Mr. S. Satyamurti :** My Honourable friend says they are constantly examining the question of reducing expenditure either by retrenchment or by increasing the revenue. I am not asking about small economies : I am asking about the last considerable reduction in expenditure in either of these things ?

**The Honourable Mr. A. G. Clow :** It is done quite continuously. I cannot really remember the last one : there have been as the Honourable Member is aware committees which have considered the question of expenditure in the telegraph branch.

**Mr. S. Satyamurti :** May I know if my Honourable friend can give me some information as to how much of this loss is due to concessions to the press for press telegrams ?

**The Honourable Mr. A. G. Clow :** I believe it is about 13 lakhs, but I do not have the figures with me.

**Mr. M. Ananthasayanam Ayyangar :** May we know if any of these telegraph offices have been converted into combined post and telegraph offices ?

**The Honourable Mr. A. G. Clow :** I believe so.

**Mr. M. Ananthasayanam Ayyangar :** How many ?

**The Honourable Mr. A. G. Clow :** I cannot tell you that.

#### CHANGES IN THE THIRD CLASS PASSENGER TARIFF ON STATE RAILWAYS.

516. **\*Mr. S. Satyamurti :** Will the Honourable Member for Railways please state :

(a) the changes in the third class passenger tariff made during the last three years by the State railways ;

- (b) the reasons, why, or the considerations on which, such changes were made ;
- (c) the financial results thereof ;
- (d) the increase or decrease of third class passenger traffic on account of such changes in the tariff ;
- (e) whether Government propose to have any scientific principles in connection with the changes of third class tariff, so as to enable railways to compete with road traffic on equal terms ; and
- (f) if not, why not ?

**The Honourable Mr. A. G. Clow :** (a) On the East Indian Railway, the fares for distances over fifty miles were enhanced by a quarter of a pie per mile from 1st June, 1937.

On the Great Indian Peninsula Railway, the basis of fares applicable by mail and express trains in bookings between stations on that Railway was extended from 1st April, 1936, to bookings between stations on that railway and stations on other railways. The difference between the fares chargeable by such trains and those for ordinary trains is one pie a mile for the first fifty miles only.

On the North Western Railway, up to 31st December, 1935, the basis of charge per mile was three pies for the first 50 miles,  $2\frac{1}{2}$  pies for additional distances from 51 to 300 miles and  $2\frac{1}{2}$  pies for further additional distances. The basis of charge per mile for the first 300 miles was then changed to three pies and for additional distances beyond 300 miles is  $2\frac{1}{2}$  pies.

(b) The changes over the East Indian and North Western Railways were made to obtain increased revenue : that over the Great Indian Peninsula Railway was principally due to there being no justification for differentiation between local and through booking.

(c) and (d). It is not practicable to isolate the effect of any one of the various factors that influence the movement of traffic, but such figures as are readily available, excluding those for military traffic and season tickets, show the following fluctuations on the East Indian and North Western Railways :

On the East Indian Railway, for distances over 50 miles the earnings for 1937-38, which include figures for the first two months of that year when the old scale of fares operated, were approximately Rs. 37 lakhs above those of 1936-37, and passengers increased by about 758,000.

On the North Western Railway, for distances over 50 miles, the earnings during 1937-38 increased by about Rs. 5 lakhs over 1936-37, the figures for which include the last three months of that year when the revised scale of fares operated, and passengers increased by about 241,000.

No figures are available in regard to the Great Indian Peninsula Railway, but the change referred to in my reply to part (a) of the question could hardly have made an appreciable difference in the earnings or passengers carried, as the maximum difference was only four annas for the longest distance.

(e) and (f). I am not aware of any scientific principles which could serve as a guide in the fixation of fares. Railways endeavour to compete with road traffic by adjusting their fares on sections where there is competition when they are satisfied that the adjustment proposed will enable them to meet such competition without an undesirable sacrifice of revenue.

**Mr. S. Satyamurti :** May I take it, therefore, that it is only to meet competition that the State Railways manipulate third class fares ?

**The Honourable Mr. A. G. Clow :** No, Sir, not necessarily.

**Mr. S. Satyamurti :** Then may I know what are the principles on which, apart from competition, third class fares are increased or decreased ? Is it solely from considerations of increase of traffic or increase of revenue ?

**The Honourable Mr. A. G. Clow :** It is to ensure that you get an adequate return on the capital invested.

**Mr. S. Satyamurti :** That I understand. May I ask, therefore, when a particular scale of fares exists for third class traffic already on any particular railway, on what principles are changes made ? Is it because there is no competition and that they can charge as much as they like, or is it because they feel that they can get more traffic or more revenue ?

**The Honourable Mr. A. G. Clow :** I think there are minimum and maximum fares, but reduction of fares may be made with a view to increasing traffic.

**Mr. S. Satyamurti :** I want to know whether third class fares are changed only for the purpose of increasing traffic and increasing revenue, or they are changed because they feel that there is no competition and so they can raise them.

**Mr. N. M. Joshi :** Exploitation.

**The Honourable Mr. A. G. Clow :** No, Sir. These changes are not due to what my Honourable friend Mr. Joshi calls exploitation.

**Mr. K. Santhanam :** May I know if the system of charging higher fares for short distances has not become obsolete in view of bus competition over short distances ?

**The Honourable Mr. A. G. Clow :** That, Sir, will be a matter of opinion as to whether the principle of making a "reduction for quantity" is sound or not.

**Mr. K. Santhanam :** I want to know whether the Railway Board has considered this question as a matter of general principle in order to revise their system of telescopic rating.

**The Honourable Mr. A. G. Clow :** I think the Honourable Member must table a question on that subject.

**Mr. S. Satyamurti :** With reference to clause (e),—where the word "scientific" may be a little exaggerated,—are the Railway Board applying their mind to this question ?

**The Honourable Mr. A. G. Olow :** Yes, Sir ; the administrations are constantly applying their mind to this question. They are compelled to by the force of circumstances.

PURCHASE OF STORES BY THE COMPANY-MANAGED RAILWAYS.

517. **\*Mr. S. Satyamurti :** Will the Honourable Member for Railways please state :

- (a) the cost of stores manufactured in India or bought through the Indian Stores Department by the Company-managed Railways during the last three years ;
- (b) the reasons for the low purchase of such stores by the Company-managed Railways ;
- (c) whether Government or the Railway Board are compelled to pay any compensation to the Company-managed Railways in respect of these purchases ;
- (d) if so, whether it is provided for in their contracts ;
- (e) the value of such compensation paid by the Railway Board or the Government to the Company-managed Railways during the last three years ;
- (f) whether this matter was borne in mind by Government in revising the contracts with the Railways, which they did during the last three years ; and
- (g) whether Government propose to bear it in mind in their dealings with the contracts of the Company-managed Railways so as to eliminate this compensation ?

**The Honourable Mr. A. G. Olow :** (a) For the years 1935-36 and 1936-37 the Honourable Member is referred to paragraph 67 of the Railway Board's report on Indian Railways for 1936-37, Vol. I. A copy of this report is in the Library of the House. The figures in respect of 1937-38 are as follows :

	Rs.
Value of stores of Indian manufacture or of indigenous origin purchased by Company-managed Railways .. ..	3,61,52,000
Value of stores purchased by Company-managed Railways through Indian Stores Department .. ..	7,71,000

(b) The value of indigenous stores purchases for Company-managed Railways during 1937-38 was 57 per cent. of the value of their total purchases. Bearing in mind that these railways are at liberty to purchase from the source most advantageous to themselves, Government do not consider this a low percentage.

(c) Government have agreed to pay compensation in cases in which the purchase in India of rails, metal sleepers and components, and wagon and wagon parts involves the railway concerned in loss.

(d) No.

(e) The amounts of compensation paid to the Company-managed Railways for the loss involved in placing orders in India against their requirements for 1935-36 and 1936-37 were Rs. 5,142 and 3,142 respectively. Similar information in respect of 1937-38 is not yet available.

(f) During the last three years only one contract, viz., that with the Madras and Southern Mahratta Railway Company has been revised. No provision was made in the revised contract regarding the purchase of stores.

(g) The question will be considered, should the occasion arise of revising any contract with a Company-managed Railway.

**Mr. S. Satyamurti :** With reference to the replies to clauses (c) and (d), if there is no provision in the contracts themselves for this payment, may I know the reasons why Government have agreed to pay and have paid compensation to these railways for purchasing these articles ?

**The Honourable Mr. A. G. Clow :** Because we wish to encourage the purchase of stores in India.

**Mr. S. Satyamurti :** May I know if Government have tried persuasion with these railways and after they failed they had to buy their consent to buy the products of this country ?

**The Honourable Mr. A. G. Clow :** We constantly bring to the notice of these railways cases where they can purchase with advantage in India, but where they are purchasing at a disadvantage, obviously we are not entitled to compel them to buy.

**Mr. S. Satyamurti :** May I take it, therefore, that with regard to all their purchases the monies paid represent approximately that extra price which the companies had to pay for buying these articles in India ?

**The Honourable Mr. A. G. Clow :** Yes, Sir, I believe that is so.

**Mr. S. Satyamurti :** May I take it that this compensation is paid only for the purchase of steel and rails and certain other articles which my Honourable friend mentioned ?

**The Honourable Mr. A. G. Clow :** Only for the list of articles I gave.

**Mr. S. Satyamurti :** With reference to clause (f), may I know why this matter was not looked into when the contract with the Madras and Southern Mahratta Railway was renewed three years ago and a provision was not inserted that they should buy indigenous articles on the same terms as the State Railways do ?

**The Honourable Mr. A. G. Clow :** I am afraid I am not familiar with what happened some years ago. I did not say it was not looked into; I said that no provision was made.

**Mr. S. Satyamurti :** May I know why no provision was made ?

**The Honourable Mr. A. G. Clow :** As I said, I am not familiar with what happened then.

**Mr. S. Satyamurti :** But Government continues always ?

**The Honourable Mr. A. G. Olow :** Quite so, but its memory is not continuous.

**Mr. K. Santhanam :** May I know what are the categories of stores which the State Railways buy inside India but which are bought outside by the Company-managed Railways ?

**The Honourable Mr. A. G. Olow :** I am afraid I cannot answer that without notice.

**Mr. T. S. Avinashilingam Chettiar :** As a matter of elucidation of the reply to clause (f), did the Honourable Member mean that no obligation was enforced upon them to buy indigenous articles, or it referred to the payment of compensation ?

**The Honourable Mr. A. G. Olow :** I meant that no provision was made compelling them to purchase stores in India.

#### DEPENDANTS OF STAFF ENTITLED TO FREE PASSES ON RAILWAYS.

518. **\*Mr. Lalchand Navalrai :** (a) Will the Honourable Member for Railways be pleased to state whether it is a fact that since the day free passes were granted to the staff employed on the Indian railways, the following dependents have been entitled to such passes :

- (i) widow mother, if dependent upon the employee, and no elder brother is employed on the railway ;
- (ii) unmarried or widow sister, if dependent upon the employee, when the father of the girl was not alive and no elder brother was employed on the railway ; and
- (iii) younger brother under the age of 18, dependent upon the employee when father was not alive and no elder brother was employed on the railway ?

(b) Is it a fact that under the revised Free Pass Rules, which came in force on the Indian State Railways, with effect from 1st January, 1937, the minor brother of an employee, referred to in part (a) (iii) above has been deprived of either pass or P. T. O. privileges, and that widow mother and unmarried or widow sister referred to in part (a) (i) and (ii) above have been deprived of pass privilege, but are to get some restricted number of P. T. Os. annually ?

(c) What were the reasons for this change in the rules ?

(d) Is the Honourable Member aware that Indian society unlike Europeans still cherishes the joint family system and the mother, sister and brother are important members of a joint family system ?

(e) Do Government propose to restore the passes for dependents referred to in part (a) above ? If not, why not ?

**The Honourable Mr. A. G. Olow :** (a), (b) and (c). These questions appear to be identical with questions which the Honourable Member put on the 28th March last, and I would refer the Honourable Member to the answers he then received.

(d) I am aware that the family includes, in many cases, a wider circle in India than in Europe.

(e) The question of whether any alteration in the rules should be made is under consideration.

**Mr. Lalchand Navalrai :** What was the reason for the revision of the rules with regard to passes for dependents in 1937 and minimising their number ?

**The Honourable Mr. A. G. Clow :** The general reason for the revision was to secure economy, an object which is constantly being pressed upon us in this House.

**Mr. Lalchand Navalrai :** May I know if the Honourable Member proposes, on account of their small economy, to allow these officers to show their discontent and irritation ?

**The Honourable Mr. A. G. Clow :** I have received some representations on the subject.

**Mr. S. Satyamurti :** May I know if, in dealing with these passes, Government will deal with the first and second class pass holders with the same degree of financial conscience, as they do in the case of the unfortunate third class pass holders ?

**The Honourable Mr. A. G. Clow :** Certainly ; the revisions affect all classes of officers.

**Mr. N. M. Joshi :** Will the Honourable Member tell us when this consideration is likely to be finished and the decision announced ?

**The Honourable Mr. A. G. Clow :** I obviously am not in a position to prophesy. I do not think it will take very long now.

**Mr. Lalchand Navalrai :** May I know from the Honourable Member once for all whether at present the question of passes is before any Committee or before any Members of the Board or before the Commissioner or before the Honourable Member himself, and when it was last seen by the Honourable Member ?

**The Honourable Mr. A. G. Clow :** It has been with me personally. Sir, since last night.

**Mr. M. Ananthasayanam Ayyangar :** May I know, Sir, what is the necessity for allowing free passes in the case of subordinate employees who draw salaries above Rs. 200 ?

**The Honourable Mr. A. G. Clow :** There is no necessity, but it is a practice followed in all Railways in the world where they give free passes to railway employees.

**Seth Govind Das :** In all their journeys ?

**The Honourable Mr. A. G. Clow :** Our rules provide.....

**Mr. President (The Honourable Sir Abdur Rahim) :** Next question please.

#### DEPENDANTS OF STAFF ENTITLED TO FREE PASSES ON RAILWAYS.

519. **\*Mr. Lalchand Navalrai :** (a) Will the Honourable Member for Railways be pleased to state whether it is a fact that adopted children are not entitled to any pass privileges on foreign railways, while step-children are entitled to such privileges ?



(b) Do Government propose to issue instructions that adopted children should be treated on an equal footing with step-children of an employee on the Indian State Railways? If not, why not?

**The Honourable Mr. A. G. Clow :** (a) No. If an employee has no other children, one adopted child is allowed passes on foreign railways.

(b) Government do not consider that it is unreasonable to differentiate between adopted children and step-children in the matter of pass privileges.

#### RESTORATION OF THE OLD PASS RULES ON RAILWAYS.

520. **\*Mr. Lalchand Navalrai :** (a) Will the Honourable Member for Railways be pleased to state whether any decision has been reached in regard to the Railway employees' demand for restoration of the old pass rules?

(b) If the reply to part (a) be in the affirmative, will the Honourable Member be pleased to lay on the table a statement showing detailed conclusions reached on the subject?

(c) If the reply to part (a) above be in the negative, will the Honourable Member be pleased to state when a decision is likely to be reached? Is the Honourable Member aware that the matter has been pending since November 1936 and that every time a question is put in this House, the reply has been that the matter is still under consideration? In view thereof, will an early decision be given? If so when?

**The Honourable Mr. A. G. Clow :** (a) No.

(b) Does not arise.

(c) I would refer the Honourable Member to the answers I gave to his supplementary questions on this subject on the 17th August. I am unable to say precisely when a conclusion will be reached.

**Mr. Lalchand Navalrai :** May I know, Sir, how many nights the Honourable Member will take to decide this question.

**The Honourable Mr. A. G. Clow :** That would depend, Sir, on the number of days the Assembly takes on the Motor Vehicles Bill.

#### GRANT OF PASSES TO CERTAIN DEPENDANTS OF EMPLOYEES ON STATE RAILWAYS.

521. **\*Mr. Lalchand Navalrai :** (a) Will the Honourable Member for Railways be pleased to state whether it is a fact that employees on the Indian State Railways are entitled to concessions of pass for :

- (i) legitimate children,
- (ii) step-children, and
- (iii) adopted children?

(b) Is it a fact that under the present rules, the adopted child loses the privilege of passes and P. T. Os. when the employee is blessed with his own legitimate child?

(c) Are Government aware that a step-child continues to have the concession of passes and P. T. Os., irrespective of the fact that the employee is blessed with his legitimate children or not ?

(d) Is the Honourable Member aware that an adopted child does not lose interest in the property of the parents, even if they are blessed with their legitimate children ?

(e) Does the Honourable Member propose to direct that an adopted child should be continued to be recognised, even if an employee is blessed with his own legitimate children ? If not, why not ?

**The Honourable Mr. A. G. Clow :** (a) Yes, but for only one adopted child.

(b) and (c). Yes.

(d) I am not an expert in Hindu Law but I understand that in a number of cases an adopted son does not have the same rights as a natural born legitimate son who is born subsequently.

(e) No. Government consider that the limitation imposed in regard to pass privileges for children generally is not unreasonable.

**Mr. Lalchand Navalrai :** May I know, Sir, whether, in order to know that law and also to come to a conclusion, the Honourable Member will consider this question also when considering the question of general passes ?

**The Honourable Mr. A. G. Clow :** No, Sir, I have stated the conclusion reached in regard to part (e) of the Honourable Member's question.

**Seth Govind Das :** Is the Honourable Member aware that an adopted son under the Hindu law has the same rights as a natural born legitimate son ?

**The Honourable Mr. A. G. Clow :** No, Sir, I consulted a leading expert on this subject, and he says that it is not the case, and that the law varies in different parts of India, and is not invariably the same everywhere.

#### STATION CLERKS OF THE NORTH WESTERN RAILWAY.

522. **\*Mr. N. V. Gadgil** (on behalf of Mr. Sham Lal) : (a) Will the Honourable Member for Railways be pleased to state whether station clerks of the North Western Railway have to work on holidays day and night and for 60 hours a week in comparison with 36 hours a week in all Government offices, in addition to the enjoyment of usual holidays ?

(b) What are their grades of pay ?

(c) Is it a fact that grade No. I station clerk gets Rs. 33—3—60 ?

(d) Does a beginner of the same rank in other services of the Crown get Rs. 60, and that the qualifications of the staff now recruited exactly correspond with those of the other Department ?

(e) Did these clerks submit a memorial to His Excellency the Viceroy for amalgamation of grades No. I (Rs. 30—3—60) and No. II (Rs. 66—4—90) ?

(f) Has similar amalgamation taken place in the Chief Accounts Office, North Western Railway, Lahore ?

(g) What action do Government propose to take on this memorial ?

**The Honourable Mr. A. G. Clow :** (a) I am not in possession of particulars of the actual hours of work but cannot believe that clerks have to work continuously night and day.

(b) I lay a statement on the table.

(c) Yes, under the old scales of pay.

(d) No : the starting rates for clerks vary considerably and are in many cases appreciably below Rs. 60.

