

9th September 1938

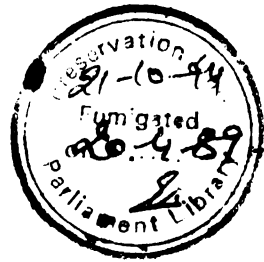
THE LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

Volume V, 1938

(26th August to 9th September, 1938)

EIGHTH SESSION OF THE FIFTH LEGISLATIVE ASSEMBLY, 1938



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1938

Legislative Assembly.

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

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LEGISLATIVE ASSEMBLY.

Friday, 9th September, 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.

POSITION OF INDO-TURKISH TRADE.

871. ***Mr. S. Satyamurti** : Will the Honourable the Commerce Member please state :

- (a) what the latest position of Indo-Turkish trade today is ;
- (b) the value of imports of Turkish goods into India and the value of exports of Indian goods to Turkey ; and
- (c) whether steps are being taken to promote this Indo-Turkish trade and if so, what they are ?

The Honourable Sir Muhammad Zafrullah Khan : (a) and (b). The latest available figures are for the year 1937-38 in which exports of Indian merchandise to Turkey amounted to about Rs. 81 lakhs and imports from Turkey to India to a little over Rs. 12 lakhs. The balance of trade was in favour of India to the extent of nearly Rs. 69 lakhs. .

(c) Government do not consider that any special steps are necessary.

Mr. S. Satyamurti : With reference to the answer to part (c), may I know whether Government have examined the present position and future prospects and come to the conclusion that the present balance of trade will remain exactly as it is, or it can be increased by any further steps being taken, say, for example, by concluding a bilateral treaty ?

The Honourable Sir Muhammad Zafrullah Khan : The balance of trade in the current year, for the months April to July, is slightly better than last year.

Mr. S. Satyamurti : Have Government examined the possibility of increasing it, by means of a bilateral agreement ?

The Honourable Sir Muhammad Zafrullah Khan : As I have said, Government do not consider that any special steps are necessary, because there is no scope for increasing the balance of trade by a bilateral agreement.

(1911)

Mr. S. Satyamurti : May I take it, therefore, that it is not the Ottawa Agreement that is standing in the way of the bilateral agreement, but it is merely on the merits of the case that Government have come to the conclusion that the present position is the best in our interests ?

The Honourable Sir Muhammad Zafrullah Khan : The Honourable Member's assumption is perfectly correct.

SECURING OF TRADE FOR INDIAN SHIPPING.

872. ***Mr. S. Satyamurti :** Will the Honourable the Commerce Member please state :

- (a) whether his attention has been drawn to a question and answer in the House of Commons on 8th July in which the Parliamentary Secretary to the Board of Trade stated that there had been a great intensification of competition on the routes in which British ships had long been trading in the past ;
- (b) whether it is a fact that before the war, trade between Calcutta and the Far East was completely British, while today it was said that Japan held 80 per cent. of the trade ; and
- (c) whether the Government of India propose to take steps in consultation and co-operation with the British Government to secure a part of this trade for Indian shipping ?

The Honourable Sir Muhammad Zafrullah Khan : (a) Government have seen the statement.

(b) Government understand that up to the year 1911 the Calcutta Far East carrying trade was almost entirely in the hands of British shipping companies and that from that year Japanese companies have secured an increasing share. The share of the trade in Japanese hands at present is understood to be substantial.

(c) Government do not consider that action of the nature suggested could usefully be taken at the present time.

Mr. S. Satyamurti : May I know the reasons why Government have come to the conclusion that they cannot take any steps at the present time—apart from the British interests in the matter—to secure a reasonable share for Indian shipping ?

The Honourable Sir Muhammad Zafrullah Khan : For the reason that Government must wait till they can use some lever against the interests concerned to secure the result that the Honourable Member has in view.

Mr. S. Satyamurti : Are any steps being taken by the British Board of Trade to secure a share for British shipping in this line ?

The Honourable Sir Muhammad Zafrullah Khan : I have no information beyond the fact that this problem was to be examined by the Imperial Shipping Committee, and I believe their report has been sent in. I don't know what its contents are.

Mr. S. Satyamurti : May I know whether the Government of India would address the British Government and point out that, when they are considering this matter, they should also consider the Indian interests and that they must secure some proportionate share for Indian shipping also ?