(e) and (f). Yes.

(g) I would refer the Honourable Member to the reply given to part (f) of unstarred question No. 288, asked by Mr. M. S. Aney in this House on the 9th March, 1936, and to Sir Thomas Stewart's speech of 21st February, 1938, appearing on page 906 of Legislative Assembly Debates for that day.

---

*Statement.*

Class I,	Grade 1	..	..	..	..	Rs. 30—5—50—5/2—60.
Do. I,	do. 2	..	..	..	..	Rs. 65—5/2—85.
Do. II,	do. 1	..	..	..	..	Rs. 100—10/2—120.
Do. II,	do. 2	..	..	..	..	Rs. 140.
Do. II,	do. 3	..	..	..	..	Rs. 160.
Do. II,	do. 4	..	..	..	..	Rs. 180.
Do. III,	do. 1	..	..	..	..	Rs. 200.
Do. III,	do. 2	..	..	..	..	Rs. 230.
Do. III,	do. 3	..	..	..	..	Rs. 260.
Do. III,	do. 4	..	..	..	..	Rs. 300.
Do. III,	do. 5	..	..	..	..	Rs. 350.
Do. III,	do. 6	..	..	..	..	Rs. 400.

---

**WORKING HOURS OF THE BOOKING CLERKS AT KALKA.**

523. **\*Mr. N. V. Gadgil** (on behalf of Mr. Sham Lal) : (a) Will the Honourable Member for Railways be pleased to state if it is a fact that before April, 1938, the number of Booking Clerks in the Booking Office at Kalka was seven, and the rule of eight hours duty was in force, and that a long rest of 32 hours a week was given ?

(b) Is it a fact that since April, 1938, the number of Booking Clerks has been reduced from seven to four and all the work which used to be done by seven clerks is now being done by four clerks ?

(c) Will Government please state whether the Station has been reduced (so far as the Booking Branch is concerned) from class " C " to " I " ?

(d) Has there been any reduction of work ?

(e) Is it a fact that booking is to be done at all hours at Kalka ?

(f) Have the Booking Clerks now to be on duty for 12 hours a day ?

(g) Are two periods of long rest every week given to the Booking Clerks as required by rules ?

**The Honourable Mr. A. G. Clow :** With your permission, Sir, I propose to reply to starred questions Nos. 523 and 524 together.

Government have no information. These are matters of detailed administration within the competence of the General Manager, North Western Railway, to whom I am sending copies of these questions for information and such action as he may consider necessary. I may add for the information of the Honourable Member that the hours of work of the staff mentioned by him are regulated by the Hours of Employment Regulations which have been given statutory effect on that railway since 1st April, 1931, and Government have no reason to believe that these regulations are being infringed.

**Mr. K. Santhanam :** May I know whether there is any passenger traffic at all between Kalka and Simla.

**The Honourable Mr. A. G. Clow :** Yes.

**Seth Govind Das :** What is the volume, Sir ?

**Mr. President** (The Honourable Sir Abdur Rahim) : Next question please.

#### GRIEVANCES OF THE BOOKING CLERKS AT KALKA.

†524. **\*Mr. N. V. Gadgil** (on behalf of Mr. Sham Lal) : (a) Will the Honourable Member for Railways be pleased to state whether the Booking Clerks at Kalka railway station submitted any representation to the Divisional Superintendent and the Agent, North Western Railway ?

(b) What action has been taken on their representation ?

(c) Do Government propose to consider the advisability of again raising Kalka station to class "C", increase the staff of Booking Clerks, and thus remove their grievances ?

#### PROPOSAL TO MAKE TUTICORIN A SEA PORT.

525. **\*Mr. T. S. Avinashilingam Chettiar :** Will the Honourable Member for Communications state :

(a) whether there was any proposal to make Tuticorin a sea port ;

(b) whether any steps were taken in this direction and money spent ; and

(c) whether it has recently been abandoned, and if so, for what reasons ?

**The Honourable Mr. A. G. Clow :** (a), (b) and (c). I would invite the attention of the Honourable Member to item 18 of List II of the Seventh Schedule of the Government of India Act from which it will be seen that minor ports fall within the Provincial Legislative List. As far as my information goes, there was a proposal to construct a deep water

†For answer to this question, see answer to question No. 523.

harbour at Tuticorin which involved a very large expenditure which the Port Trust were not able to finance, and neither the Government of Madras, who were directly concerned, nor the Government of India, who were subsequently approached, were prepared to make the large grant required towards the cost of the harbour. The scheme was, therefore, abandoned.

**Mr. T. S. Avinashilingam Chettiar :** May I know, Sir, whether the scheme was abandoned after incurring an expenditure of 20 lakhs or more ?

**The Honourable Mr. A. G. Olow :** I do not think any expenditure was incurred by the Government of India.

#### ESTABLISHMENT OF ADVISORY BOARDS IN WATERWAYS AND COASTAL TRAFFIC.

526. **\*Mr. T. S. Avinashilingam Chettiar :** Will the Honourable Member for Communications state :

- (a) whether in waterways and coastal traffic there are any advisory boards which look after the interests and convenience of passages, such as, corresponding to those in Railways ;
- (b) whether Government have received representations from anybody about the establishment of these bodies ; and
- (c) whether Government have considered the advisability of establishing such boards ?

**The Honourable Mr. A. G. Olow :** (a) and (c). The Honourable Member is referred to the reply to starred question No. 366 asked by Mr. Mohan Lal Saksena on the 14th September, 1936, and the supplementary questions and answers.

(b) As regards coastal traffic, yes. As regards Inland Waterways, no.

**Mr. T. S. Avinashilingam Chettiar :** May I know, Sir, what steps have Government taken on the representations they have received ?

**The Honourable Mr. A. G. Olow :** On what ?

**Mr. T. S. Avinashilingam Chettiar :** Part (b) of my question asks whether Government have received representations from anybody about the establishment of these bodies ?

**The Honourable Mr. A. G. Olow :** If the Honourable Member will refer to the answer to the starred question of Mr. Mohan Lal Saksena to which I referred, he will understand the position.

**Mr. T. S. Avinashilingam Chettiar :** My question was whether Government have received any representations from anybody, and he refers me to a question and reply in 1936. It was about two years ago. I want to know whether Government have received any representations after that ?

**The Honourable Mr. A. G. Olow :** I think the last representation was from a Rice Merchants' Syndicate in Calicut in 1936 ; so far as I know, there has been none since.

**Mr. T. S. Avinashilingam Chettiar :** May I know, Sir, whether they have considered the representation about the establishment of Advisory Boards ?

**The Honourable Mr. A. G. Clow :** I have replied to that in answer to part (c) of the Honourable Member's question.

**Mr. T. S. Avinashilingam Chettiar :** What is the result of that consideration ?

**The Honourable Mr. A. G. Clow :** I think the Honourable Member will have to refer to the question and answer put by Mr. Mohan Lal Saksena. I am perfectly willing to read it to the House.

**Mr. T. S. Avinashilingam Chettiar :** Sir, it is an important matter about the establishment of advisory boards for coastal traffic ; they are having a lot of difficulties, and it would be better if the Honourable Member reads out his reply given in 1936.

**The Honourable Mr. A. G. Clow :** The answer was as follows :

“ Sir Zafrullah Khan said. ‘ In the case of companies engaged in Inland Navigation, section 54B of the Inland Steam Vessels Act, 1917, empowers Local Governments to make rules providing for the appointment of Advisory Committees. The Government of India have no information whether the Local Government have exercised this power. Government have no similar powers in respect of maritime navigation ’.”

**Mr. T. S. Avinashilingam Chettiar :** Will Government consider the desirability of sending these questions and answers to the Local Governments ?

**The Honourable Mr. A. G. Clow :** No, Sir, I have no reason to believe that they have overlooked the powers they possess.

**Mr. T. S. Avinashilingam Chettiar :** They can send these on also ?

#### RAIDS ON BANNU AND OTHER BRITISH INDIAN TERRITORIES.

527. **\*Mr. T. S. Avinashilingam Chettiar :** Will the Secretary for External Affairs state :

- (a) how many raids by the tribes on the North-West Frontier have been made in Bannu and other British Indian territories in the last three months ;
- (b) what the main reason for the raids has been ;
- (c) what the loss of life and property amongst the people of British India has been and whether the sufferers were paid any compensation ; and
- (d) whether Government have considered the advisability of relaxing the Arms Act in those districts, so that the people there may be better able to protect themselves against these attacks ?

**Sir Aubrey Metcalfe :** (a) Twenty-two.

(b) The hostility of the Faqir of Ipi who is the chief instigator of all raids and outrages committed by tribesmen from Waziristan.

(c) Seven Muhammadans and six Hindus killed, and two Muhammadans wounded. The value of cash and property looted amounts to Rs. 1,33,830 including Rs. 1,32,464 on account of the Bannu raid. No compensation has so far been paid, but the question is understood to be under the consideration of the Provincial Government.

(d) The matter is one for the Provincial Government, but the Government of India understand that arms licenses have been liberally granted in the Bannu and Dera Ismail Khan districts, which are chiefly affected, to meet the menace of raids. In addition Government understand that the number of Government village defence rifles has been greatly increased.

**Mr. T. S. Avinashilingam Chettiar :** In view of the fact that there have been 22 raids in three months, may I know, Sir, whether the Government have taken any special steps in this direction ?

**Sir Aubrey Metcalfe :** A great many steps have been taken in the way of re-enforcing the frontier constabulary and so forth.

**Mr. Abdul Qaiyum :** Is it not a fact, Sir, that the Provincial Government have already handed over Rs. 25,000 for relief work ?

**Sir Aubrey Metcalfe :** I am not aware of that ; it may be so.

**Mr. Abdul Qaiyum :** May I know, Sir, in view of the fact that even according to the Honourable the Foreign Secretary's own statement that part of the people of this *lashkar* came from the tribal area, whether the Government of India would also contribute something to the relief of these people ?

**Sir Aubrey Metcalfe :** I am not in a position to answer that question. No such suggestion has been made by the Provincial Government.

**Mr. Abdul Qaiyum :** Will the Government of India take up this matter *suo motu* ? It is a question of relieving distress. Why should they wait for a suggestion from the Provincial Government ?

(No reply.)

**Mr. S. Satyamurti :** May I know, Sir, whether the Government of India are in active touch with the Provincial Government with regard to precautions against future raids ?

**Sir Aubrey Metcalfe :** Certainly.

**Mr. T. S. Avinashilingam Chettiar :** May I know how many raids there have been after the reinforcement of the frontier constabulary ?

**Sir Aubrey Metcalfe :** That is not a question which I could answer. The district forces were reinforced and are constantly being reinforced since raids started about a year ago.

**Mr. T. S. Avinashilingam Chettiar :** When was the latest raid ?

**Sir Aubrey Metcalfe :** The last important raid was that on Bannu which took place on July 23rd.

**Mr. T. S. Avinashilingam Chettiar :** Has there been any kidnapping ?

**Sir Aubrey Metcalfe :** That hardly arises out of this question I think. If the Honourable Member wishes for details about cases of kidnapping, I would ask him to put down a question.

**Seth Govind Das :** What particular steps are Government taking to avoid these raids in future ?

**Sir Aubrey Metcalfe :** I do not understand what information the Honourable Member is asking for.

**Seth Govind Das :** I am asking what particular steps the Government are taking to avoid such raids in future.

**Mr. President** (The Honourable Sir Abdur Rahim) : I think the Honourable Member has given an answer. Next question.

#### PROPOSAL TO CONNECT BRITISH INDIA WITH THE MYSORE STATE BY RAILWAY.

528. **\*Mr. T. S. Avinashilingam Chettiar :** Will the Honourable Member for Communications state :

- (a) whether there was any proposal to connect British India with the Mysore State by rail *via* Satyamangalam in the Coimbatore district ;
- (b) whether that proposal was examined ; and
- (c) at what stage that proposal is ?

**The Honourable Mr. A. G. Clow :** (a) and (b). Yes.

(c) The original surveys are out of date, and fresh surveys are necessary. As the connection has been proposed by the Mysore Government, and the scheme will mainly benefit the Mysore Railways, they have been asked to meet the cost of new surveys. Their final reply is awaited.

**Mr. T. S. Avinashilingam Chettiar :** May I know whether the Government are aware that after the Cochin port has come into existence this communication has become much more important than before ?

**The Honourable Mr. A. G. Clow :** I suppose that has enhanced its value somewhat.

**Mr. T. S. Avinashilingam Chettiar :** When do the Government expect a reply from the Mysore State ?

**The Honourable Mr. A. G. Clow :** I cannot say.

**Mr. T. S. Avinashilingam Chettiar :** Will they be in a position to come to a decision before the next budget session ?

**The Honourable Mr. A. G. Clow :** It depends on the Mysore Government.

#### LABOUR CONTRACT OF THE CALCUTTA PORT TRUST.

529. **\*Mr. Manu Subedar :** Will the Honourable Member for Communications state :

- (a) for how many years Messrs. Bird and Company have been labour contractors to the Calcutta Port Commissioners ;



- (b) whether the contract has been renewed with them from time to time without any attempt to ascertain by open tenders whether the rates were excessive or fair ;
- (c) whether any formal contract with them was made before 1923 ;
- (d) before such a formal contract was made, what the method of determining labour charges between them and the Calcutta Port Commissioners was ;
- (e) whether during the last seven years Indian Commercial bodies in Calcutta and particularly the Indian Chamber of Commerce, Calcutta, and its representatives on the Calcutta Port Trust, have urged the inviting of open tenders for the purpose of this work ;
- (f) whether it is a fact that the Accountant General, Bengal, who is the Auditor of the Calcutta Port Trust Accounts, has also emphasised the desirability of calling tenders for the supply of labour ; and
- (g) the total annual payment, both gross and net, made by the Calcutta Port Commissioners during the last ten years to labour contractors ?

**The Honourable Mr. A. G. Clow :** (a) For over 40 years.

(b) So far as I am aware open tenders have not been invited.

(c) and (d). The information is being obtained and will be laid on the table in due course.

(e) and (f). The position is as stated by the Honourable Member.

(g) The attention of the Honourable Member is drawn to the statement laid on the table of the House in answer to starred question No. 786 asked by Mr. Amarendra Nath Chattopadhyaya on the 25th February, 1936. I have no later information.

**Mr. Manu Subedar :** May I enquire from the Honourable Member what sort of control the Government of India exercise on the Port Trusts administration generally and specifically when scandals of this kind arise ?

**The Honourable Mr. A. G. Clow :** I am not prepared to accept the Honourable Member's implication that it is a scandal. The matter is one which rests within the competence of the Port Trust.

**Mr. Manu Subedar :** Has the attention of the Honourable Member been drawn to the statement in Indian press that this was a free gift of public funds to the labour contractor ?

**The Honourable Mr. A. G. Clow :** No.

**Mr. S. Satyamurti :** With reference to the answer to clause (b) of the question, may I know whether the Port Trust Commissioners took any steps, apart from inviting open tenders which they did not according to my Honourable friend's answer, to satisfy themselves that this arrangement was the best in the financial interests of the taxpayer ?

**The Honourable Mr. A. G. Clow :** I presume that they certainly did. It is part of their duties.

**Mr. S. Satyamurti :** Apart from presumption, my Honourable friend said in answer to part (b) of the question that open tenders were not invited. May I know whether my Honourable friend has any information on the question whether the rates were excessive or fair? That is the information which the Calcutta Port Trust Commissioners should have had in their hands, before renewing this contract.

**The Honourable Mr. A. G. Clow :** I have no specific information about what went on at their meeting. I have not received a copy of the minutes.

**Mr. S. Satyamurti :** Did Government call upon the Calcutta Port Trust for any information after receipt of this question by them?

**The Honourable Mr. A. G. Clow :** We are awaiting the minutes of the meeting.

**Mr. N. M. Joshi :** May I ask what exactly is the position of the labour contractor—whether the labourers engage to work under the Port Trust or under the contractor?

**The Honourable Mr. A. G. Clow :** They work normally, if it is a labour contract, under the contractor.

**Mr. K. Santhanam :** May I know what is the value of this contract?

**The Honourable Mr. A. G. Clow :** If the Honourable Member will refer to the figures which were laid on the table in answer to the question to which I have referred in my reply to part (g), he will see that during the sixteen years between 1920 and 1935 the total amounts paid varied between 15½ and 29½ lakhs.

**Mr. K. Santhanam :** What was the date of the last renewal of this contract?

**The Honourable Mr. A. G. Clow :** I think it is under consideration at the moment. The present agreement dates from 1923.

**Mr. S. Satyamurti :** May I know whether Government have ascertained or will ascertain from the Calcutta Port Trust and inform this House in due course, as to the reasons why they did not invite open tenders?

**The Honourable Mr. A. G. Clow :** I should think that the reason was that this firm had given satisfactory service and that no other firm was similarly equipped.

**Mr. T. S. Avinashilingam Chettiar :** In view of the fact that the last tender is being considered just now, would the Government consider the advisability of issuing instructions or orders to them to invite tenders.....

**The Honourable Mr. A. G. Clow :** We have no power to issue orders in this matter.

**Mr. Badri Dutt Pande :** Are Messrs. Bird and Co. an irremovable body?

**The Honourable Mr. A. G. Clow :** No.

**Mr. N. M. Joshi :** May I ask whether Government have considered the question of direct employment of labour by the Port Trust instead of through contractors which will not be in the interests of labour?

**The Honourable Mr. A. G. Clow :** It is not a matter for the Government to consider but for the Port Trust to consider.

**Mr. N. M. Joshi :** May I enquire, Sir, whether the Port Trust is not working under the control of the Government ?

**The Honourable Mr. A. G. Clow :** No, not in this respect.

**Mr. Manu Subedar :** May I enquire whether this contract which was expiring in March, 1939, has been renewed and that for the period of eight years the total amount of the contract was one crore and eighty lakhs of rupees ?

**The Honourable Mr. A. G. Clow :** The Honourable Member seems to have more information than I have.

**Mr. Manu Subedar :** But would he kindly enquire and let us know ?

**The Honourable Mr. A. G. Clow :** The Honourable Member has the information.

**Mr. Manu Subedar :** I am making a specific request, and I would like to know whether Government can assure this House that they would make enquiries as to whether this contract was renewed prior to the date of its expiry and why such renewal was made, and for a period of eight years, the total amount being one crore and eighty lakhs ?

**The Honourable Mr. A. G. Clow :** The decision of the Port Trust will be reported to Government.

**Mr. T. S. Avinashilingam Chettiar :** If the Government have no powers to instruct, will they advise the Port Trust to call for tenders ?

**The Honourable Mr. A. G. Clow :** The Port Trust are capable of looking after their own interests.

**Mr. K. Santhanam :** May I ask the Honourable Member whether the contractors have been giving rebates frequently to the Port Trust Commissioners, thus showing that the contract was high ?

**The Honourable Mr. A. G. Clow :** Does the Honourable Member mean secret rebates ?

**Mr. K. Santhanam :** No. Any rebate.

**The Honourable Mr. A. G. Clow :** I am not aware of any rebates having been given.

**Mr. President (The Honourable Sir Abdur Rahim) :** Next question.

#### LABOUR CONTRACT OF THE CALCUTTA PORT TRUST.

530. **\*Mr. Manu Subedar :** (a) Will the Honourable Member for Communications state whether it is a fact that at a meeting of the Commissioners for the Port of Calcutta held on the 3rd of August, 1938, it was decided to renew the labour contract with Messrs. Bird and Company ?

(b) If so, on what terms was this done and for what period ?

(c) Was this done without calling any alternative tenders, or giving an opportunity to Indian firms to quote ?

(d) Was this decision arrived at by the European members voting solidly on the one side against the solid and unanimous opposition of the Indian members of the Calcutta Port Trust ?

**The Honourable Mr. A. G. Clow :** (a) to (d). Government have not yet received the minutes of the meeting of the Port Commissioners held on the 3rd August, 1938, which should contain the information asked for. I understand that they have not yet been confirmed.

**Mr. Manu Subedar :** Have Government considered the advisability of changing the constitution of the Calcutta Port Trust and increasing the number of Indians thereon ?

**The Honourable Mr. A. G. Clow :** I think the matter has been under consideration. I have no particulars here.

**Mr. Manu Subedar :** Will the Honourable Member assure this House that he will take care either that Indian firms are given a full, free and equal chance of taking the work of the Port Trust, failing which, will he assure the House that he will change the constitution and increase the number of Indians on the Port Trust ?

**The Honourable Mr. A. G. Clow :** That is a request for action and not a request for information.

**Mr. Manu Subedar :** I want an assurance one way or the other.

**Mr. President (The Honourable Sir Abdur Rahim) :** The Honourable Member can only ask for information.

**Mr. N. M. Joshi :** May I ask whether Government will give an assurance that they will consider the question of direct employment of labour by the Port Trust instead of through a contractor ?

**The Honourable Mr. A. G. Clow :** I am not prepared to give any such assurance.

**Mr. S. Satyamurti :** With reference to the answer to clause (c) of the question, may I know,—since the minutes will not show,—whether the Government have obtained this information, namely, “ Was this done without calling any alternative tenders, or giving an opportunity to Indian firms to quote ? ” ? Will Government call for that information if they have not done so already ?

**The Honourable Mr. A. G. Clow :** So far as that question is concerned, I have given a reply, in answer to part (b) of the preceding question when I said that, so far as I am aware,—and I believe my information is correct—open tenders were not invited.

**Mr. S. Satyamurti :** With reference to clause (c) of the question, may I know whether Indian firms were at least given an opportunity to quote ?

**The Honourable Mr. A. G. Clow :** If the minutes do not make that clear, enquiries will certainly be made.

**Mr. K. Santhanam :** In reply to my previous supplementary question, the Honourable Member replied that the question is under consideration and when I asked about the last date of renewal he replied that the contract is going to be renewed hereafter. In reply to part a) he said that he has not got the minutes ?

**The Honourable Mr. A. G. Glow :** I believe the contract has not yet been concluded. When the minutes are confirmed, I suppose it will be.

**LABOUR CONTRACT OF THE CALCUTTA PORT TRUST.**

531. **\*Seth Govind Das :** Will the Honourable Member for Communications please state :

- (a) whether it is a fact that the contract for the supply of labour to the Calcutta Port Trust was being given to one British firm since more than half a century ;
- (b) whether it is a fact that the average annual payments made to labourers working for the Calcutta Port Trust are about 20 lakhs of rupees ;
- (c) whether it is a fact that, for many years, there was not even a formal contract made with the contractor firm ;
- (d) whether the Accountant General, Bengal, objected to the procedure of a certain percentage of rebate paid by them and stressed the advisability of calling for tenders for the contract of labour supply ;
- (e) whether it is a fact that the Indian Commissioners of the Calcutta Port Trust, at a recent meeting of the Trust, objected to the renewal of the contract, proposing that tenders should be called, which was voted down by the European Commissioners ; and
- (f) whether Government propose to intervene in the matter and direct the calling for tenders for the supply of labour ; if not, why not ?

**The Honourable Mr. A. G. Glow :** (a) to (d). The Honourable Member is referred to the replies I have just given to parts (a), (g), (c) and (f) of Mr. Manu Subedar's question No. 529.

(e) I am awaiting the minutes of the proceedings which have not yet reached me.

(f) No. Such matters are under the statutory discretion of the Port Commissioners and Government have no power to issue orders.

**Prof. N. G. Ranga :** Are not the Government of India aware of the fact that the Royal Commission on Labour has remarked very strongly against this contract labour and has even recommended that it should be put an end to as soon as possible, and is it not a fact that the Honourable Member himself was one of the signatories of that report ?

**The Honourable Mr. A. G. Glow :** I was one of the signatories of that report and so far as my recollection of it goes, the question of direct versus contract labour was not considered in this specific connection ; but I think that the Royal Commission on Labour was on the whole in favour of direct employment as against the employment through contractors.

**Prof. N. G. Ranga :** Is it not a fact that in actual practice this contract labour system has affected the interests of labour adversely ?

**The Honourable Mr. A. G. Olow :** That, Sir, is a question that should be addressed to the Honourable Member for Commerce and Labour.

**Mr. S. Satyamurti :** With reference to clause (d), may I know whether the Government have ascertained or will ascertain why the Port Trust Commissioners did not accept the advice or the recommendation of the Accountant General, Bengal, with regard to the advisability of calling for tenders for the contract of labour supply ?

**The Honourable Mr. A. G. Olow :** I am not aware of it.

**Mr. S. Satyamurti :** May I know whether the Government of India as such are not aware of the opinion of the Accountant General, Bengal, objecting to this procedure ?

**The Honourable Mr. A. G. Olow :** I have already dealt with that in answer to part (f) of Mr. Manu Subedar's question No. 529.

**Mr. Manu Subedar :** May I know whether Government have considered it a sound principle for the Calcutta Port Trust, instead of inviting open tenders or instead of inviting quotations from rival firms, to go on reducing by way of rebate their old rates ? Is this a sound principle of public finance for the Calcutta Port Trust to adopt ? Have Government made any recommendation on this point ?

**The Honourable Mr. A. G. Olow :** It is obviously a question of opinion. No recommendation has been made.

#### EXPULSION OF CERTAIN SIKH FAMILIES FROM KABUL.

532. **\*Seth Govind Das :** Will the Secretary for External Affairs please state :

- (a) whether it is a fact that several Sikh families residing in different parts of Kabul have been ordered to be expelled from that country ;
- (b) the cause, or causes actuating the authorities for so ordering the expulsion ;
- (c) whether it is a fact that a deputation of 40 persons who went to lay their grievances before the authorities, were taken into custody ;
- (d) whether it is a fact that only a week's notice has been given to them to quit the country with bag and baggage ;
- (e) whether Government represented to the authorities in Kabul on the matter ; and
- (f) the result of such representation ?

**Sir Aubrey Metcalfe :** (a) and (b). As far as the Government of India are aware, the Afghan Government have ordered the concentration of Sikhs from the border villages of the Eastern Province in the town of Jalalabad. Government have no information regarding their expulsion from Afghanistan.

(c) and (d). Government have no information.

(e) and (f). The Sikhs affected by these orders are, so far as the Government of India are aware, all Afghan subjects and no representations can, therefore, be made on their behalf by the Government of India.

**Mr. President** (The Honourable Sir Abdur Rahim) : Question No. 533 (in the name of Maulvi Muhammad Abdul Ghani).

I find that the Honourable Member has authorised more than one Honourable Member to put his questions on his behalf. I must inform the House that only one Honourable Member should be authorised. The authorising of more than one Honourable Member must be discontinued.

**Mr. Muhammad Nauman** : I have been authorised. May I put that question.

**Mr. President** (The Honourable Sir Abdur Rahim) : No. It has been passed over.

**RECRUITMENT OF APPRENTICES FOR TRAINING AS PERMANENT WAY INSPECTORS, ETC., IN THE HOWRAH DIVISION OF THE EAST INDIAN RAILWAY.**

†533. **\*Maulvi Muhammad Abdul Ghani** : Will the Honourable Member for Railways be pleased to state :

- (a) the total number of vacancies for recruitment of apprentices for training as Permanent Way Inspectors, or Inspectors of Ways and Works, in the Engineering Department of Howrah Division, or elsewhere over the East Indian Railway, as recently advertised in various newspapers ;
- (b) the number of such vacancies to be filled up by Muslims ;
- (c) whether the claims of Beharee Muslims and Hindus will also be considered ; and
- (d) whether Government propose to appoint an independent Muslim member on the committee of selection to advise on the above subject ?

**The Honourable Mr. A. G. Clow** : (a) Eleven.

(b) Two.

(c) The selection committee will select the best qualified candidates irrespective of their province of origin.

(d) I am not sure what the Honourable Member means by an independent Muslim member. It is intended that the Committee should include a Muslim member.

**TAKING DOWN OF THE NAMES AND ADDRESSES OF PASSENGERS COMING UP TO SIMLA AT TARA DEVI.**

534. **\*Mr. Sri Prakasa** : Will the Honourable Member for Railways state :

- (a) if it is a fact that certain persons take down the names and addresses of passengers coming up to Simla at the Tara Devi Railway Station ;

---

†Answer to this question laid on the table, the questioner being absent.

(b) if they have permission of the Railway Company to enter the platform ; and

(c) the law under which they so enter ?

**The Honourable Mr. A. G. Clow :** (a) Yes. This is done in pursuance of the Simla Municipality's Health Regulations.

(b) The municipal employees are permitted by the Railway Administration to come on the platform.

(c) Does not arise.

**Mr. Badri Dutt Pande :** Are these C. I. D. officials who go on to the platforms ?

**The Honourable Mr. A. G. Clow :** These men come there in pursuance of the health regulations of the Simla municipality.

**Mr. Mohan Lal Saxena :** Are these Health Inspectors or C. I. D. Inspectors ?

**The Honourable Mr. A. G. Clow :** They are municipal employees.

**Mr. T. S. Avinashilingam Chettiar :** Are Government sure that they are health inspectors ?

**The Honourable Mr. A. G. Clow :** I don't know them personally but I understand they are municipal employees.

**Prof. N. G. Ranga :** Are they in the employ of the Simla municipality ?

**The Honourable Mr. A. G. Clow :** That is my information.

**Prof. N. G. Ranga :** Then why do they search the luggages ?

**The Honourable Mr. A. G. Clow :** I am not aware that they do.

**An Honourable Member :** For octroi.

†535\*.

#### ENQUIRY OFFICES AT BENARES CANTONMENT AND OTHER STATIONS ON THE EAST INDIAN RAILWAY.

536. **\*Mr. Sri Prakasa :** Will the Honourable Member for Railways state :

(a) the names of the stations on the East Indian Railway that have enquiry offices with or without telephones ;

(b) if there used to be such an enquiry office at the Benares Cantonment Railway Station ; if so, when and why it was discontinued ; and

(c) if Government are thinking of establishing one there ?

---

†This question was withdrawn by the questioner.



**The Honourable Mr. A. G. Clow :** (a) Hewrah, Cawnpore Central, Allahabad, Lucknow, Patna, Gaya, Benares Cantonment and Moghalsarai.

(b) The enquiry office at Benares Cantonment has not been closed.

(c) Does not arise.

#### EXPULSION OF CERTAIN SIKH FAMILIES FROM KABUL.

537. **\*Mr. Satya Narayan Sinha :** (a) Will the Foreign Secretary be pleased to state whether his attention has been drawn to the leading article in the *Lokmanya* of Calcutta, dated the 7th August, 1938, in which it is alleged that "Afghan Government has ordered hundreds of Sikh families to leave Afghan borders and has given a week's time in which to vacate"?

(b) Have Government received any report on this point, and will they state what the nature of the report is?

(c) Have Government made any representation to the Afghan Government and if so, with what results?

**Sir Aubrey Metcalfe :** (a) Yes.

(b) and (c). The Honourable Member's attention is invited to the reply given by me to Seth Govind Das' question No. 532.

#### PROVINCIAL OR TERRITORIAL REPRESENTATION IN THE RAILWAY SERVICES.

538. **\*Babu Kailash Behari Lal :** Will the Honourable Member in charge of Railways be pleased to state :

(a) if Government have ever considered the desirability of accepting the principle of Provincial or Territorial representation in the Railway Services ; and

(b) if Government have drawn the attention of the Railway Administrations to the desirability of accepting the principle of Provincial or Territorial representation in Railway Services ?

**The Honourable Mr. A. G. Clow :** (a) and (b). The question has been considered by Government who are of the opinion that it is undesirable to regulate recruitment to subordinate railway services on a territorial basis.

**Babu Kailash Behari Lal :** Is it a fact that most of the mileage of the E. I. R. and the B. and N.-W. R. is through Bihar and that the people of Bihar do not find any representation or only very insignificant representation in the service of these two railways ?

**The Honourable Mr. A. G. Clow :** I am aware that these two railway systems run through Bihar.

**Babu Kailash Behari Lal :** As the Biharis are not represented in the services of these two railways adequately, will Government find any help for them ?

**The Honourable Mr. A. G. Clow :** We endeavour to secure the most efficient persons for employment on the railways.

**REPRESENTATION IN THE RAILWAY SERVICES ON PROVINCIAL BASIS.**

539. **\*Babu Kailash Behari Lal :** (a) With reference to the answer given by the Railway Member on the 16th September, 1937, to a supplementary question to starred question No. 578, regarding sufficient representation in Railway Services of all the Provinces, will the Honourable Member in charge of Railways be pleased to state if the Government of India have received any reply from the Railway Administrations ?

(b) If the answer to part (a) be in the affirmative, what is the attitude of the Railway Administrations, regarding representation in Railway Services on Provincial basis ?

(c) If the answer to part (a) be in the negative, have Government pressed for a reply from the Railway Administrations ?

(d) If the answer to part (c) be in the negative, do Government propose to have a reply from the Railway Administrations ?

**The Honourable Mr. A. G. Clow :** (a) to (d). In such cases railway administrations are not expected to inform Government of the action taken by them nor do Government propose to ask the administrations concerned to advise them of the action taken in such matters as are within the competence of the General Managers of the Railways concerned. I may, however, add that Government had already consulted railway administrations on the subject and were satisfied that they endeavour, as far as practicable, to secure representation in the subordinate services of the Provinces which they traverse.

**(b) WRITTEN ANSWERS.**

**NON-GRANT OF VENDING CONTRACTS ON THE EAST INDIAN RAILWAY TO BIHARIS.**

540. **\*Babu Kailash Behari Lal :** Will the Honourable Member for Railways be pleased to state :

(a) if it is not a fact that Dinapur Division of the East Indian Railway has jurisdiction over the whole of Bihar and, the area contract system having been found to be too small, the Division was divided up into four areas at first, and ultimately into two areas for the purpose of giving contracts for vending at stations ;

(b) if it is not a fact that in two areas of Dinapur Division the contracts for vending have been given to Messrs. Ballabhadras Eshwardas and Messrs. Isa Brothers, in the Mughalserai Area and to Messrs. S. L. Kapoor and Company and Messrs. A. H. Khan and Company, in the Patna Area ;

(c) if it is not a fact that all these contractors do not belong to the Province of Bihar ;

- (d) if it is not a fact that complaints have been received by the authorities regarding the award of vending contracts; and
- (e) if Government propose to take action and urge upon the Railway Administration concerned to see to the matter?

**The Honourable Mr. A. G. Clew :** (a) Yes, except that Dinapore Division does not cover the whole of Bihar.

(b) Yes.

(c) No record is maintained of the province of origin of the contractors.

(d) and (e). I would refer the Honourable Member to the information recorded in the Legislative Assembly Debates of the 19th July, 1934, in connection with starred questions No. 729 asked by Pandit Satyendra Nath Sen on the 16th April, 1934, and Nos. 762, 763 and 764 asked by Mr. M. Maswood Ahmad on the 17th April, 1934.

#### ARREST OF SINDHI MERCHANTS FROM SPAIN IN GIBRALTER.

541. **\*Mr. Abdul Qaiyum :** (a) Will the Foreign Secretary please state whether he has read the report which appeared in the *Hindustan Times* of the 2nd August, 1938, of the arrest of Sindhi merchants from Spain in Gibraltar?

(b) How many persons have been arrested?

(c) What is the charge against them, and have they been tried?

(d) What is the latest information about them?

(e) Have any representation been made through the British Ambassador in Spain? If so, with what result?

**Sir Aubrey Metcalfe :** (a) Yes.

(b) to (e). Government have no information but enquiries have been made from His Majesty's Government.

#### AGREEMENT WITH THE IMPERIAL AIRWAYS FOR THE CARRIAGE OF AIR MAILS.

542. **\*Mr. Manu Subedar :** (a) In view of the prior termination of the arrangements for the carriage of air mails before March, 1939, and a new agreement extending over fifteen years made with the Imperial Airways, will the Honourable Member for Communications please state whether Government considered the advisability of consulting (i) the Standing Advisory Committee attached to the Department, (ii) the leaders of the Parties of the House, and (iii) any non-official association, body or individual?

(b) Have Government received complaints at any previous time of the neglect of consultation with non-officials in matters of this kind?

(c) Will Government make a general statement of their policy and explain what are the reasons which weighed with them against such consultation on this occasion?

**The Honourable Mr. A. G. Olow :** (a) and (c). No consultation took place with any of the bodies or persons mentioned. The negotiations in connection with the Empire Air Mail Scheme were protracted and a good deal could not be made public before the negotiations were considerably advanced. The Government of India gave most careful consideration to the advantages which would accrue to India by participating in the Scheme and to the details affecting India's interests.

(b) No, not in the Departments under my charge.

DEMANDS FORMULATED AT CERTAIN PUBLIC MEETINGS IN THE  
MALAKAND AGENCY.

542A. **\*Mr. Abdul Qaiyum :** Will the Foreign Secretary please state whether at a public meeting held at village Garhi Usman Khel, Malakand Agency, on the 23rd June, 1938, and at a meeting of the "Markazi Jirga" held at Skhakot, Malakand Agency on the 4th July, 1938, the following demands were formulated :

- (i) that the Frontier Crimes Regulations should no longer apply to the Agency ;
- (ii) that the Sam and Swat Ranizai areas be at once amalgamated with the settled districts of the Frontier Province so as to derive benefit from constitutional reforms ; and
- (iii) that an Anglo-vernacular middle school be set up for the Sam Ranizai tract ?

**Sir Aubrey Metcalfe :** Government have ascertained that no such meetings took place.

DEMANDS FORMULATED AT CERTAIN PUBLIC MEETINGS IN THE  
MALAKAND AGENCY.