The Honourable Sir Muhammad Zafrullah Khan : I do not think that that suggestion is likely to meet with favour from the Board of Trade.

Mr. Manu Subedar : May I know whether Government have given up the idea of securing a share for Indian shipping or they are merely postponing action till a more suitable moment ?

The Honourable Sir Muhammad Zafrullah Khan : I must not be taken to have replied to the general question with regard to the proportion of Indian shipping. My answer was and must be confined to the question as it was put, that is to say, some share in the Far Eastern trade.

Mr. T. S. Avinashilingam Chettiar : Do Government think that a certain period of time must elapse before they can take action ?

The Honourable Sir Muhammad Zafrullah Khan : I do not think it is a question of waiting for a certain period of time. It is a question of a favourable opportunity which may arise at any time.

REQUEST BY JAPAN FOR CREDIT FACILITIES ON COTTON PURCHASES FROM INDIA.

873. ***Mr. S. Satyamurti :** Will the Honourable the Commerce Member please state :

- (a) whether Government have been approached by Japan for long credit facilities on cotton purchases from India ;
- (b) whether Government have given any answer to these requests ; and
- (c) what the latest position in the matter is ?

The Honourable Sir Muhammad Zafrullah Khan : (a), (b) and (c). The attention of the Honourable Member is invited to the answers given to questions Nos. 189 and 209 and their supplementaries on the 15th August last.

Mr. S. Satyamurti : May I take it that these negotiations for long credit facilities on cotton purchases from India have fallen through ?

The Honourable Sir Muhammad Zafrullah Khan : A complete answer was given in reply to the questions to which I have referred. I do not think there was really any time when there were any negotiations between the two Governments.

Mr. T. S. Avinashilingam Chettiar : May I know whether any chambers of commerce have referred to such negotiations between them and the Japanese interests ?

The Honourable Sir Muhammad Zafrullah Khan : Not so far as I am concerned. I have no recollection of any such negotiations.

NEGOTIATIONS FOR A TRADE AGREEMENT BETWEEN INDIA AND CEYLON.

874. ***Mr. S. Satyamurti** : Will the Honourable the Commerce Member be pleased to state :

- (a) when the proposed trade talks between India and Ceylon will begin ;
- (b) whether, in view of the protracted nature of the Indo-British trade negotiations, Government propose to start these talks independently ;
- (c) whether Government propose to take up the question of the status and rights of Indians in Ceylon, on the estates and outside as part of these trade talks ; and
- (d) if not, why not ?

The Honourable Sir Muhammad Zafrullah Khan : (a) Negotiations for a trade agreement with Ceylon are expected to begin as soon as possible after the conclusion of those now in progress with the United Kingdom.

(b) No.

(c) and (d). These considerations will be borne in mind during the negotiations.

Prof. N. G. Ranga : Will the interests of the producers of Indian copra be kept in view when these negotiations are carried on ?

The Honourable Sir Muhammad Zafrullah Khan : Certainly.

Mr. S. Satyamurti : With reference to part (c) of the question, my Honourable friend's answer is somewhat vague and needs clarification. My question is whether Government propose to take up the question of the status and rights of Indians in Ceylon, on the estates and outside as part of these trade talks. I am anxious to know, in view of the parlous state of Indian franchise and other Indian rights in Ceylon, whether Government will make this part of their trade talks.

The Honourable Sir Muhammad Zafrullah Khan : The particular questions that will be taken up with Ceylon have not been specifically formulated, though it is understood that one object of keeping Ceylon out of the rest of the Colonial Empire in regard to these trade agreements was that the matters to be taken up with Ceylon were not to be confined to purely commercial matters and I have no doubt that the point raised by the Honourable Member will be looked into by the appropriate department when specific questions have to be formulated.

Prof. N. G. Ranga : In the last two or three years, our exports of rice to Ceylon have been going down. Will Government also consider the advisability of pressing for larger imports of rice into Ceylon in preference to imports from Indo-China, Burma and Java.

The Honourable Sir Muhammad Zafrullah Khan : And Siam ? I note what the Honourable Member has said.

Seth Govind Das : Have Government received any representation from Ceylon in this respect ?