542B. **\*Mr. Abdul Qaiyum :** Will the Foreign Secretary please state :

- (a) whether there is a danger of civil disobedience being resorted to in the Malakand Agency if the demands mentioned in the preceding question are not conceded ;
- (b) whether Government have arrived at any conclusions regarding those demands ; if so, what those conclusions are ;
- (c) what the policy of Government is about these tracts ; whether it is not the intention to amalgamate those areas with the settled districts ; if the inhabitants so desire ; and
- (d) whether Government have consulted the Provincial Government regarding the amalgamation of Ranizai tracts with the settled districts ?

**Sir Aubrey Metcalfe :** (a) and (b). Do not arise in view of the answer given to the Honourable Member's preceding question No. 542A.

(c) The attention of the Honourable Member is invited to part (c) of the reply given by me on the 17th August, 1938, to his question No. 301A.

The concluding portion of this part of the question asks for the solution of a hypothetical proposition.

(d) No.

#### POST OF RESIDENT IN WAZIRISTAN.

542C. \*Mr. Abdul Qaiyum : Will the Foreign Secretary please state :

- (a) whether the post of Resident in Waziristan was abolished on the 1st April, 1938 ;
- (b) whether this post has again been created ; if so, who has been appointed as Resident ;
- (c) whether it is intended to make it a permanent post ; if so, the reasons for such a step ; and
- (d) what the additional annual expenditure will be as a result of the creation of this new post ?

Sir Aubrey Metcalfe : (a) Yes.

(b), (c) and (d). The post has been created for a period of three months only as a temporary measure and is at present held by Mr. O. K. Caroe, C.I.E., of the Indian Political Service. The estimated extra expenditure including that incurred on account of the Resident's office staff and all connected charges is Rs. 23,000.

#### DEMANDS OF THE PEOPLE OF THE KURRAM AGENCY.

542D. \*Mr. Abdul Qaiyum : Will the Foreign Secretary please state :

- (a) whether the Kurram Agency has been quite a peaceful district since long ;
- (b) whether the people of Kurram have demanded the repeal of the Frontier Crimes Regulations ; what Government's attitude towards this demand is ; and
- (c) the reasons why local self-government has not been introduced in this Agency ?

Sir Aubrey Metcalfe : (a) Yes.

(b) No such representation has been received by Government.

(c) Because the present system is more economical and more suitable to tribal conditions.

#### POSITION BETWEEN INDIAN STATES AND THE GOVERNMENT OF INDIA REGARDING RADIO LICENCES AND CUSTOMS DUTIES ON RADIO INSTRUMENTS, ETC.

542E. \*Mr. Manu Subedar : (a) Will the Honourable Member for Communications state the position between the Indian States and the rest of India, under the Government of India, as regards the collection and retention of (i) licence fees on radio located in the Indian States, and (ii) customs duties on radio instruments ?

(b) Has any negotiation taken place and any arrangement or contract, involving financial clauses, been arrived at between the Government of India and the Governments of Hyderabad and Mysore, who have set up transmission ?

**The Honourable Mr. A. G. Olow :** (a) The Government of India are not entitled to any share in the licence fees levied on radio sets located in Indian States. Customs duties on radio instruments are collected and disposed of in the same manner as customs duties on other classes of articles.

(b) No.

---

### STATEMENTS LAID ON THE TABLE.

*Information promised in reply to starred question No. 957 asked by Mr. K. S. Gupta on the 23rd March, 1938.*

#### INCONVENIENCES OF THE TRAVELLING PUBLIC ON THE VIZIANAGRAM-RAIPUR BRANCH OF THE BENGAL NAGPUR RAILWAY.

(a) The latrine space in some carriages is below the standard now adopted. These carriages, however, were built about 30 years ago and in the normal course it will not be long before they are replaced.

(b) The Honourable Member's attention is drawn to the latter part of the answer to part (a). Government are informed that all passenger stock employed in the Raipur-Vizianagram Branch is washed and cleaned at Waltair and at Katni and Raipur on the return journeys from the latter stations.

(c) Government are informed that the cushions in the seats of the intermediate compartments are in good condition.

(d) No.

(e) No. The original surface of the roadway on the sloping approaches of the old bridge was smooth cement, but this has since been suitably roughened to avoid slipperiness.

(f) No. As there are lines on both sides of the platform, it is essential for passengers to use the overbridge for their own safety.

(g) The question of provision of cover to overbridges is within the competence of the Railway Administration, and any difficulties at Vizianagram can be brought to the notice of the Administration through the Local Advisory Committee.

---

*Information promised in reply to part (e) of starred question No. 244 asked by Mr. Brojendra Narayan Chaudhury on the 16th August, 1938.*

#### INCOME-TAX PAID BY TEA COMPANIES.

(e) Approximately Rs. 18 lakhs.

---

### THE MUSLIM DISSOLUTION OF MARRIAGE BILL.

**Mr. President** (The Honourable Sir Abdur Rahim) : Order, order.

12 NOON. Legislative Business. Qazi Muhammad Ahmad Kazmi.

**Mr. A. K. Chanda** (Bengal : Nominated Official) : On a point of order, Sir. I notice that my friend, Mr. Chatterjee, and myself have been supplied with a copy of the Bill which does not contain clauses 4 to 6 while

another Honourable Member has been supplied with a copy which does not contain clauses 5 and 6. We have not received a copy of Mr. Kazmi's full Bill.

**Qazi Muhammad Ahmad Kazmi** (Meerut Division : Muhammadan Rural) : Mr. President, I move :

"That the Bill to consolidate the provisions of Muslim Law relating to suits by married Muslim women for dissolution of marriage and to remove doubts as to the effect of apostasy of a married Muslim woman on her marriage tie be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable the Home Member, Captain Sir Sher Muhammad Khan, the Honourable Sir Muhammad Zafrullah Khan,...."

**Mr. President** (The Honourable Sir Abdur Rahim) : Order, order. In my typed copy, as supplied by the office, I think the names are different ?

**Qazi Muhammad Ahmad Kazmi** : Yes, Sir, they have been changed. This is the final list which I hope you have got in your hand now. I will move it again. I move :

"That the Bill to consolidate the provisions of Muslim Law relating to suits by married Muslim women for dissolution of marriage and to remove doubts as to the effect of apostasy of a married Muslim woman on her marriage tie be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable the Home Member, Captain Sir Sher Muhammad Khan, the Honourable Sir Muhammad Zafrullah Khan, Mr. N. A. Faruqi, Dr. G. V. Deshmukh, Mr. M. Asaf Ali, Maulvi Abdul Wajid, Pandit Sri Krishna Dutta Paliwal, Bhai Parma Nand, Sir Muhammad Yamin Khan, Maulvi Abdur Rasheed Chaudhury, Syed Ghulam Bhat Nairang, Mr. H. M. Abdullah and the Mover, with instructions to report by the 15th December, 1938, and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Sir, this Bill was circulated for eliciting opinion thereon at the beginning of this year, and the opinions have now been received. It is in the light of those opinions that I want to place my own views before this House. Sir, for the purposes of discussion, this Bill can be divided into three parts. Firstly, grounds for the dissolution of marriage and the method of dissolution, secondly, the effect of apostasy on the marriage tie, and, thirdly, the personnel of the Court authorised to try suits relating to the dissolution of marriages.

In the first part, an attempt has been made to collect all the grounds that are considered valid according to Muslim Law for the dissolution of marriages. As is well known, under Muslim Law, a married woman has almost an equal right with the husband to get a divorce or a dissolution of marriage, but the provisions regarding procedure as well as the personnel of the courts have always come in the way of a woman enforcing that particular right. At present, on account of these handicaps, the right is not being exercised almost at all and it was for that purpose that the first part of the Bill was drafted to include all provisions of law which are allowed under Muslim Law for the dissolution of marriage. The opinions that have been received about this part, in an overwhelming majority of cases and with almost an unanimity, support these provisions of the Bill. There are certain suggestions and the criticisms that have been made are mostly constructive ones. Suggestions have been made that this part of the Bill must be made more specific and that the periods of desertion of the husband and of non-maintenance and of the absence of the husband while he is kept in jail should be definitely defined in the Act itself. My object, from the beginning in introducing this Bill and speci-

[Qazi Muhammad Ahmad Kazmi.]

fying the provisions of Maliki and Hanafi law, was to show that in those laws we have got definite cases and definite decisions about the period during which the husband must be incarcerated or be sent to jail or be absconding before these provisions of law can be invoked, but, after reading these opinions, I am inclined to think that it may probably be more convenient that this law itself should contain those limitations of time and the way in which the marriage is to be dissolved. That may also remove, to a certain extent, the objection of certain sects,—though I have not found the objection specifically stated in the opinions that I have received—but the objection may be that the mention of Maliki and Hanafi law would make it applicable only to Hanafis or only to one particular sect. If we succeed in taking up all the grounds given by Maliki or Hanafi law, as a matter of fact by the whole of Islamic Law, and can give in this Bill the definite limitations and the definite conditions under which those provisions are to be applied, I think it will be an improvement for the better ; but it is for this House and for the Select Committee to consider these points in the light of the opinions that have been received. Now, Sir, I do not think that it is necessary for me to dilate further on this part of the Bill because the opinions are there ; the condition of women is apparent to everybody ; and the difficulties under which they are suffering are so well-known that to describe them will only be taking up the time of the House and only saying what is already known to everybody here. So, I will just proceed on to the other two parts in respect of which, unfortunately, the support is not so whole-hearted, and in the case of clause 6 the opposition is almost unanimous.

It has been suggested by some that I have put in this clause in the Bill because of the distrust of the judiciary or I am bent upon introducing communal element in the judiciary and some have gone to the extent of saying that this is an indirect way in which the Muslim Members are made a necessary part in the judiciary and a further representation of the Mussalmans in the judiciary will become necessary. I must say that none of these considerations was in my mind or in the mind of any person at the time of the drafting of the Bill. It is due to the difficult condition in which the Mussalmans find themselves today that we have to take resort to this clause. It is a well-known fact and the very fact that I have brought this Bill before this House is sufficient to show that this part of the Muslim Law is not being acted upon and the reason why it is not being acted upon is that the necessary personnel which is prescribed by the Muslim Law for the enforcement of the provision of the Bill does not exist. The very fact that we are suffering from this handicap, the very fact that the women are not resorting to law courts for getting divorces and the very fact that they are suffering and yet cannot do anything is sufficient to show that it is on account of the handicap of the personnel of the courts that they are being deprived of this very highly valuable right which they are given by the Muslim Law and which is almost a human right which every human being must possess. What has happened with the Mussalmans is that, up to 1864, all the cases were decided by the Qazis. The Muhammadan and Hindu law officers were there to decide the cases. If we just consider the condition and the history of the Mussalmans throughout the world, and especially with reference to India itself, we will find that nothing has appealed to this community more than the freedom in the exercise of



religious rites and ceremonies. They were not anxious to get the Government of the country so much as they were about the full liberty of religion. I may mention here in passing that as early as 1830 Maulvi Syed Ahmed Rai-Barailwi, who was carrying on fights on the Frontier, was given an offer that Peshawar may be given to him and he may rule over it. But he said :

“ I am not fighting for the possession of land, nor am I fighting for property, but I am fighting only for the liberty of religion.”

What we want is only freedom to exercise our religion liberally and without any restrictions. That was the only object. This feeling was so prevalent amongst the Muslim minds that it has always been immaterial to them whether the Mughals were ruling here, or the Sikhs were predominant or the Mahrattas were at the head of the administration so long as they had liberty of religion. But it was in 1864 that the first blow in respect of the liberty of religion was struck by the abolition of the posts of Qazis. I must submit, in this connection, that it was not only the Mussalmans who had got the Qazis but the Hindus also had got their law officers, and the Government, in its discretion, thought that it would probably serve their purpose better if both the Hindu law givers and the Muslim Qazis could be abolished. After the abolition of the posts of Qazis, in 1864, we find that the real agitation started in India. It was at that time that the Mussalmans began to think and consider whether India was *dar-ul-harab* or *dar-ul aman* or *dar-ul Islam*. It will be noticed that this controversy was never raised so high and never came to the forefront before the removal of the Qazis was enacted in 1864. It was at that time that the continuous agitation was carried on by the Mussalmans and they decided that India was not *dar-ul Islam*, it ceased to be *dar-ul aman* and it was *dar-ul harab*. Even up till today certain of our prayers are offered on the basis that it is *dar-ul harab*, and it was this legislation which put the Muslim community in great difficulty. The agitation continued and, in 1880, Government enacted a Qazis Act. I could not get the Act of 1864, but the very preamble of the Act of 1880 shows that there was great trouble amongst the Muslim community and, therefore, this Qazis Act (Act XII of 1880) was enacted. The preamble of this Act says :

“ Whereas by the preamble to Act No. XI of 1864 (An Act to repeal the law relating to the offices of Hindu and Muhammadan Law officers and to the offices of *Kazi-ul-Kuzrat* and of Kazi, and to abolish the former offices) it was (*among other things*) declared that it was inexpedient that the appointment of the *Kazi-ul-Kuzrat*, or of City, Town or Pargana Kazis, should be made by the Government, and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed ; and whereas by the usage of the Muhammadan community in some parts of British India the presence of Kazis appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kazi ; It is hereby enacted as follows.”

So, it was to remove this inconvenience of the Mussalmans that the Qazis Act was enacted, but, as a matter of fact, it was the Qazis Act in name only. There was no real significance about it and no real benefit was conferred by it on the Muslim community, because, though authority was given to the Local Governments to appoint Qazis, by section 2 which says :

“ Wherever it appears to the Provincial Government that any considerable number of the Muhammadans resident in any local area desire that one or more Kazis

[Qazi Muhammad Ahmad Kazmi.]

should be appointed for such local area, the Provincial Government may, if it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons and appoint him or them to be Kazis for such local area."

Nothing was really given. So far as section 2 goes it was all right. But then comes section 4 which takes away the whole effect of the appointment of Qazis. It says :

"Nothing herein contained and no appointment made hereunder shall be deemed :

' (a) to confer any judicial or administrative powers on any Qazi or Naib-Qazi appointed hereunder ; ' "

They were given absolutely no judicial or administrative powers. It goes further :

" (b) to render the presence of a Qazi or a Naib-Qazi necessary at the celebration of any marriage or the performance of any rite or ceremony. "

Not only this but he has no more right to be present than any other person, for clause (c) says :

" (c) to prevent any person discharging any of the functions of Qazi. "

Now, Sir, this Act was enacted to give some satisfaction to the Muslim community, but it did not at all meet the necessity which was impending. It was not possible that any Qazi could do the business. The only difficulty which the Muslim community has in this matter is that the orders of that Qazi can only be enforceable who is appointed by Government. Had this not been so, Muslims would have evolved a system of carrying on these matters themselves even if the Government refused to help them in the matter and so the matters remain where they are today. From the opinions that we have received, I will just read out the opinion of a gentleman who, though he differed from the Bill and though he is not in favour of it, still he has described the condition of the Muslims. On page 10, paragraph 14 of the Opinions, the District Judge of Salem says :

" The statement too that, under present circumstances, it is not possible to get a Qazi to pronounce the decree is hardly correct. Even after the British rule commenced, the Qazi was a recognised institution. Various regulations providing for the appointments of Qazis and defining their duties have been passed from time to time. Under the Bengal Regulations, he was expressly clothed with the duty of presiding at marriages and divorces. Under the Qazi Act XII of 1880, they are even now appointed by the Government. One has only to re-invest them with the powers they originally possessed in the matter of divorces. If it be thought that it would be impossible to place reliance on the ability or the integrity of the present day Qazi in the decision of causes relating to divorce, there is an easy way out. Under the Muslim law, the Qazi need not himself try cases, nor give a decision based on his individual judgment. He can pass decrees based on the opinion of others. Provision, therefore, can be made for Judges, Muslim or non-Muslim, giving judgment and for the Qazi to give it his ' imprimatur ' to satisfy the susceptibilities of the Muslims. The procedure would be similar to what obtains in appeals to the Judicial Committee. Their Lordships of the Judicial Committee advise His Majesty that the appeal should be allowed or dismissed, but the ultimate order is the Order of His Majesty in Council. "

Just as I have submitted before, this gentleman, the District Judge of Salem, is opposed to this measure and he has criticised it. He does not believe in the necessity of this Bill. But even he has recognised this difficulty from which Muslims are suffering. It is this handicap which the Muslims want to remove and it is from this point of view that I have attempted to put in clause 6 in this Bill.

**An Honourable Member :** What is a Qazi ? Is there any definition of ' Qazi ' ?

**Qazi Muhammad Ahmad Kazmi :** A Qazi is a person who is appointed for the purpose of carrying on certain functions and duties by the King.

**An Honourable Member :** To perform marriages.

**Qazi Muhammad Ahmad Kazmi :** It is not only for performing marriages, but even that they are not getting now. It is all finished. The Act of 1880 which recognised the status of a Qazi who is appointed by the Government says that it cannot deprive any other person from acting as Qazi. But a person who is not appointed by the Government to carry on the duties of Qazi is not recognised by Muslim Law and the decrees given by him are not regarded as valid. Otherwise, the Muslim community might have, by their own social customs, provided for these contingencies for themselves. Even now, from the opinions I have received, I find that in Malabar amongst the Moplahs, they have got Qazis of their own appointment and they get cases of dissolution of marriages before them and their decisions are carried out. But the only difficulty is that it is not fully recognised by Muslim Law and even then, in the present circumstances, when every one of us knows how to go to law courts and how to avoid all inconvenient laws and orders of religion or of society, it cannot be conceivable that any Qazi, not appointed by the Government and who has not the sanction of the Government behind him, can ever enforce these divorces, these dissolutions of marriages and other things. The difficulty is there. We have got to provide for it and if the Government are prepared only to invest these gentlemen with the powers of dissolution of marriages, I think there will be no necessity of putting in this clause in this Bill at all. I can go further and say that even there will be no necessity to the Bill at all because they can carry on the administration of dissolution of marriages according to the Muslim Law itself. Because that is not happening, we are forced to go to the courts of law and the only way of making the law as much near and close to the orthodox Muslim Law is the way in which an attempt has been made in this Bill.

Now, Sir, I may proceed and submit that even if this clause 6, in its present form, be not acceptable to some on the ground of inconvenience and to others on the ground of introduction of communal principle, still I say that we can improve it in other ways. I have just read out the opinion of the District Judge of Salem that Qazis may enforce the decrees passed by others, that they may hand over cases to ordinary courts and enforce the decrees passed by them. Even if that be not acceptable, though I do not think that it will be quite in accordance with the provisions of Muslim Law, still if we could resort to some expedient of having some assessors or jurors or delegates, whatever you may call them, with the Qazi to help him in the decision of these cases, then it will also be a solution which may be acceptable and which may come quite, more or less, near the injunctions of Islam. This appointment of delegates or assessors is not a novel thing and is not a thing which is unknown to British India. Only recently, as late as 1936, in this very House, we passed the Parsi Marriage and Divorce Act. And section 19 of the

[Qazi Muhammad Ahmad Kazmi.]

Act, after saying that there will be Parsee Chief Matrimonial Courts in Calcutta, Madras and Bombay, says with reference to the personnel of those courts :

“ The Chief Justice of the High Court or such other Judge of the same Court as the Chief Justice shall from time to time appoint shall be the Judge of such matrimonial court, and in the trial of cases under this Act he shall be aided by seven delegates.”

Who these delegates would be is given in section 24 (2), and it is said that “ the persons so appointed shall be Parsees ” and their names shall be published in the local official Gazette. That is the important part that the persons shall be Parsees, and then it is further provided that in matters of fact the opinion of the Parsee delegates shall be binding, and as to the law it will be applied by the Judge. To the English Law itself, whether criminal or civil, the system of jury is such a well-known system that I need not say anything about it for the present. It was in its naked form without the advantages and facilities which English Law could give that it was imposed on India at a time when there was no representative of India in the rooms of the legislature. They were imposed in rapid succession without understanding the needs and necessities of this country, whether Hindus or Muslims. I may just cite an instance. I have read in the proceedings of 1880 that at the time the Specific Relief Act was moved by the Honourable the Mover in the Council of the Viceroy, he had to explain to the members of the Executive Council that this Specific Relief Act had nothing to do with the relief of famine that was going on in Madras at that time. So laws were imposed on this country only as a copy from the British institutions but deprived of all the facilities that were found in the law there. Because of the idea that in these courts should be centralised the whole power and that may be exercised by a foreign community, so this provision that there may be delegates or jurors or assessors, whatever you may call them, to aid the Judges in carrying on these duties is not a novel proposition. It is well-known to the British law and it is a thing which has actually been accepted by this very House as late as 1936. And I do not remember that in this House or in the other House there was any dissentient voice against that provision. It may not look sound but it is correct to say that any such provision does not, in the least, express any distrust in the judiciary or in their competence to administer the law. And our own experience is that as a matter of fact, in most cases, these jurors and delegates are necessary,—because I personally have been carrying on this profession for some time and even my own mind has been so much overcome by legal propositions that sometimes, in my anxiety to give effect to the legal position, I overlook the justice of a case. And as is well-known that the moral conviction of a judge cannot help him in the decision of a case, it is the legal conviction which is necessary. I will read out before you some of the opinions that have been expressed in respect of this Bill which will go to show that judicial officers have found themselves absolutely at the mercy of the litigants in deciding cases of dissolution which have come before them. Their moral conviction is on one side while the law goes the other way ; and they are bound to follow the law. Therefore, to remove this defect which comes to the legal man—from the very training that he gets—in the trial of the cases of persons who are not only gov-

erned by law but by justice and by common sense also of persons who do not understand these technicalities, we should keep with the Judges certain persons who can help them in arriving at a decision on the points of facts. Now, Sir, I may say that so far as this clause is concerned, my only submission is that the House may give it a more patient hearing and a calm consideration, a real appreciation and understanding of the conditions of the Muslim community, and give its decision on it after we have tried to solve this problem and see how far we can succeed in it. This is the stage when this Bill is being sent to a Select Committee for consideration and it will be a matter worth considering by the Select Committee.

After this, I come to another clause on which I must admit that amongst the Muslims themselves the opinion is divided, though an overwhelming majority of the Muslims is in favour of this clause, *viz.*, clause 5. People have been very unkind in imputing motives so far as that clause is concerned. One gentleman has gone so far as to say that that was the main purpose of the Muslims in bringing forward this Bill. I only say that in spite of the difficulties under which this clause and clause 6 were put in and the purpose for which we have put it in as I have explained, it will be apparent to the House that it was no less to give facilities to the women and to enforce the Muslim Law that we have put in this Bill than on account of any antagonism that we have got with any other community. And the way in which—I will just quote before you—some of the Muslims have opposed this clause will show that the Muslim community will more be prepared to follow the injunctions of Islam than be carried away by prejudices against any community. So, when Muslim opinion itself is a little divided on that point, I think this House will also consider that proposition with an unbiassed mind without considering that any attempt is being made to thrust in communalism or to bring any particular community to any disadvantage by making a provision in respect of apostasy not dissolving the marriage tie. As I submitted there is a difference of opinion. The law as it stands today is that apostasy *ipso facto* dissolves marriage. The courts have not stopped there but they have even refused to go into the motives of the parties in regard to conversion and in regard to the apostasy. The whole law on this point is derived from the jurists of Bokhara and I would read out before the House what Sir Syed Ameer Ali has got to say about this. He says :

“ The lawyers of Bokhara who adhered to the doctrines of ancients (*Mutakad-damins*) hold that whatever the religion she adopts, she would be imprisoned until she returns to the faith when she should be constrained to remarry her former husband on a very small dower. The object of the doctrine they propounded, as they declared, was to prevent a woman from trying to escape from the bonds of matrimony by the abandonment of Islam.”

This is one school.....

**Mr. N. M. Joshi** (Nominated Non-Official) : Do you support this ?

**Qazi Muhammad Ahmad Kazmi** : I want to place all the views of Muslim jurists before this House and then try and show how far we can get our relief even from the most extremist views that are being adopted in British India today. As I was saying, this is the school of Bokhara.

[Qazi Muhammad Ahmad Kazmi.]

Then, about the other school, Sir Syed Ameer Ali says :

"The jurists of Balkh and Samarkand, on the other hand, have said that when a woman abjures Islam for a spiritual or revealed religion like Judaism or Christianity, her renunciation of faith does not dissolve the marriage."

These are the two views. In this connection, I may just read out what the present body of ulemas say : I have got to read it from Urdu, but I will translate the necessary parts.

**An Honourable Member :** What is this book ?

**Qazi Muhammad Ahmad Kazmi :** This is a book called, *Almarqoomat Lil Mazloomat*, written by Maulana Ashraf Ali of Thanahawan, and it has got upon it the seals of the ulemas of Saharanpur and other gentlemen who are the representative ulemas of the Muslims in these provinces. It says :

"There are three versions amongst the Hanafis about the apostasy of a woman. One is *Zahirul Biwaya*."

The summary of which is this : that on the apostasy of a woman the marriage will be dissolved at once but then she will be kept in imprisonment and will be forced to adopt Islam and she will also be forced that she must renew her marriage with her former husband ; but it does not say anything about the dower. And this has been dilated upon in '*Alam Giri*', '*Qazi Khan*', '*Durrai Mukhtabr*' and '*Shami*'.

**Mr. President** (The Honourable Sir Abdur Rahim) : Today being Friday, the House will adjourn now and re-assemble at a Quarter Past Two.

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

---

The Assembly re-assembled after Lunch at a Quarter Past Two of the Clock, Mr. Deputy President (Mr. Akhil Chandra Datta) in the Chair.

---

**Qazi Muhammad Ahmad Kazmi :** Mr. Deputy President, when we adjourned, I was discussing the view of Maulana Ashraf Ali in his book *Almarqoomat Lil Mazloomat*. After discussing all the three schools of thought, he comes to the following conclusion :

"though there is some difference of opinion in the three versions, all the three agree that a woman shall not have this right of separating from her previous husband or of marrying another man. Thus, it is an agreed proposition that the woman shall have no right to marry at any other place."

According to no school the present practice of dissolution of marriage by mere apostasy can be supported, and as I submitted, the other view is supported by all the legal authorities that are available on Muhammadan Law. Now, the only view, as I submitted before, that apostasy dissolves marriage is the Bokharist view, but that view contemplates the imprisonment or detention of women or keeping them in close custody or of their being forced to come back to the religion of Islam. Whatever be the merits of that law, whatever be the merits of that particular legislation, the legislation is there, and it cannot be doubted for a moment that the

subsequent provision of the Bokharist view cannot be put into operation under the existing circumstances. Therefore, to adopt only the first part and to leave the other is, according to most of the Ulemas, not the proper interpretation. But for the time being, I would take up the position that dissolution of marriage is effected by apostasy. I will take up that view, the view which is current at present, that is, apostasy does dissolve marriage. We have got to consider as to why this particular provision was enacted. Apostasy was considered by Islam, as by any other religion, as a great crime, almost amounting to a crime against the State. It is not novel for the religion of Islam to have that provision. If we look up the older Acts of any nation, we will find that similar provision also exists in other Codes as well. For the male a severer punishment was awarded, that of death, and for females, only the punishment of imprisonment was awarded. The main provision was that because it was a sin, it was a crime, it was to be punished, and the woman was to be deprived of her status as a wife. It was not only this status that she lost, but she lost all her status in society, she was deprived of her property and civil rights as well. But we find that as early as 1850 an Act was passed here, called the Caste Disabilities Removal Act of 1850, Act XXI of 1850. I will just read the relevant portion from it. Section 1, which is the only section in this Act, say :

“So much of any law or usage now in force within the territories subject to the Government of the East India Company as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion or being deprived of caste, shall cease to be enforced as law in the courts of the East India Company and in the courts established by Royal Charter within the said territories.”

So, by this Caste Disabilities Removal Act, the forfeiture of civil rights that could be imposed on a woman on her apostasy has been taken away. She can no longer be subjected to any forfeiture of property or her right of inheritance or anything of the kind. The only question is that the Legislature has come to her help, it has given her a certain amount of liberty of thought, some kind of liberty of religion to adopt any faith she likes, and has removed the forfeiture clause from which she could suffer, and which was a restraint upon her changing the faith. The question is how far we are entitled after that to continue placing the restriction on her status as a wife. Her status as a wife is of some importance in society. She belongs to some family, she has got children, she has got other connections too. If she has got a liberal mind, she may not like to continue the same old religion. If she changes her religion, why should we, according to our modern ideas, inflict upon her a further penalty that she will cease to be the wife of her husband. I submit, in these days when we are advocating inter-marriages between different communities, when we are advocating freedom of thought and freedom of religion, it would be inconsistent for us to support a provision that a mere change of faith or change of religion would entail forfeiture of her rights as the wife of her husband. So, from a modern point of view, I have got no hesitation in saying that we cannot, in any way, support the contrary proposition that apostasy must be allowed to finish her relationship with her husband. But that is only one part of the argument. What we have got to see is as to how the law is applied, and that punishment is not allowed by this Legislature or by the Courts to be turned into a right. What is now hap-

[Qazi Muhammad Ahmad Kazmi.]

pening is that, on the least dispute or difference of opinion—not for the purpose of really believing in or going to another faith—women go out of the fold of their religion and say that they have adopted another faith. As soon as the marriage is dissolved by this declaration of hers she goes and marries another man. So, what is happening today is, that the law is being misused, the law is being abused, the law is being defrauded, and we have to see how far we can countenance that particular activity. Before dealing with that point, I would only briefly put before this House as to what are the results of apostasy or change of religion so far as other religions are concerned. Let me first take the Hindu religion. With the exception of the cases or the instances cited by the Honourable the Law Member, Sir Nripendra Sircar, that in Bengal Hindu women, by becoming Muslims, get a dissolution of their marriage,—throughout the rest of India the Hindu marriage is considered a sacrament which cannot be dissolved by any change of faith. It is an undisputed proposition and I would not take up much time of the House in reciting any law on the subject. Then what about Christians? According to the Christians also, it is an established practice that conversion to another religion does not dissolve their marriage. As regards Parsis, as late as 1936, a law was passed on the subject, and there again you will find that though change of religion has been provided as a ground for dissolution of marriage, yet it is not to be exercised in the way in which it is being used in Islam. Section 32 of the Parsi Marriage and Divorce Act, 1936, is to the effect that a married woman may sue for divorce on any one or more of the following grounds, and subsection (j) says :

“ That the defendant has ceased to be a Parsi, provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know of this fact.”

There are two things apparent from this. The first is, that it is a ground for dissolution, not from any religious idea or religious sentiment, because, if two years have passed after the conversion and if plaintiff does not object, then either the male or female has no right to sue for dissolution of marriage. The second thing is, that it is the plaintiff who has got the complaint that the other party has changed the religion. It is not the person himself who has changed the religion who has got the right of getting the marriage dissolved. It is the defendant's religion which is in question. If the defendant has changed the religion then the plaintiff has got the right of bringing in the suit. So, it is a case in which there can be no fraud upon the law, because the plaintiff comes forward and says, “ I continue to be a Parsi and the defendant has changed the religion and, therefore, let me dissolve it”, and it is open to the other party to prove if he or she wants to continue the relationship, “ I have not left the Parsi religion, I still continue to be a Parsi”. Even this ground of divorce is not at all comparable with the ground of divorce that is being enforced so far as the Muslims are concerned. In addition to this Act, as regards other communities we can have an idea of the effect of conversion on marriage tie from the Native Converts' Marriage Dissolution Act, Act XXI of 1866. Section 4 says :

“ If a native husband change his religion for Christianity, and if, in consequence of such change his native wife, for the space of six continuous months, desert or repudiate him, he may sue her for conjugal society.”



## Section 5 says :

"If a native wife change her religion for Christianity, and if in consequence of such change her native husband for the space of six continuous months desert or repudiate her, she may sue him for conjugal society."

I may just say that the words "native wife" in this law, according to the definition, shall mean a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall not be a Christian, a Muhammadan nor a Jewess. So, it applies to all the communities of India, and this legislation recognises the fact that mere conversion of an Indian to Christianity would not dissolve the marriage but he will have the right of going to a law court and saying that the other party, who is not converted, must perform the marital duties in respect of him. I need not go further into this Act. The principle is recognised, but only the further procedure that is adopted after this is, that if the wife or husband comes before the court and she or he is not willing to perform the conjugal duties, then they are given a year's time and the Judge directs that they shall have an interview with each other in the presence of certain other persons to induce them to resume their conjugal relationship, and if they do not agree, then on the ground of desertion the marriage is dissolved. The marriage is dissolved no doubt, but not on the ground of a change of faith, but on account of the inconvenience to any of the parties, or refusal of the other party to have conjugal relationship with the first one. So, every community in India has got this accepted principle that conversion to another religion cannot amount to a dissolution of marriage.

I now want to bring to the notice of the House as to how, in actual practice, this provision of dissolution of marriage on change of religion is being used. I need not give my own experiences in this matter, but will rely more on the judicial officers of British courts who have given their own experiences in such matters. I have selected only a few of the observations from the opinions that we have received and I want to read first before you the opinion of the District and Sessions Judge of Baluchistan. The District and Sessions Judge of Baluchistan says on page 2 :

"My own experience as a judicial officer of some standing in the Punjab is that most of the conversions of Muslim married women even to the scriptural religion of Christianity were far from being genuine and were set up as subterfuges to obtain decrees for cancellation of marriage where the woman concerned did not even know the elementary and fundamental principles of Christianity. This sort of sordid practice should not, in my opinion, be countenanced by the State or society."

Earlier, for the very same reason, he says :

".... but this contingency has to be jealously guarded against as the object of conversion from one religion to another should never be the evasion of the law of the former religion nor should the State permit such a fictitious conversion to give a legal cloak to the desire of the wife to separate from her husband if she cannot otherwise secure such separation on lawful grounds."

Then the District and Sessions Judge of Cuddappah says, on page 7 :

"One other aspect of the matter is—and I believe this is the more important consideration—that these restrictions were originally devised to serve as a deterrent

[Qazi Muhammad Ahmad Kazmi.]

or perhaps even as punishment to persons who renounced the faith. Latterly, however, what was so intended has on the other hand come to be employed as a device for women whose marital lives with their husbands are not happy to dissolve the connection by changing faith, taking advantage of the provision that the renunciation will automatically have that effect. These conversions take place not sincerely and conscientiously—for such a thing there could surely be no objection—but as a stratagem and as a fraudulent expedient for a purpose which was certainly not sanctioned by the law."

I need not go on repeating instances, which will be found in the volume of opinions.

Now, Sir, I will state briefly the last part of my argument. The courts have held that they cannot inquire into the motives of women. The courts have refused to consider the fact of conversion as a colourable transaction or a real and genuine transaction. In 1924, Lahore, page 397, Mr. Justice Duleep Singh while holding that conversion to Christianity results in dissolution of marriage remarked :

"It seems to me that it is not in the province of the Court to inquire into the genuineness or otherwise of the conversion."

With due deference to His Lordship I have to say that it was never the spirit of Muslim Law. Even the extreme Bokhara view which is adopted in holding the marriages dissolved, due to apostasy, says : "she would be imprisoned until she returns to the faith, when she should be constrained to remarry her former husband on a very small dower". Under the present circumstances she is not to be imprisoned, nor to be forced to marry her former husband. But the very fact that she was to be imprisoned warrants that under the present circumstances, at least, an inquiry may be made into the fact whether her conversion is genuine or only *malafide*. Even the proposition that apostasy does not dissolve marriage tie may be open to dispute, yet in the light of such strictness, an inquiry into the genuineness of the conversion cannot be called unwarranted. Rather it is absolutely necessary according to Muslim Law. By enacting a law, a legislator does not contemplate and permit a fraud upon that law and it is the duty of the legislatures, existing for the time being, to see that the law is not abused. Thus, even if clause 5 may not be acceptable as it stands, it may be amended to give effect to the spirit of the accepted Bokhara view itself. This can be effected only by adding the words : "unless the conversion is genuine". The determination of the genuineness or otherwise of the intention of the party is not an impracticable proposition. Instances can be cited from other laws where such a thing is provided for. I need not repeat before the House the provisions of the Divorce Act. For example, in the Divorce Act, if the Court finds that there is collusion between the plaintiff and the respondent or any of the respondents no decree of divorce can be passed. It cannot be said that the mere fact of the determination will be such a complicated affair that we cannot provide for it in the law. We can say that the Courts will be entitled to determine and find out the intention of the person whether he was actually going to the other faith on account of genuine conviction or with the intention of committing a fraud upon the law. The judges of the High Court might have interpreted it in a particular way but what are the Legislatures for, if they cannot enact the law accord-

ing to the spirit in which it was enacted from the very beginning or in which it was enacted by the Legislatures themselves? No law can tolerate a fraud upon it. Sir, I will not take long over this matter. I will now only draw the attention of the House to the objections to clause 5. I find that the objections to this clause have been collected in one place. They are contained in the opinion of the Rajputana Provincial Hindu Sabha and so instead of referring to the various opinions I shall read it. It is on page 32 :

“ This Bill is opposed to the principles of Hindu law and will unnecessarily interfere with the marital relation of Hindu women who have been converted to another faith and want to return to the Hindu fold.... (g) Hindu widows or virgins or married women having their husbands alive are often enticed away by Muslims and are often married to some Muslims immediately after conversion. Now, if the woman is later on penitent and returns to the Hindu fold or if she is rescued by the Hindus the Muslims will say that the woman's marital relation with her Muslim husband should be continued according to this clause. In other words, it would mean that once a Hindu woman becomes Muslim she will never be able to release herself from the clutches of the Muslims.”