The Honourable Sir Muhammad Zafrullah Khan : The Ceylon Government are anxious to find out when the matter can be taken up.

PROTECTION TO INDIAN INDUSTRIES.

875. *Seth Govind Das : Will the Honourable Member for Commerce please state :

- (a) whether it is a fact that when moving the resolution on the appointment of the Indian Industrial Commission, Sir William Clarke, the then Member for Commerce and Industry, made the following statement :

“ The building of industries where the capital, control and management should be in the hands of Indians, is the special object we all have in view ”.

and that he also deprecated the taking of any steps which might

“ merely mean that the manufacturer who could not compete with you from a distance would transfer his activities to India and compete with you within your boundaries ” ;

- (b) whether Government are aware of the fact that several non-Indian industrial concerns have been established in India during the last few years in order to escape the tariff and take advantage of the protective policy as well as the stores purchase policy of the Government of India in such industries as, for example, matches, soap, boots and shoes, cigarettes and tobacco, etc. ; and

- (c) whether Government propose taking action in order to safeguard Indian interests against this enterprise of non-Indian concerns within India ?

The Honourable Sir Muhammad Zafrullah Khan : (a) No, Sir.

(b) and (c). I have nothing to add to the answers given by Mr. Dow on the 21st March, 1938, to the Honourable Member's starred question No. 836.

Mr. T. S. Avinashilingam Chettiar : Are we to understand that he did not make that statement ?

The Honourable Sir Muhammad Zafrullah Khan : What I mean is that the quotation is not correct. Besides, the effect of the quotation, when it is taken out of its context, is not the same as when the speech is read as a whole.

Seth Govind Das : Then the first quotation is correct ?

The Honourable Sir Muhammad Zafrullah Khan : Yes, more or less.

Mr. S. Satyamurti : With reference to part (c) of the question, in view of the fact that non-Indian concerns are being increasingly established in this country, may I know the reasons why the Government do not propose to consider taking some action to safeguard the interests of Indian companies ?

The Honourable Sir Muhammad Zafrullah Khan : The question was exhaustively discussed in the replies to the question to which I have referred, and the supplementaries thereon.

Mr. S. Satyamurti : The result of these supplementaries was that Government do not propose to take any action. I am asking whether, in view of the increasing tendency of non-Indians coming and taking advantage of the protection here, may I know whether Government will examine the whole question with a view to seeing that their policy benefits genuine Indian interests and does not benefit *benami* interests calling themselves Indian ?

The Honourable Sir Muhammad Zafrullah Khan : As a matter of fact, when the initiation of the present policy was being discussed in this House in that very debate in which Sir William Clarke spoke, some of these matters were brought prominently to notice that the effect of the policy was bound in certain matters to be as he indicated.

Mr. T. S. Avinashilingam Chettiar : May I know whether Government have made a survey and an inquiry into the matter as to how many companies have been established in this way ?

The Honourable Sir Muhammad Zafrullah Khan : I do not recollect any actual investigation.

Seth Govind Das : May I know if the policy indicated by Sir William Clarke in that debate is being followed by the Government of India ?

The Honourable Sir Muhammad Zafrullah Khan : Sir, it is not a question of Sir William Clarke indicating a policy. He gave a warning, and some of the results of the policy which he said might follow from the policy have unfortunately followed.

Mr. S. Satyamurti : In view of the fact that these results have unfortunately followed, may I ask whether Government are re-examining the question to ascertain how much of these allegations are true, and, secondly, whether they can usefully take any steps to prevent these undesirable consequences being multiplied ?

The Honourable Sir Muhammad Zafrullah Khan : Government have generally considered the situation and found that, unless there is a radical change of policy, which they are not prepared to embark upon just now and which possibly would cause more harm than good, the present situation cannot be improved.

Mr. T. S. Avinashilingam Chettiar : Apart from any action that they may take, may I ask whether Government at least propose to ascertain as to how many companies have been established, and in what industries, and how much capital has been invested ?

The Honourable Sir Muhammad Zafrullah Khan : Government are aware of that generally and it is not necessary to make a detailed investigation.

Seth Govind Das : Is it not a fact that the number of these companies and the capital that is being brought by foreign companies are increasing ?