That I think is the most important clause so far as the religious objection of the Hindus is concerned. Some objection to the same effect, as I read in the papers, was made by the President of the All-India Hindu Mahasabha, Mr. Savarkar, and I say that if that is their desire, *viz.*, that Hindu women who have been converted to Islam and have married a Muslim might come back to their original faith without any difficulty, if they so desired, we can have a proviso to deal with cases of conversion ; I am just suggesting that there can be a *via media* for acceptance of this provision, from the strict Muslim point of view, if we just provide that this clause shall not apply to re-converts to their old religion. If you only say that this will not apply to cases of re-conversion to one's old religion, that will take away the objection of the whole of the Hindu community and the whole of their grievance that a woman who once was a Hindu and then, afterwards, became a Muslim would not under this Bill be allowed to go back to the Hindu religion. Sir, I mention these things with the idea that there is a possibility of a compromise on clauses which some think are absolutely undesirable and it will be for the Select Committee to consider them and to come to proper conclusions. This is only the stage where the Bill has to go to a Select Committee and I appeal to the House that they may help the Bill to go to that stage. I should just like to mention that I want to make one change in the composition of the Select Committee. In place of Pandit Sri Krishna Dutta Paliwal, I want to substitute the name of Sardar Mangal Singh.

**Mr. Deputy President (Mr. Akhil Chandra Datta) :** Motion moved :

“ That the Bill to consolidate the provisions of Muslim Law relating to suits by married Muslim women for dissolution of marriage and to remove doubts as to the effect of apostasy of a married Muslim woman on her marriage tie be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable the Home Member, Captain Sir Sher Muhammad Khan, the Honourable Sir Muhammad Zafrullah Khan, Mr. N. A. Faruqui, Dr. G. V. Deshmukh, Mr. M. Asaf Ali, Maulvi Abdul Wajid, Sardar Mangal Singh, Bhai Parma Nand, Sir Muhammad Yamin Khan, Maulvi Abdur Rasheed Chaudhury, Syed Ghulam Bhik Nairang, Mr. H. M. Abdullah and the Mover, with instructions to report by the 15th December, 1938, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five.”

**Bhai Parma Nand** (West Punjab : Non-Muhammadan) : Sir, this Bill that has been brought before this Honourable House by the Honourable Mr. Kazmi apparently seems to be a simple and non-controversial affair, but, if we look a little more deeply, we find that it has got a great many complications as well as difficulties. Besides this the drafting of the Bill is also somewhat defective.

There are three main provisions or objects of the Bill. The first is to give extension of rights to Muslim women to get a divorce from their husbands. So far as this object is concerned, no other community, no other person has got any quarrel with our Muslim friends. If they want to revive an old custom of theirs or if they want to reform any custom, that is their own look-out and they are welcome to do it. The second provision is that apostasy, by itself, is no ground for dissolution of a Muslim marriage. On this point there is a great difference of views, even amongst the Muslims themselves. I am no authority on that subject, and, therefore, whatever, I would say, I would not do so on my own authority, but on the strength of views expressed in these opinions by Muslim judges and sub-judges or Muslim Associations. Then, there is the third point, and it is that the trial of these divorce cases should be made over to Muslim judges. I think, Sir, my Honourable friend has, on a study of the views that are expressed in these opinions by different people, agreed to the view that this point is universally condemned. Excepting one or two unimportant opinions, I have not come across in these papers any Muslim Association or Muslim judge or other important individual who has indicated the slightest liking for this view.

There is, however, one point of interest in the opinions. We have got one High Court Judge of the Punjab, the Honourable Mr. Justice Din Muhammad, who has expressed a novel opinion. On page 38 of the opinions, Paper No. IV, Din Muhammad J., says :

" Clause 6, in my view, is both impracticable and inadvisable and the precedents derived from the Parsi Marriage Act and Sikh Gurdwaras Act which have been relied upon in the debates are not exactly in point. I would, however, recommend that in order to assist the Courts (irrespective of the fact that the presiding judge is a Muslim or a non-Muslim) in arriving at a right conclusion as regards the law applicable to the question at issue, a statutory duty should be imposed on the party seeking dissolution of marriage to support her case by procuring a *fatwa* and proving it under the provisions of the Indian Evidence Act."

But another Muslim Judge of the same High Court, Justice Abdur Rashid, contradicts this view and says :

" Moreover, clause 6 is open to strong objection on principle. I regret I do not agree with Din Muhammad J. regarding the necessity of a *Fatwa*. Both parties will secure *Fatwas* in their favour, and *Fatwas* will be a hindrance rather than a help to the Courts."

Now, with regard to certain faults in the drafting of the Bill, without expressing my own view, I would prefer to quote some Muhammadan Judge on this point. Mr. Muhammad Abdur Rahman, Subordinate Judge, Delhi, says this on page 35 :

" In clauses 2, 3 and 4, no distinction is necessary between Maliki School and the Hanafi Law. The grounds for the dissolution of marriage enumerated in clause 3 of the Bill should be made applicable to all the Muslims irrespective of School of Thought to which they belong. Besides, there is no difference in the procedure in all the different schools of thought among the Muslims as a whole. In addition to the Maliki and Hanafi Schools there are two other Schools, namely, Hambali and Shafai.

If such a distinction is made there would be much agitation among the members of those Schools, who belong to Hambali and Shafai Schools of Thought. The procedure should be uniform one. The Shariat does not make any difference between any school of thought. I, therefore, suggest that clauses 2, 3 and 4 are not necessary and should be deleted."

I have quoted the whole of this paragraph in order to make clear the fault in drafting to my Honourable friend, Mr. Muhammad Ahmad Kazmi, and I will suggest to him that he should consider the draft afresh from the point of view suggested in the above paragraph. This view, which has been expressed by a Muhammadan Judge, seems to me to be very reasonable, and I do hope that the Honourable the Mover of the Bill will give due consideration to it.

**Mr. Muhammad Azhar Ali** (Lucknow and Fyzabad Divisions : Muhammadan Rural) : Do you think there is no distinction or there ought to be no distinction between the Dayabhaga and the Mitakshara Schools for the same reason that this Judge has expressed ? Do you think that for the same reason that distinction should also go away ?

**Bhai Parma Nand** : I am not a lawyer, and I do not know what difference there is between the Dayabhaga and the Mitakshara Laws. I know this much that one is prevalent in Bengal, and the other in Southern India. But here I have quoted the opinion of a Muslim Judge ; it is not my opinion. You should not, therefore, try to get any explanation from me on this point. I have said that it seems to me to be reasonable that there should be one law for all schools of Muslim thought. I can say this much with the help of simple common sense that, in the matter of the law for divorce for Mussalmans, there should be one uniform principle. That is my view based on common sense, though I do not understand much of law. My friend on my back tells me that the marriage law in Dayabhaga and Mitakshara is the same. There is not much difference between the two.

Now, Sir, this is one point so far as the faulty drafting is concerned. Clauses 2, 3 and 4 go away in this way and my Honourable friend, the Mover, has also agreed that clause 6 in the Bill is universally condemned and we shall have to omit it. I can quote the opinions of Muslim Sub-Judges from Delhi, Bombay, and even from Madras, saying that this clause is altogether redundant, but, avoiding all those, I would like to quote in this connection the opinion of the Bombay Bar Association. This is what they say on page 56 :

" Finally, the Association would like to say a word about section 6 of the Bill. Formal expression of protest at such an unjustifiable provision cannot be enough. That section contains within itself a condemnation of the Indian members of the judiciary of this country which, we assert, it would be impossible for the most rabid communalist to substantiate."

They have all expressed opinions against this clause. If clauses 2, 3 and 4 are taken away, then only one clause is left, that is, clause 5, and, even on this clause, there is great divergence of opinion.

Clause 5 has got two applications. One, of course, is the fear that is prevailing in the minds of the Hindus that the passing of this clause would affect them very adversely. I do not say that that fear is based on sufficient data, but all the same the feeling is there. So far as I know, even in the opinions received, some of the Hindu Associations,

[Bhai Parma Nand.]

the Hindu Sabhas and Arya Samajes and Sanatan Sabhas have expressed this feeling in their resolutions passed at public meetings. This is one side of the clause as to how non-Muslims look at it. The other, of course, is, as I said, the great divergence of opinion even among the Muslim jurists and Muslim lawyers, and, I may also add, among Muslim leaders. The difference resolves itself into several points. The first point is whether the conversion into other religion or abjuration of Islam, for a woman *ipso facto* dissolves the marriage or not. The second point is whether a Muslim woman has equal rights with her husband or any right at all in the matter of divorce. The third point is that if this Bill is passed into law and full permission is given to Muslim wives to get divorce on various grounds set out in this Bill, whether there would be any need for clause 5.

I find from the list of opinions in our papers that a great majority of Muslim opinion is that originally this conversion to another religion or abjuration of Islam was sufficient *ipso facto* to dissolve the marriage. I think it was quite a natural thing for the law givers to follow this rule. Muslim law was meant for Muslim population in Muslim countries. They could not tolerate that any married woman should give up Islam or should go against its tenets and at the same time remain married to a Muslim husband. Not only this, as it is expressed in some of the opinions, this dissolution of marriage was a sort of punishment for that woman. As my Honourable friend has himself quoted, in the case of a Muslim woman who abjured her religion before puberty, the marriage was dissolved; if she abjured her religion after marriage had taken place, but before consummation, the marriage was dissolved; and in case a married Muslim woman abjured her religion, after consummation had taken place, she was kept for three months in a sort of imprisonment and was practically forced to come back to Islam, and, if, even then, she did not agree to come back, her marriage, as a matter of course, was dissolved. The idea underlying this dissolution was not to give her any freedom or any right to get away from her husband in order to be free from bondage, but only to punish her for her fault in abjuring Islam. Thus it is beyond all doubt that originally the Muslim jurists held that any wife who abjured her religion had her marriage dissolved. Later on, it seems this view was changed, and, perhaps, when the Muslims came in contact with other religions like Christianity, Buddhism, etc., the jurists might have changed. Modern jurists have begun to think that giving up religion should not amount to dissolution of marriage. We find on page 48 :

“Section 5 : It must be admitted that this section lays down a rule contrary to the letter and the spirit of the Islamic law. All the sections in Islamic law join in laying down that ‘*Irtidād*’ or conversion from Islam of either of the spouses dissolves the marriage tie”,—

Does it equally apply to men also ? That is another great point. If the wife gives up her religion, the marriage is dissolved. What happens if the husband renounces his religion ?—

“The Shias and the Shafies hold that when either of the spouses renounces Islam before consummation, the marriage tie becomes dissolved at once; and that if the apostasy comes after consummation the marriage would stand dissolved on the expiration of three courses of the woman. Among Hanafis apostasy from Islam of either

husband or wife whether it takes place before or after the consummation dissolves *ipso facto* the marriage tie (Amir Ali's Muhammadan Law, Vol. II, Chapter VIII, page 390)."

I should now like to give here views of the various Provincial Governments. The Madras Government say :

" I am to say that the Provincial Government accept the main purpose of the Bill. They are against the incorporation of clauses 5 and 6 in the Act as there is some opposition to clause 5 and as clause 6 stands condemned by almost all consulted."

The Madras Government thus do not want clauses 5 and 6 in the Bill.

The view of the Bombay Government is as follows :

" The Government of Bombay supports the principle of the Bill in so far as it will provide Muslim women with facilities to obtain a divorce but there are many objections to clause 3 as drafted. With regard to clause 5 of the Bill, the present law is that apostasy on the part of either party to a marriage operates as annulment of the marriage. It appears preferably that there should be no change in the existing law. This Government agrees with the views of the High Court of Bombay as regards clause 6 of the Bill that this should be condemned."

Then, I come to the Punjab Government. This is what they say. on page 37 :

" The opinions received by the Punjab Government indicate that Muslim opinion of the province is on the whole in favour of the Bill. Clauses 5 and 6 have, however, evoked some criticism..... If the object of the clause is to prevent attempts to secure dissolution by professions of apostasy, it appears equally necessary to provide for acts of abjuration..... The clause does not recognise any distinction between conversion to Judaism or Christianity and conversion to other faiths."

They, therefore, suggest that :

" the clause should make it clear whether conversion to a faith other than Judaism or Christianity will operate to dissolve a marriage."

Now, I give the opinion of important Muslim Leaders. Messrs. Haji Hassan Bava Sahib Muthavalli and F. M. Bahauddin Sahib, Pensioner and Honorary Magistrate, Turupur (Madras) are very definite. They say on page 12 :

" As the laws framed are the injunctions of God they cannot be amended, altered or corrected. If so done by unwarranted interference by the State, it means encroachment upon the Godly injunctions of the Islamic faith giving room to the unpleasant situation among the Muslim community..... The Bill gives wide scope for fanciful woman to throw away the yoke of the husband according to her whims and fancies, thus of course capable of bringing in false and frivolous charges against her husband for the dissolution of the marriage.

Regarding clause 5 of the Bill, the Bill pretends to give freedom to womanfolk to embrace any religion according to her moral conviction. That means unhealthy independence among them. Since *Nika* is the only religious tie between a Muslim husband and a Muslim wife and as there can never be a *Nika* between a Muslim man and a non-Muslim woman, there can be no legal unity between a Muslim man and a non-Muslim woman. Embracing other faith by a woman means dissolution of marriage by herself and the protection given for such an act in the Bill is not according to Muslim law and is deplorable."

Then, in support of this view, I wish to quote some opinions from Madras and Bombay and also from the Punjab. The District Judge of

[Bhai Parma Nand.]

Salem, whom my Honourable friend has already quoted, says in paragraph 11 :

“ Amongst the recognised grounds of divorce under Muslim law is apostasy. The Hedaya, work of high authority among Muslims, categorically states that the apostasy of the wife dissolves the marriage tie. Decisions of course have recognised this. But if this ground were cut out, the woman would be chained to a Muslim all her life. The change of faith, however *bona fide*, would not necessarily lead to a change of life. The Bill, if it becomes law, would be a great fetter on freedom of conscience.”

The Government Pleader of Lahore says on page 45 :

“ Clause 5 does not, in my opinion, correctly represent the Muhammadan law on the subject and I am very doubtful if the Legislature has authority to alter the Muhammadan law on the subject of apostasy. I have tried to discover if there is any authority in support of this proposition but I have failed to discover any.”

Then, he quotes judgments of the various High Courts, and after quoting a number of cases from Lahore, Allahabad and Calcutta, he refers to an Allahabad case as follows :

“ The Honourable Judges observed :

‘ Mr. Ishaq Khan admits that there is no authority to be found in support of his contention outside the writing of the jurists of Balkh and Samarkand and this is apparently so ’.

A number of passages from text books on Muhammadan law have been cited in this ruling and the Honourable Judges observed :

‘ We find ourselves unable to disregard the authorities in support of the view taken by the courts below and depart from the course of decision hitherto prevailing. However weighty be the view expressed by Mr. Amir Ali we do not think that we should be justified in doing so ’.

Sir, leaving this part here, I come to the other point, namely, whether this Bill affects other communities adversely or not. On this point also, instead of expressing my own opinion.....

**An Honourable Member :** First tell us your opinion.

**Bhai Parma Nand :** If you want my opinion, I think that, and the Honourable Mr. Kazui has agreed to a proviso and if the Select Committee accepts this proviso, I would have practically very little objection to the Bill. That proviso is that this clause will apply only to Muhammadan women who are born as Muhammadans, and that it would not apply to any other woman who is not born as a Muhammadan. This proviso will save us from cases of abduction and further trouble and litigation. For instance, there are cases pending, even now, in the Frontier Province. The Bannu girl's case has been quoted so often by Sir Aubrey Metcalfe in his speeches : again, I received a letter yesterday from a Hindu of Mardan saying that his daughter had been abducted, that some people are keeping her by force and that he, being unable to bear the expenses of the case, is trying to get pecuniary help from other people and he appealed to me also to collect some money for him to enable him to conduct the case which is now before the Court. I think, if such a proviso is accepted, as my



friend has agreed, I personally will not have much objection to the Bill. Thus, of course, clause 5 goes and clause 6 also goes. I want to add that such opinion is not only held by the Rajputana Hindu Sabha or other Hindu Sabhas as my friend has stated, but it is the opinion of other people as well. The Advocates' Association of Western India says :

" My Council, however, is unable to agree to the principle underlying clause 5 of the Bill. Before any legislation laying down that the conversion of a married Muslim woman would not by itself operate to dissolve the marriage tie is passed, attempts must be made to prohibit or check forcible conversions. Till that is done a provision such as the one contained in clause 5 is sure to lead to great hardship and mischief."

That is exactly our view about this clause if forcible conversions are not checked. Then, there is another opinion from the Bombay Bar Association : they suggest that section 5 should be amended as follows :

" The conversion of either party to a marriage to a faith other than Islam shall not by itself operate to dissolve a marriage, provided that the apostasy of the husband shall be sufficient to enable the wife to obtain divorce."

Again, the Commissioner, Central Division, Bombay, says :

" The provisions of section 5 are, however, not fair to a woman who changes her religion, since her lot would be a cruel one if she were compelled to remain with her husband. The section is also likely to evoke resentment from people of other religions and also to some extent from Muslims who are averse to the idea of the continuance of the matrimonial tie on the apostasy of a married Muslim woman."

The Sessions Judge of Multan gives a strong reason for the omission of clause 5, and he says :

" The contentious provision is contained in section 5 of the Bill. I will omit it altogether from the Bill. There is no doubt that there have been numerous cases in which Muslim wives have had recourse to apostasy simply in order to put an end to an intolerable domestic situation and get rid of a husband with whom the Muslim wife finds it absolutely impossible to live... but with the enactment of this Bill into law such dishonest conversions will cease automatically."

In other words, this clause becomes quite unnecessary when we have got enough provision for the Muslim wives to get divorce.

The Commissioner, Southern Division, Bombay, fully supports this view when he says :

" In respect of clause 5, though the leaders of the Muhammadan community as well as Muhammadan M. L. A.'s support this clause, it appears to me, however, that for the reasons given by the Law Member, this clause should be omitted."

I need not give any more quotations.

**An Honourable Member :** Give some more.

**Bhai Parma Nand :** I have got plenty more, but I do not want to tire you. Finally, I say that I am not opposed to the principle of this Bill if it wants to protect the Muslim interests alone. Our point of view is that this measure should be made so innocuous that it should not have any adverse effect on any non-Muslim community, and, therefore, according to this view, I both support and oppose this Bill.

**Mr. M. Asaf Ali** (Delhi : General) : Sir, I rise to lend my qualified support to the motion of my Honourable friend, Mr. Kazmi, but, before doing so, I should like to make one or two points clear. The very first point which I should like to make clear is that, in so far as my Party is concerned, they will pronounce their final opinion only when this Bill has emerged from the Select Committee. At present they have no desire even to intervene in this debate, for the simple reason that at least a part of the object of this Bill is a perfectly simple one, and we agree with it. But there is another part of it which requires much deeper consideration, and it is impossible for any one of us to give unqualified support to the entire object of the Bill. Sir, having made that point clear, I should also like to make another point clear in case there is any doubt in anybody's mind in respect of it. It may be asked,—“What is the position of the Congress with respect to a legislation of this nature”. Well, Sir, in so far as this particular piece of legislation is concerned, I have already stated that, we as a Party, will take our final decision later on, but generally speaking, the Congress stands pledged to the well-known principle which, I suppose, is known to every one, and which was enumerated in the long list of fundamental rights, which is to the effect that the Congress will not interfere with the profession or practice of any religion, subject of course to public order and morality, which also leads to another deduction, namely, that the personal laws of every community, whoever they may be, will be respected by the Congress, and the decision in regard to them will be left, as far as possible, entirely to the communities concerned except in one case. If there is any considerable body of opinion which is at variance within a community, and if a certain community is divided on a particular point, then the Congress will be free to judge the issues involved according to justice, equity and good conscience, which, I believe, is a fairly reasonable position.