The Honourable Sir Muhammad Zafrullah Khan : The number possibly, but I do not think the capital.

REFUSAL TO RENEW LEASES OF LAND HELD BY INDIANS IN FIJI.

876. *Seth Govind Das : Will the Secretary for Education, Health and Lands please state :

- (a) whether Government are aware of the fact that leases, which had been obtained by Indians during the years 1917-21, are now being refused renewal by the Fijian Chiefs except on extravagant terms ;
- (b) whether it is a fact that the Indian population in Fiji numbers about 45 per cent. of the whole of the Fiji population ;
- (c) whether Government are aware that if Indians in Fiji are precluded from the purchase or lease of agricultural land, or building site on reasonable terms, a large number of them will be thrown out of occupation ; and
- (d) what action Government propose to take in the matter ?

Sir Girja Shankar Bajpai : (a), (c) and (d). I would refer the Honourable Member to my replies to the starred questions, No. 432 by Mr. Govind V. Deshmukh and No. 433 by Mr. N. M. Joshi, on the 24th August, 1938, and No. 683 by Mr. T. S. Avinashilingam Chettiar on the 1st September, 1938.

(b) Figures for the year 1936 are the latest available. The Indian population was then about 43.2 per cent. of the total.

SCHEME FOR THE REGISTRATION OF DOCK LABOUR.

877. *Mr. N. M. Joshi : Will the Honourable Member for Labour be pleased to state :

- (a) whether Government have come to a decision regarding the proposal for a scheme for the registration of dock labour with a view to the proper distribution of employment ;
- (b) if so, what the decision is ; and
- (c) whether they propose to publish their proposals to elicit the opinion of the public and of labour organisations ?

The Honourable Sir Muhammad Zafrullah Khan : (a) and (b). Port authorities have so far been opposed to the institution of the scheme. The question is now under further consideration.

(c) Appropriate interests will be consulted.

Prof. N. G. Ranga : Will Government keep in mind the sensible experiment made in the London docks to bring about the " de casualization " of labour ?

The Honourable Sir Muhammad Zafrullah Khan : If the Honourable Member will send me information, I will look into that.

Mr. S. Satyamurti : Are Government aware that, in many Port Trusts, the labour is given away to contractors who get so much and who exploit the labourers, and will Government examine this matter and see that labour is directly employed, and not through unscrupulous contractors ?

The Honorable Sir Muhammad Zafrullah Khan : Government are aware that the greater part of this labour is casual labour but I do not know whether Government can go as far as the Honourable Member suggests.

Prof. N. G. Ranga : Is it not a fact that his own colleague the other day said that this particular question of whether or not to allow these Port Trusts to employ this contract labour is under consideration ?

The Honourable Sir Muhammad Zafrullah Khan : I have said that this matter is under consideration.

Mr. N. M. Joshi : With reference to the answer to part (c) of the question, may I know whether Government propose to publish their proposals ?

The Honourable Sir Muhammad Zafrullah Khan : As I have said, the appropriate interests will be consulted. I do not know what form the consultation will take but the Honourable Member may rest assured that they will be consulted.

BREACHES OF THE LABOUR REGULATION OF THE INDIAN RAILWAYS ACT.

878. ***Mr. N. M. Joshi :** Will the Honourable Member for Labour be pleased to state :

- (a) whether the Supervisor of Railway Labour has noticed any breaches of the Labour regulation of the Indian Railways Act ;
- (b) if so, what action he has taken to see that the breaches may not continue ;
- (c) whether any prosecution for the breaches of the Act have been made ; and
- (d) if not, why not ?

The Honourable Sir Muhammad Zafrullah Khan : (a) Yes.

(b) The irregularities detected are brought to the notice of the Railway Administrations for rectification.

(c) No.

(d) It has been possible to remove the defects so far discovered by administrative action. No occasion for launching criminal prosecutions has arisen.

Prof. N. G. Ranga : What is this Railway on which this sort of breach of labour regulation was discovered ?

The Honourable Sir Muhammad Zafrullah Khan : I imagine on several of them.