Having made that point clear, I should like to offer my own personal opinions, and not the opinions of the Party. I wanted to make the position of the Party clear to begin with and also that of the Congress, and now I come to offer my own individual views which may be taken for what they are worth. Sir, individually, I am generally in agreement with the object of this Bill, only in so far as it affects the question of dissolution of Muslim married women. In so far as the other part is concerned, I have very grave legal doubts which I shall state in a moment. I shall state them only for the purpose of elucidation. I am not laying it down as an opinion which should be accepted straightaway. These are *my* views and doubts, and I should like some one to try and clear these doubts for me, because, before I go to the Select Committee, I should like to make up my mind about them. As regards the Bill itself, Sir, I begin by looking at clause 1. It is merely a matter of drafting, and I think in the Select Committee we shall be able to deal with it, but I should not like to say : ‘This Act may be called the Muslim Dissolution Marriage Act’,—I should like to call it : ‘The Dissolution of Muslim Women's Marriage Act’, because it does not affect men at all,—it is confined only to the rights of women. Proceeding further, when I come to clause 3, I should like each one of the sub-clauses of clause 3, both under (A) and (B) to be amplified, and where there is vagueness, each item to be specified as accurately as possible, because they sound rather vague and uncertain. I should like them to be clearly defined; amplified and clarified. Similarly, under the other sub-clauses, I should like further light on the subject, and certain additions

in certain cases. For instance, this Bill deals only with, among other grounds for divorce, a husband suffering from insanity or a dangerous type of leprosy. I should like to add : " or any incurable venereal disease which has not been imparted by her " or something of that sort.

**Mr. Deputy President** (Mr. Akhil Chandra Datta) : These are matters of detail which I do not think need be discussed at this stage.

**Mr. M. Asaf Ali** : I was merely indicating the lines of the reservations.....

**Mr. Deputy President** (Mr. Akhil Chandra Datta) : Specially in view of the fact that the Honourable Member is himself a member of the Select Committee, I think he can very well bring forward these points there.

**Mr. M. Asaf Ali** : I shall obey your ruling, Sir, and I shall not go into details. I thought it was necessary to do so, because I wanted some light on the subject from other quarters of the House. I do not believe in reading out all the opinions and saying : ' So and so holds such and such opinion ' and go on speaking for hours together. I want to be very specific and definite about these things. I am making definite suggestions. I want to hear the other side of the case, because, after all, I have to go to the Select Committee, and I should like to go there with a clear mind on these points.

**Mr. Deputy President** (Mr. Akhil Chandra Datta) : On the principle, and not on details.

**Mr. M. Asaf Ali** : I shall confine myself to the principle only. It appears to me, Sir, that the need for this particular legislation has arisen by reason of certain differences of opinion as regards the ' Maliki ' and ' Hanafi ' Law relating to the dissolution of marriage in so far as women are concerned ; otherwise, if I am not mistaken, we put in a section in Act XXVI of 1937 to this effect,—Section 5 of that Act is as follows :—

" The District Judge may on a petition by a Muslim married woman dissolve a marriage on any ground recognised by Muslim personal law (Shariat). "

Now, Sir, from my point of view this is a very comprehensive piece of provision, because it covers not merely the cases of ' Maliki ' and ' Hanafi ' law, but it also covers cases which may fall under Shia or Sunni law or the law of any other school of thought among those who profess to be Muslims bound by the Shariat. It is a very comprehensive section, but I believe the need for this particular legislation has arisen on account of the fact that this section has not been given effect to by various courts. Women have gone to law courts, they have gone to District Judges with their petitions, and, I believe, their petitions have not been entertained.

**An Honourable Member** : Why ?

**Mr. M. Asaf Ali** : It is more than I can tell you. But those on the Bench have gone and made a mess of the whole thing. Any way, even then I feel that if my Honourable friend, Mr. Kazmi, had sought to amend that Act with a view to clarifying the position which he wanted to be clarified, it might have been a more advisable step. However, now

[Mr. M. Asaf Ali.]

he has taken another step and introduced a Bill, which is now under consideration and is going to a Select Committee and I have nothing further to say on that point. Still I should like to refer to one or two other points of principle which are involved in this Bill. Coming to clause 4—I do not wish to deal with details as ruled by you, I shall refer only to matters of principle. Clause 4 says :

“ Suits brought on grounds mentioned in section 3 (A) shall be heard and decided according to Maliki Law.

Suits brought on grounds mentioned in section 3 (B) shall be heard and decided according to Hanafi Law.”

I should like to know exactly how a case will be governed if the parties to the contract happen to be of different persuasions. Supposing the husband happens to be a Maliki and the wife a Hanafi, which particular part of this clause will come into operation? I should, therefore, like this point to be made clear by subsequent speakers or any one who is more acquainted with that particular aspect of the law. I then pass on to clause 5 of the Bill. But before I do so, let me make myself clear that I am entirely in favour of the principle which underlies clause 3, that is to say, I do want the Muslim women's right to seek dissolution of marriage on certain grounds to be restored to them. It has been denied for a long time under the Anglo-Muhammadan Law ; it must be restored. Therefore, I am entirely in agreement with the principle which underlies clause 3. Coming to clause 5, I find myself in very great difficulty. My difficulties arise from different sources. My first difficulty arises from the fact that there are two definite schools of thought in Muslim law. According to one, the mere fact of conversion of a Muslim married woman to any other faith is a good ground for dissolution of marriage ; in fact, apostasy dissolves the marriage *ipso facto*. And this is the prevalent law in India.

[At this stage, Mr. President (The Honourable Sir Abdur Rahim) resumed the Chair.]

This rule of law has been followed all along for so many years. The other school of thought to which reference has already been made, namely, the Balkh and Saamarkand School, holds a different view altogether. But so far as these two different interpretations of the essential tenets of Islam are concerned, I do not think I can do better than refer to a certain dictum, Mr. President, which you once laid down in one of your famous judgments which is always quoted and held as an authority on the subject, namely, that in all matters Muslims must first rely on the *Nas*, the text of the Koran, and after that, of course, naturally the question of interpretation comes in. I maintain that the question of apostasy and dissolution of marriage will, in certain circumstances, depend entirely on the *Nas*.....

**Syed Ghulam Bhik Nairang** (East Punjab : Muhammadan) : May I ask that the case may be quoted by name with reference to the report to which you are referring ?

**Mr. M. Asaf Ali** : If you will just allow me, I shall let you have it. I have got it here.

Now, my difficulty arises in this respect. I would like you to appreciate the point—I am now referring to clause 5 of the Bill which says :

“ The conversion of a married Muslim woman to a faith other than Islam shall not by itself operate to dissolve her marriage.”

My difficulty is this. Marriage between a Muslim and a non-Muslim who is a fire worshipper, or idolater, or polytheist, or atheist, or pantheist, or agnostic,—is void *ab initio* ; it cannot take place. A marriage between an atheist, an idolater, a polytheist, a pantheist, or an agnostic and a Muslim is void *ab initio*, and what is void *ab initio* cannot be legalised by saying that the fact of conversion to such a faith will not operate to dissolve the marriage. You cannot do it, I cannot do it. I cannot go behind the *Nas*, it is impossible.

**Syed Ghulam Bhik Nairang :** What is the *Nas* ?

**Mr. M. Asaf Ali :** I have already stated that a Muslim cannot marry an idolatress or a fire worshipper. If you have any authority to the contrary I am prepared to abide by it.

**Syed Ghulam Bhik Nairang :** You have not quoted the *Nas*. Quote the Koran or the Hadis ; that only is the *Nas*, nothing else.

**Mr. M. Asaf Ali :** I do not like to enter into this learned discussion any further, but I think that for the purposes of this Bill it is quite enough at present that you cannot deny the proposition which I am laying down.

**Syed Ghulam Bhik Nairang :** What is the proposition ?

**Mr. M. Asaf Ali :** The proposition is that a marriage between an idolatress and a Muslim is void *ab initio*, and if it is so, a Muslim woman, adopting an idolatrous religion, cannot remain the wife of a Muslim and, therefore, clause 5 cannot operate in all cases. That being so, my next difficulty is this—what will be the rights of a woman who has adopted a religion which is forbidden so far as questions of marital relationships are concerned among the Mussalmans ? What will be her rights after clause 5 comes into operation ? Will she have the right to inherit property, to be the guardian of her children and the right to claim her dower and the right to claim restitution of conjugal rights ? My point is that either she has these rights or she has not. Under the law, she has none after apostasy and under the law she naturally forfeits all rights but if the marriage is not dissolved and she remains a wife, she exercises all the rights. Are you prepared to accept that ? Would you like, for instance, a Muslim man to die, leaving minors in charge of a mother who has changed her religion, say from Islam to any other forbidden for marital relationship ? Would you like the minors to be left in charge of a wife of that persuasion ? That would introduce difficulties of a most crucial nature and again, if she remains a wife and she can inherit and claim her dower and can be the guardian of her children, it would be introducing into a harmonious family a most fruitful source of acrid discord and those were the reasons which influenced the school of thought to which I subscribe at present. I keep an open mind if you can convince me otherwise but it was reasons like these which led the other school of thought to maintain that apostasy would have the effect of dissolution of marriage immediately. I go further and say this. In so far as Muslim law of marriage is concerned, it is a purely contractual relationship. It has no

[Mr. M. Asaf Ali.]

sacrament about it and one of the very first principles of contract is that if any of the conditions of the contract expire, the whole of the contract disappears. If one party changes her status, in so far as the society is concerned, and seeks the protection not of the society in which she was married but seeks the protection of another society, naturally then the contract is determined.

**The Honourable Sir Muhammad Zafrullah Khan** (Member for Commerce and Labour) : That applies in the case of Christians ?

**Mr. M. Asaf Ali** : So far as my knowledge goes, Christian marriages have been regarded as sacramental marriages.

**The Honourable Sir Muhammad Zafrullah Khan** : A Christian marriage takes place before a Registrar.

**Mr. M. Asaf Ali** : That is a different thing. That is a statutory marriage and a statutory relief is provided. She can go and seek divorce if she wants. I am now merely stating the law as I find it. Now, Sir, that being so, the school of thought of Muslim Jurists who maintained that the fact of conversion would operate as a ground for dissolution of marriage were actuated by some such reasons as I have stated now. As I have said, I am perfectly willing to change my opinion if strong enough reasons are advanced by the other side.

**An Honourable Member** : What is the other side.

**Mr. M. Asaf Ali** : I don't know. For these reasons I am opposed at present to the retention of section 5 at least in its present form. I believe Bhai Parma Nand said a minute ago that he would have no objection to the retention of clause 5, provided that it was suitably modified to exclude at least Hindus from its operation. I understood him to say something of that sort. Perhaps the Select Committee will come to some sort of *via media* but, personally, I think that the contention of that school of thought which would dissolve marriage on the ground of apostasy holds good. Then there is one other point which I would like to state and it is this. Reference has been made to the practice of Hindu society. The structure of Hindu society and law is utterly different. They would like to do what you seek to do now. They are trying it in certain places. Their contention has failed, for example, in Bengal. Even Hindu marriages have been dissolved. I maintain that is no ground for me to change my law in order to assimilate it to the law of the Hindus. If it suits them, let them have it. It does not suit me, and I do not want to have it. Let us consider our law on its own merits. Why must we always try and imitate and copy others, whether their particular law suits us or not ? Simply because Hindu married women on conversion cannot go out of the married state, I see no reason why Muslim law, which allows women to claim dissolution of marriage on the ground of conversion, should not hold good. I have only just one word to say about clause 6, Sir. I very seriously doubt whether Government will ever agree to the enactment of this clause, and if the Leader of the House is prepared to tell me that he is willing....

**The Honourable Sir Muhammad Zafrullah Khan** : I have nothing to do with it.

**Mr. M. Asaf Ali :** In so far as clause 6 is concerned, I am absolutely certain that the Government will not agree to its enactment for it presents very serious administrative difficulties. There is not the least doubt about it. Moreover, I should like my friends of the Muslim League particularly and other Muslim friends also—my co-religionists—kindly to consider another point also. The machinery of arbitration is open to you even to-day. Why do you want a legal provision for compelling people to go to courts of law for dissolution of marriage or for any matters relating to marriage? Why must you not encourage Muslims voluntarily to go to their Ulemas and Qazis and abide by their decision? Why can't it be done on a voluntary basis? Even today I think it is possible for any husband and wife to refer any matter relating to any dispute concerning their marriage or divorce or their dower to a sole arbitrator or as many arbitrators as they like, and the award of the arbitrator can always be the equivalent of a decree if only one of the parties goes to court and says, "will you kindly call upon the arbitrator to file the award?". Leave that door open. Let the Ulemas and the Qazis organize themselves and let the Mussalmans voluntarily go to them in regard to all these matters. Why do you want to seek any enactment on that point? But apart from that, as this clause stands, there are serious difficulties and, I hope, it will be either dropped or so modified in Select Committee as to enable parties who may seek its aid to be able to avail themselves of it. I think my Honourable friend, Mr. Kazmi, indicated a certain direction in which this clause might be modified. He suggested that some provision like that in the Parsi Marriage Act may be enacted. I do not quite know whether that would be a practical solution of the problem. Now, whatever I am now going to say has nothing to do with religion—I am speaking merely as a rational human being. If you are going to have any assessors or jurors at all, I should like those jurors or assessors to be women rather than men, so that they may be able to judge of the distress and the suffering of the poor women who want to take advantage of this provision. With these few words, I support the motion of my friend, Mr. Kazmi, and recommend to the House that this Bill may be referred to a Select Committee. We have got serious and important reservations in our mind, and it is only subject to these reservations that we wish this Bill to be referred to a Select Committee where we can thresh it all out—and let us hope that the Bill which will emerge from the Select Committee will be a wholly non-contentious one.

**Mr. Muhammad Nauman** (Patna and Chota Nagpur *cum* Orissa : Muhammadan) : Sir, this time we, the Mussalmans, have come before the House with a very modest piece of social legislation called the "Muslim Dissolution of Marriage Bill". Of course, I am thankful to Bhai Parmanand, who, even after reading the various opinions of Hindu organisations and others, which have been sent to us as a result of circulation, did not at all try to oppose or interfere or to hold back any part of this Bill. He has practically agreed with regard to the principle and said that if the Mussalmans thought it necessary to have this piece of legislation for themselves, they should have it. Of course he suggested that there should be some modifications; and, probably, the Select Committee would be able to discuss what modifications would be necessary in the circumstances so that this Bill might not interfere with the religious rights or religious principles of other communities in this country or even with such religious

[Mr. Muhammad Nauman.]

principles of the Mussalmans themselves which might have been overlooked. Sir, from the Statement of Objects and Reasons it is clear that, in this country as we are placed, this law was actually being conducted till about 1864, through Kazis who had all the judicial powers necessary and this law is certainly in the *Nas*, that is, the text of the Koran. My Honourable friend, Mr. Asaf Ali, tried in his speech just now to say that clause 5 of the Bill was not in accordance with the text of the Koran, but he failed to give quotations and explain to the House the lines in reference and his statement goes *without quotations*. This law is being practised in all the other Muslim countries like Egypt, Arabia, etc., and, as a matter of course, dissolution of marriages on this basis are going on and the Kazis and the judicial Courts have jurisdiction to dissolve marriages under all the circumstances specified in this Bill. I do not like to discuss at length the legal difficulties with regard to divergent opinions of Muslim jurists which Mr. Asaf Ali has so nicely and ably tried to point out, and, probably, this part will be explained by other friends of ours who will be able to discuss fully how things stood. I have not much time at my disposal and I do not like to waste the time of the House by reading opinions as received on this subject. I would only like to say with regard to the principle of the Bill that we consider it absolutely necessary, because, in Islam, the rights of Muslim women are more or less reciprocal to their husbands or as much as those of Muslim husbands. This somehow or other has not been made practicable in this country after 1864. Mr. Kazmi fully explained to the House the history—how this part of the law as affecting the Muslim women's rights has become a dead letter after 1864, and I need not dwell on that any further. I need not go into all those circumstances and controversies.

Now, looking to the opinions received from all quarters, I find that there is not much controversy so far as clauses 1 to 4 are concerned except suggestions for explanations. The only controversial clauses which are there are clauses 5 and 6. With regard to clause 6, in view of the practical difficulties mentioned in the opinions of the different Judges or the official opinions of the different Governments who have condemned it more or less, I do certainly feel that there are practical difficulties. It is suggested by Mr. Kazmi in his speech today, that if the Judge be a Hindu or a non-Muslim, he should be advised by a body of assessors or jurors who should be Mussalmans, and the purpose, I think, will be served without any difficulty. By this clause 6, the Mover never meant any reflection on the ability of the non-Muslim judges, but what he meant was that the assistance of Mussalman assessors and jurors will probably make the tribunal more popular and these advisers will have more sense of responsibility and will consider the question in the light of religion only and will try to apply their minds with full sense of responsibility to God in pronouncing a judgment. Conscience and honesty does not appear to be correct. Mr. President, this House has already given its sanction to this system in the Parsi Marriage Law under section 90 as was quoted by my Honourable friend, Mr. Kazmi. If that is so, I do not see any reason why Government should not consider the advisability of accepting the same proposition for the tribunal which will sit on the cases of the dissolution of Muslim women's marriages?



I now come to clause 5 about which so much has been said. I will not read the opinions that have been expressed, but what I want to say is this that the spirit of this clause is that we want to give full liberty to Muslim women. It is not only we who say this, but Islam has certainly given full liberty to our women who can change their religion if they so like. We do not like to make it binding on a woman that she must continue to practise her religion, if she did not like it or because she loved a certain person. Apostasy should not be a necessary factor for dissolution. It is common sense that if a woman thinks that some other religion appeals more to her mind and conscience, what is the sense in compelling her to continue under her parents' article of faith and continue in the same religion? She should not be forced to remain in her religion simply because she loves a certain person, her husband, and there should not exist a clog to her liberties in the sense that she will have to leave the comforts that she may have been enjoying with her husband. There is more common sense in this argument and it appeals more to the human nature than the one that she should not have the liberty of conscience and the liberty of choice for her own article of faith. If she likes and cares, she should be at liberty to continue matrimonial relations and maintain her husband as well. There should not be a bar against her choice of the one or the other. Of course, if it interferes with the *Nas*, the Koranic text, my other friends will explain the matter. What I wish to tell the House is based on common sense, and the claim of Islam is that it is a democratic religion. We believe in the fullest freedom to every woman and man and we maintain, therefore, that a woman should have every liberty to change her religion and she should also be at liberty to dissolve her marriage. I do not know if the provisions of this Bill will interfere with other communities. That matter can be discussed in the Select Committee. Whatever my personal opinion was, I have given it to the House. With these few words, I resume my seat.