**APPOINTMENT OF A ROYAL COMMISSION TO INVESTIGATE CONDITIONS IN THE
BRITISH WEST INDIES.**

879. ***Mr. N. M. Joshi :** Will the Secretary for Education, Health and Lands be pelased to state :

- (a) whether he is aware of the contemplated appointment of a Royal Commission to investigate the conditions in the British West Indies ;
- (b) what are the circumstances that led to the appointment ;
- (c) what the personnel of the Commission and the terms of reference are ;
- (d) the number of Indians in the Colonies concerned and their percentages to the total population ; and
- (e) whether the Government of India have been consulted by the British Government with reference to the personnel and the terms of reference of the contemplated Royal Commission ; if not, whether Government propose to make suitable representation, and in particular urge the inclusion of the representatives of the Government of India on the Commission ?

Sir Girja Shankar Bajpai : (a) Yes.

(b) The attention of the Honourable Member is invited to the speech of the Secretary of State for the Colonies in the House of Commons on the 14th June, 1938, in the course of the debate on the Colonial Office Vote.

(c) and (d). The information is contained in the statements which I lay on the table of the House.

(e) The answer to the first part is in the negative. As regards the second part, Government have under consideration the question as to what steps should be taken to safeguard the interests of Indians.

Statement I.

The terms of reference and the personnel, of the Royal Commission, the appointment of which was announced by the Secretary of State for the Colonies in the House of Commons on the 14th June, 1938, are as follows :

“To investigate social and economic conditions in the Barbados, British Guiana, British Honduras, Jamaica, Leeward Islands, Trinidad and Tobago, and Windward Islands and matters connected therewith and to make recommendations.” The members are Lord Moyne (Chairman), Sir Edward Stubbs (Vice-Chairman), Mr. Amberton, Dr. Mary Blacklock, Sir Walter Citrine, Dame Rachel Crowdy, Professor F. L. Engledow, Mr. H. D. Henderson, Mr. Morgan Jones and Sir Percy Mackinnon.

Statement II.

Colony.	Total population.	Indian population.	Percentage of Indian population to the total population.
Barbados ..	188,294	*	*
British Guiana ..	332,898	140,768	42.3
British Honduras ..	45,317	497†	1.1
Jamaica ..	1,138,558	18,660	1.6
Leeward Islands ..	122,242	7,189†	5.8
Trinidad and Tobago ..	448,253	151,076	33.7
Windward Islands ..	182,500	*	*

* Not known.

† Approximate.

Mr. N. M. Joshi : May I ask what are the steps which Government have taken and what they propose to do ?

Sir Girja Shankar Bajpai : The Government of India have taken up with His Majesty's Government the question of sending an observer on behalf of the Indian community in order to watch their interests.

Mr. N. M. Joshi : May I know whether the observer will represent the Government of India or the people in British Guiana and other colonies, and whether Government will take steps to see that the people in those colonies will be represented in some way ?

Sir Girja Shankar Bajpai : Sir, in so far as the Government of India are concerned, assuming that His Majesty's Government agree to our deputing an observer, they can only vest him with a representative capacity from themselves, but I have no doubt whatsoever that the Indian community in these territories, if they wish to approach—and I believe they will approach—the observer, will get all the assistance they can get from him.

Mr. N. M. Joshi : May I know whether the observer will be an official or a non-official ?

Sir Girja Shankar Bajpai : Well, we have not yet reached the stage of considering the personnel.

Seth Govind Das : Have Government considered the advisability of sending a non-official observer—because he is always better than an official observer ?

Sir Girja Shankar Bajpai : I do not subscribe to the latter part of what my Honourable friend has said but the suggestion will be borne in mind.

Mr. Muhammad Ashar Ali : Will the Honourable Member be able to state what will be the personnel of this Commission ?

Sir Girja Shankar Bajpai : The personnel of the Commission will be found in the statement which I am laying on the table.

Seth Govind Das : Is it possible for the Government of India to write to the Home Government that there should be an Indian on this personnel ?

Sir Girja Shankar Bajpai : That question or a question to the same effect was asked earlier in the session and I stated that in view of the fact that the territorial scope of the inquiry included areas where Indians had not settled, we would not be on strong ground in asking for the inclusion of an Indian in the personnel of the Commission.

NON-REPRESENTATION OF INDIANS ON THE BRITISH GUIANA LABOUR DISPUTES COMMISSION.