**Babu Baijnath Bajoria** (Marwari Association : Indian Commerce) : Sir, the object of this Bill seems to me to be three-fold. Firstly, it seeks to make divorce easy amongst the Mussalmans. Secondly, it seeks by clause 5 that even if a married Mussalman woman adopts any other religion, the marriage will not be dissolved. Thirdly, it requires by clause 6 that in all cases of dissolution of marriage or divorce, in which the parties are Mussalmans, the judicial officer must be a Mussalman. I may say straightaway that I am opposed to all these three principles. If the House will kindly bear with me for a few minutes, I will give my reasons for opposing all these three principles. First and foremost, I will refer to the principle of divorce-made-easy. Sir, it is a well-known fact that, amongst the Hindus, we do not recognise divorce. Our marriage is a sacrament. I do not say for a moment that divorce should not be recognised amongst the Mussalmans or that it should be prohibited amongst the Mussalmans. What I want to say is this that this Bill seeks to make divorce easier, and I am opposed to it. As to my reasons why I am opposed to divorce generally, I must reserve them till my friend, Dr. Deshmukh, has introduced his Bill. If it ever comes for discussion in this House, I will welcome it, because it will give me another opportunity of expounding the principles of Sanatam Dharma religion in this House.

**Dr. G. V. Deshmukh** (Bombay City : Non-Muhammadian Urban) : I hope you will help the introduction of the Bill.

**Babu Baijnath Bajoria :** Wait and see. I know that divorce is allowed in Islam and in Christianity, but I can say, without fear of contradiction, that it is not looked upon as a desirable thing, but as an undesirable evil, and the persons who are divorced, be they men or women, are looked down upon in the society.

**Pandit Krishna Kant Malaviya** (Benares and Gorakhpur Divisions : Non-Muhammadan Rural) : That was in old days.

**Babu Baijnath Bajoria :** I will give you a very recent case and of a very very high personality. I refer to no less a person than our *ex-King* Edward VIII.

**An Honourable Member :** Do not bring in personalities.

**Babu Baijnath Bajoria :** I did not like to mention this, but, as my friend, Pandit Krishna Kant Malaviya, said that that was the practice in old days, I mentioned the name of the *ex-King*. We all know the circumstances which led to the abdication of the *ex-King*, and I need not repeat them here.

**An Honourable Member :** The Britishers are the most conservative people.

**Babu Baijnath Bajoria :** I must rather confess my ignorance of Muslim law, and so I do not think I am competent to go into clauses 3 and 4 as it has been detailed in the Bill. But, from the opinions which have been circulated to us, I find that even the Muslims, to whom this law will apply, are not unanimous in their approval of this Bill. Even my Honourable friend, Mr. Kazmi, has stated that there are many persons who are opposed to it. One thing which struck me was the opinion of the District Munsif, Bangalore. He says :

“ It is hard to enforce the Hanafi law on the Shiah community in preference to their own personal law in the matter of divorce or dissolution of marriage.”

Sir, I do not know whether there is any Shiah Muslim in this House or not.

**An Honourable Member :** Mr. Jinnah belongs to the Shiah community.

**Babu Baijnath Bajoria :** But he is absent from the House. I should like to know from any Shiah Member of the House whether the Shiah community has got any objection to this law being applied to them. My point is this : if any section of the Muhammadan community does not like this Bill, I would only suggest that the provisions of clauses 3 and 4 of the Bill, which are the operative clauses in the Bill, should not be applied to that part of the community. Simply because that community is not represented here or under-represented in this House, it should not be the reason why any law which they do not want should be made applicable to them. That was the point which I had in mind when I mentioned the Shia community.

Another point about this Bill is this : Clause 3 (A) (1) says that one of the grounds for dissolution of marriage is when “ her husband is absconding and there is no provision for her maintenance or that her chastity is in danger due to his absence ”. I wish to know for how many days or how many months the husband should be absconding

before the marriage could be dissolved ? Supposing there is a criminal case against the husband and he is absconding or hiding himself on this account, then is the wife entitled, in the meantime, to get a dissolution of the marriage ? Supposing he surrenders and he is convicted, then he loses his wife also. I should like this matter to be considered by the House. I have already said that I do not know the Muslim law and, therefore, I am not in a position to say whether under these provisions embodied in the Bill a Muslim woman should get her marriage dissolved or not. That is for the lawyers of this House, both Hindus and Muslims, to judge.

Now, I come to the most controversial clause of the Bill, namely clause 5. Here I must say that I am opposed to this clause lock, stock and barrel. This clause is the most obnoxious from the Hindu point of view. This clause lays down that, if a Muslim lady is converted into another faith, the marriage will not be dissolved. Sir, I, as a Sanatanist, am opposed even to inter-caste marriage. (*Cry of "Shame" .*) My Honourable friend may cry out "shame", but perhaps my Honourable friend is not aware that this very House gave a decent burial to Dr. Bhagavan Das' Bill for inter-caste marriage during the Delhi Session of the Assembly. I hope the House will also give a decent burial and an inglorious exit to the Bill of my Honourable friend, Dr. Deshmukh. On the authority of the previous Law Member, I mean Sir Nripendra Sircar, I can narrate what is happening in Bengal. When the Bill was circulated for opinion, he mentioned about the cases which are happening in Bengal almost every day. I also come from Bengal, and I know something of what is going on there in Bengal. Sir, it is very unfortunate that in Bengal cases of rape, seduction and abduction are of common day occurrence. It is really a matter of shame, but I have to say that most of the culprits are Muslims and the sufferers are invariably Hindus.

**An Honourable Member : Question.**

**Babu Baijnath Bajoria :** The Honourable Member cannot question. The facts and figures are there. A day does not pass when we do not read in the *Amrita Bazar Patrika* and other papers in Calcutta at least two or three cases of such crimes against the womanhood of the Hindu community.

**Syed Ghulam Bhik Nairang :** I rise to a point of order, Sir. The Honourable Member is casting a very serious reflection on an entire community. Unless he is in a position to give facts and figures, he has no right to make such remarks.

**Mr. President** (The Honourable Sir Abdur Rahim) : This is not really relevant to the Bill under discussion. The Honourable Member had better proceed with the provisions of the Bill.

**Babu Baijnath Bajoria :** I do not want to press this question further. I only stated the facts.

**Syed Ghulam Bhik Nairang :** They are merely your fancies, and not facts.

**Babu Baijnath Bajoria :** If the Honourable Member should read the Administration Report of the Bengal Government which is to be found in the Library, he will get all facts and figures. For this very reason, the Bengal Government have painfully passed a special Act to prevent crimes

[Babu Baijnath Bajoria.]

on women. There is also the provision of whipping incorporated in that Act. I am not charging the entire community, but I merely say that the culprits come from that community.

**Mr. President** (The Honourable Sir Abdur Rahim) : The Honourable Member cannot go into that now.

**Babu Baijnath Bajoria** : Very well, Sir.

The effect of clause 5 of the Bill, if it is passed, will be this. A Hindu woman is forcibly carried away or abducted by a non-Hindu and she is forcibly converted into another religion, not Hinduism, then what will be the effect ? If she is forced to Islam, her marriage with her Hindu husband is automatically dissolved.

**The Honourable Sir Muhammad Zafrullah Khan** : No ; ask the Law Member.

**Dr. G. V. Deshmukh** : That is why you should support my Bill.

**Babu Baijnath Bajoria** : I will read a few lines from the speech of Sir N. N. Sircar :

" Those are cases in which the Hindu wife, on account of her conversion, becomes a Muslim, and then it is said that the Muslim Law will apply. It has been laid down that if a Hindu wife becomes a Muslim and adopts the Muslim religion, then she is entitled to call upon the Hindu husband giving him the option either of embracing Islam or, failing to do that, the marriage stands dissolved. This has been accepted by the Courts."

So, Sir, when a Hindu wife is converted the marriage is dissolved. If this clause 5 is passed the effect will be that if a Muslim wife is re-converted to Hinduism, her marriage with her husband or her forced marriage will not be dissolved.

**An Honourable Member** : Why " forced " ?

**Babu Baijnath Bajoria** : As I have said before, she is forcibly carried away and converted into Islam and married to a Muslim. That marriage is recognised, and if she is rescued and wants to marry her husband again, she cannot do that. This is saying, " Heads I win, tails you lose ". The Muslims want to have it both ways. I for one cannot agree to this clause. I shall read a few opinions here.....

**Mr. President** (The Honourable Sir Abdur Rahim) : The Honourable Member need not read them. They have been quoted already and every Honourable Member has got them.

**Babu Baijnath Bajoria** : Members have already been permitted to read those opinions, and I will be very brief. I find that the Government of Bengal is opposed to this Bill *in toto*. They say :

" The Government of Bengal, while recognising that it is desirable that there should be some statutory clarification of the legal position of the Muslim wife in claiming divorce, is of opinion that the proposed Bill is quite unsatisfactory for the purpose."

They are also against clause 6 of the Bill. The Government of Bombay and the Government of Madras are also opposed to clauses 5 and 6 of the Bill.

Then, there have been numerous meetings of Hindus, both Sanatanists and Arya Samajists, throughout the country. I will read a few lines from the letter of the Secretary of the Sanatan Dharam Sabha of Pilibhit to the Law Member. He says :

“ This Association is strongly of opinion that this Bill, if passed into an Act, will interfere with the established laws of Hindu society and Hindu religion which will inject the poison of communal animosities in the body-politic of the Indian nation for more reasons than one, the chief among them being that this Bill is wholly against Hindu Shastras and interferes with Hindu law and the second is,—(and this is most important),—that this Bill will tend to increase the communal animosities, both Hindus and Muslims, which will lead to disruption of nationalism in the whole Indian nation.”

Then, Sir, the Muhammadan nobility and the Muhammadan jurists have also opposed this clause. The District Judge of Salem, whom the Mover quoted as being in his favour, is opposed to this Bill *in toto*.

**The Honourable Sir Muhammad Zafrullah Khan :** The Mover said that.

**Babu Baijnath Bajoria :** This is what he says :

“ Section 2 of the Muslim Personal Law Application Act, 1937, requires that the Muslim Personal Law should *inter alia* govern the decision of questions relating to dissolution of marriages. The present Bill is no advance on it. It gives an imperfect and inaccurate summary of the law of divorce, but leaves the details to be discovered from the Shariat. There is no amelioration of the law which enables the husband to divorce his wife with a celerity unequalled in any other system of jurisprudence. The remedy is worse than the disease in so far as it respects the selection of the tribunal. It also introduces an invidious distinction in that it removes apostasy from among the grounds of divorce, it imposes, indirectly though, obstacles in the way of conversion to other faiths, and hence it fetters freedom of conscience. There is nothing to recommend the passage of the measure into law.”

Therefore, Sir, as regards this clause 5, I have quoted Hindu opinion as almost unanimously opposed to this clause, and Muslim opinion is also divided about it. And there are many eminent judges who are opposed to this clause.

Now, Sir, I come to clause 6. In the words of the Mover of the Bill, this clause has been universally condemned. Except those who support the Bill *in toto*, those who have given any reasons are all opposed to this clause. This is a novel clause and it introduces a new method of trying cases. My friend says that these cases should be tried only by Muslim judicial officers, and, if there is no Muslim judicial officer in a sub-division, the case must be sent from there to the District Court. If the District Judge happens to be a non-Muslim, he has to send it to any other Muslim officer, within his jurisdiction. If nobody is found, it has to be sent to a Muslim High Court Judge ; he has no faith even in a Hindu High Court Judge. This is absolutely ridiculous, and I do not think I should waste my energy and the time of the House in dilating on how pernicious this clause is. I would like to know what my Honourable friends opposite, the entire Hindu bloc, as I will call my Congress friends,.....

**An Honourable Member :** No, no : No Hindu or Muslim here.

**Babu Baijnath Bajoria :** I know all that. When it comes to a question of attacking the Hindu religion, I know they are the loudest ; but when it comes to a question of protecting it, they sit like dumb cattle. I

[Babu Baijnath Bajoria.]

am glad that my Honourable friend, Mr. Asaf Ali, in his speech today says that the Congress stands for religious neutrality and will not interfere in any religion. I hope he will remember this—I think I am correct, because I was not here when he spoke, and I was merely told this—when my Honourable friend, Dr. Deshmukh's Bill comes up and his Party will do full justice to this fundamental principle....

**Dr. G. V. Deshmukh :** The Congress will come in in the matter of equity, justice and conscience.

**Babu Baijnath Bajoria :** This is how you circumvent anything that you say here. From what I have seen of the Congress Members—I do not mean any personal disrespect to any of them, but I am speaking on principle here—their record in this House against the Hindu religion is very black.....

**Mr. President** (The Honourable Sir Abdur Rahim) : The Honourable Member will have opportunities of speaking on that subject when it is brought up. He may confine himself to this Bill now.

**Babu Baijnath Bajoria :** But, Sir, I want to know what they are going to do. When Dr. Deshmukh's Bill about Hindu Women's Property was referred to Select Committee, which was opposed by the different Parties here on very good grounds, it was agreed by the Mover of the Bill, before the Bill was sent to Select Committee, that that Bill would be restricted only to widows and that other portions which were not acceptable to the House should be cut out ; similarly, I would suggest.....

**Dr. G. V. Deshmukh :** It is not correct : it is not stating the facts ; I never promised that it will be restricted to widows only.

**Babu Baijnath Bajoria :** Do you mean to say it is not correct ? You agreed before it was sent to Select Committee—you promised me ; that was the condition on which that Bill was allowed to be introduced on an official day as a non-controversial measure : otherwise, there would have been no chance....

**Mr. President** (The Honourable Sir Abdur Rahim) : All that has nothing to do with this Bill.

**Babu Baijnath Bajoria :** I mentioned it because of this. From the speeches which I have heard in this House today, I feel that the consensus of opinion is that clauses 5 and 6 should go ; and if that is the consensus of opinion—if I have correctly gauged the opinion of the House—then I would respectfully suggest that before the Bill is sent to Select Committee it must be agreed here that these two clauses will be deleted in the Select Committee. If these two clauses are deleted, then it becomes a purely Muslim Bill and I do not know anything about Muslim Law—let them please themselves. But if clause 5 is to remain in any shape or form I am surely going to oppose this motion for reference to Select Committee. With these words, I resume my seat.

**Syed Ghulam Bhik Nairang :** Sir, the Honourable speakers who have preceded me have for the most part, with the exception of the Honourable the Mover and to a certain extent with the exception of my Honourable friend, Mr. Asaf Ali, really not understood either the genesis or the object of this Bill, nor have they comprehended its scope and the basis on which it rests.....

**An Honourable Member :** Explain it to us.

**Syed Ghulam Bhik Nairang :** I will. The genesis of the Bill is really this. For a very long time those, anxious to effect social reforms among the Muslims, have been noticing one most lamentable feature of Muslim social life, that in many many cases married Muslim women are not properly treated by their husbands : they are neglected : they are maltreated in many ways, they are kept practically in marital bondage without any attempt being made to fulfil the marital duties which devolve on the husband. The state of society at the present time is such that women for the most part find themselves helpless ; and if any of them make up their minds to approach the Courts for redress of their wrongs or for dissolution of the marriage tie, they encounter certain difficulties arising from differences between the several schools of Muslim jurists. For instance, if the wife happens to be a Hanafi Muslima—and the vast majority of Muslims in India are of the Hanafi School—she finds that she cannot get any redress from the Courts in cases which fall under clause 3 (A) of Mr. Kazmi's Bill. That is to say, in the case of the husband being an absconder or not having been heard of for a very long time or in case of her not being provided with maintenance or in case of cruelty and all that, she is met with the ready plea in the Courts that these grounds are not recognised by the Hanafi law as sufficient for a judicial dissolution of marriage. That puts an end to her case. She despairs and must thereafter either suffer all the miseries consequent on the husband's neglectful behaviour or take to some drastic measure in the matter ; she may even, for aught the husband cares, commit suicide or do something worse. Now, the Courts have been quite justified, as far as the Hanafi Law was concerned, in taking up that attitude, because a very well established principle of Hanafi law, which is there to afford relief in such cases, has been all along unknown to the courts, it has been unheard of in the courts and so it has remained unrecognised. That principle is this. According to a well-known doctrine of Hanafi law, for which there is ample proof, where the strict application of Hanafi law to a case would cause hardship, it is permissible to the Qazi, and, consequently to the courts in British India, to act on the relevant principles of the Shafai law, the Maliki law or the Hambali law. This principle has been practically unknown to the courts. It has never been referred to in the courts and, therefore, it remained unrecognised by them, but it is there all the same. Therefore, those who were on the one hand anxious to keep within the limits of Muslim law, and not to enact any provision of law which was not warranted by strict Muslim law, and were on the other hand anxious to find a way to afford relief to oppressed Muslim women, came to the conclusion that under such circumstances there was one way out of the difficulty, and that was the application of the Maliki law. The Maliki law allows the Judge, according to the procedure laid down, to dissolve a marriage in case of proof of circumstances which are referred to in clause 3, sub-clause (A). Now, this principle was first of

[Syed Ghulam Bhik Nairang.]

all recognised in the Bhopal State. As the House is well aware, Bhopal is a Muslim State, and as most of the Honourable Members of this House probably know, there is a regular Ecclesiastical Department there, and therefore, after consulting the Ulema, the Bhopal State got a Code prepared which was named the *Tahaffuz-i-Huquq-i-Zaujain* which means protection of the married parties' rights. This was formally passed as an Act of the Bhopal Government in 1931, and I have got a printed copy here. In that they acted on this very principle that if the Hanafi law, in certain cases, cannot afford relief, the court is free to adopt the provisions of the Maliki law and can act upon it, and acting on that principle specific provisions were laid down as to how under certain circumstances the wife can claim dissolution of marriage through a court on proof of the facts alleged by her against her husband, and thus get rid of the miseries from which she may be suffering owing to the neglectful behaviour of her husband or other specified causes. Now, surely, Sir, unless this principle is recognised by a legislative enactment, I am afraid most courts in India would, when such a contention is put before them, say,—‘well, we find nothing of the kind in the books on Muhammadan law such as Amir Ali or Wilson, or Mulla, or Tyebji, etc., the principle is nowhere referred to, the plaintiff is a Hanafi woman, she asks for relief according to Maliki law, how can we afford her relief’. Therefore, Sir, in order to prevent such a plea being put forward to make the plaintiff's case fail, we have inserted these clauses 3 and 4, and we have also enumerated the cases which would fall under the Maliki law and also those which would fall under the Hanafi law, and if these two clauses are passed by the Legislature, it will be possible for these women to obtain relief.....

**Mr. President** (The Honourable Sir Abdur Rahim).: The Honourable Member can continue his speech next day.

The Assembly then adjourned till Eleven of the Clock on Monday, the 29th August, 1938.