880. ***Mr. N. M. Joshi :** Will the Secretary for Education, Health and Lands be pleased to state whether Government are aware that the Indians in British Guiana claimed representation on the British Guiana Labour Disputes Commission and, on being refused the request, declined to tender evidence before the Commission ?

Sir Girja Shankar Bajpai : Government understand that though the British Guiana East Indian Association was dissatisfied with the composition of the Commission of Enquiry and did not tender evidence before it, it adopted a resolution in 1937 expressing satisfaction with the Commission's recommendations.

Prof. N. G. Ranga : What were the terms of reference to this Commission ?

Sir Girja Shankar Bajpai : The terms of reference—speaking from memory—at the time were to inquire into the causes of the disturbances and to make recommendations which would have the effect of preventing their recurrence ?

Prof. N. G. Ranga : What is the result of the consideration by the Government of India ? Is it this that the report of this Commission was in favour of the Indian labourers, or not ?

Sir Girja Shankar Bajpai : Not only was it the view of the Government of India that the recommendations of the report would safeguard Indian interests but presumably that was the opinion of the Indian community also because, as I have already stated, the East Indian Association in British Guiana accepted the report.

Mr. N. M. Joshi : In view of the fact that there is a danger of Indians in these colonies boycotting this Commission if they are not represented on the Commission, will the Government of India take steps to see that those colonies themselves are represented on the Commission ?

Sir Girja Shankar Bajpai : Well, Sir, I have already answered earlier today a question regarding the personnel of the Royal Commission which is going out. The particular Commission referred to in question No. 880 which I have been answering has already reported. As to what we should do in the future I cannot say.

Mr. N. M. Joshi : I wanted to know whether Government have learnt by the example of the previous Commission ?

Sir Girja Shankar Bajpai : It seems to me that the example of the previous Commission is not altogether conclusive, seeing that the Indians accepted the recommendations of the Commission even though there was no Indian on it.

Seth Govind Das : Would it not be more desirable if the Indians in those colonies were represented on the Commission ?

Sir Girja Shankar Bajpai : That is asking for an expression of opinion.

ASSISTANCE TO INDIANS IN THE WEST INDIES TO PRESENT THEIR CASE TO THE ROYAL COMMISSION.

881. ***Mr. N. M. Joshi :** Will the Secretary for Education, Health and Lands be pleased to state whether the Government of India propose to depute their own officers to the West Indies to assist the local Indians in presenting their case to the Royal Commission ?

Sir Girja Shankar Bajpai : I would invite the attention of the Honourable Member to the reply I have just given to part (e) of his starred question No. 879.

DISABILITIES OF INDIANS IN SOUTH AFRICA.

882. ***Mr. Govind V. Deshmukh :** Will the Secretary for Education, Health and Lands please state :

- (a) if the Agent General for India in South Africa, Mr. Rama Rau, has opened any negotiations with the Union Government of South Africa to remove any of the disabilities of Indians in South Africa ; if so, which and with what result ; and
- (b) if he has followed up the suggestion of Sanator Brookes to press for a round table conference to discuss the question of franchise for Indians ; if so, what are the attempts made and what is the result ?

Sir Girja Shankar Bajpai : (a) It is one of the main duties of the Agent General in South Africa to bring to the notice of the Union Government the difficulties of Indians in South Africa. In this respect the present Agent General is continuing the work of his predecessors.

(b) The attention of the Honourable Member is invited to the reply given by me on the 15th August to part (b) of Mr. Satyamurti's starred question No. 210.

Seth Govind Das : The Honourable Member has just said that the present Agent General is continuing what his predecessor has done in this respect. The predecessor of the present Agent General in South Africa was of opinion that franchise should be granted to Indians there, is he also pursuing that policy at present ?

Sir Girja Shankar Bajpai : That question I answered on an earlier occasion.

Seth Govind Das : In what respect is he pursuing the policy of his predecessor ?

Sir Girja Shankar Bajpai : My answer is that he is helping, like his predecessor, to bring to the notice of the Union Government the difficulties of Indians in South Africa. Naturally, there are some other difficulties of the Indians also, other than the question of the franchise.

Mr. Govind V. Deshmukh : The negotiations may have been continued, but what are the achievements ?

Sir Girja Shankar Bajpai : I can mention only one. For instance, recently there was an attempt in the Cape province to introduce the principle of segregation and as a result of the intercession of our Agent General I venture to say that that difficulty has been averted.

Mr. S. Satyamurti : May I ask whether the present Agent General Mr. Rama Rau has definitely dropped the claim of all Indians for franchise in South Africa, or whether it is a case merely of pressing more important problems at present, and waiting for a suitable opportunity to raise this question later on ?

Sir Girja Shankar Bajpai : My Honourable friend is quite correct in the latter part of the statement. That is the correct assumption. There is no question of dropping anything.

Seth Govind Das : Has he written anything to the Government of India with regard to the reasons why he has dropped this question at present ?

Sir Girja Shankar Bajpai : My Honourable friend, Mr. Satyamurti, asked that question about a week ago, and I told him that it would not be in the public interest to disclose the reasons why he has for the moment decided not to pursue this question.

DISABILITIES OF INDIANS IN THE KENYA HIGHLANDS.

883. ***Mr. Govind V. Deshmukh :** Will the Secretary for Education, Health and Lands please state if Government recently made any representations to the British Government about the Highlands in Kenya, the acquisition or transfer of which by Indians has been made impossible by either legislative or administrative measures ? If so, what is the result of those representations ?

Sir Girja Shankar Bajpai : The answer to the first part of the question is in the affirmative. As regards the second part, so far as the Government of India are aware, no Order-in-Council has yet been issued.

Seth Govind Das : Have Government received any intimation from His Majesty's Government as to when this Order-in-Council is likely to be issued ?

Sir Girja Shankar Bajpai : We asked His Majesty's Government not to issue an Order-in-Council at all. That is our position.

Seth Govind Das : Has His Majesty's Government agreed that they are not going to issue any Order-in-Council ?

Sir Girja Shankar Bajpai : My Honourable friend knows as well as I do that several questions have been answered on this subject before. I am merely stating that no Order-in-Council has been issued so far.

Seth Govind Das : The Honourable Member has just said that the Government of India have written to His Majesty's Government not to issue an Order-in-Council, may I know whether His Majesty's Government have agreed not to issue any Order-in-Council in this respect ?

Sir Girja Shankar Bajpai : No, Sir, His Majesty's Government have not agreed not to issue an Order-in-Council, but equally no Order-in-Council has been issued.

Mr. S. Satyamurti : May I ask when, and what was the last communication which the Government of India received from His Majesty's Government, as a result of the strong protest in this House against issuing an Order-in-Council in this matter, and will the Government of India take a very early opportunity of informing His Majesty's Government that the issuing of this Order-in-Council will be a case of gross racial discrimination ?

Sir Girja Shankar Bajpai : All the arguments which the Government of India could urge upon His Majesty's Government in so far as this question of the Order-in-Council is concerned have been urged not once but several times and I do not think that there is anything fresh that we can put forward for the consideration of His Majesty's Government. What we have to do now is to await their decision.

Mr. S. Satyamurti : The first part of my question was : When did the Government of India hear last from His Majesty's Government on this matter and what was their answer ?

Sir Girja Shankar Bajpai : As far as I remember, the last we heard on the subject from His Majesty's Government was in May and it was to the effect that the representations of the Government of India were under consideration.

PRICE OF THE PUBLICATION ON THE RESULTS OF THE ACTIVITIES OF THE ARCHAEOLOGICAL SURVEY.

884. **Mr. Brojendra Narayan Chaudhury :** With reference to the reply to part (c) of starred question No. 52 of the 9th August, 1938, will the Secretary for Education, Health and Lands please state :

- (a) how the purchase price of published results of the activities of the "Archaeological Survey" is fixed ;
- (b) whether the price is expected to cover the cost of the find and publication, including salary, allowances of officers engaged, and the cost of excavations ; and
- (c) whether costs mentioned above have been recouped from the sale of publications generally in the past ?

Sir Girja Shankar Bajpai : (a) By adding to the cost of printing the letterpress and plates 60 per cent. on account of agents' commission, advertising, storage and distribution charges. This applies to all publications of the Department issued through the Government of India Press.

(b) and (c). No.

Prof. N. G. Ranga : Is it not a fact that the prices of the publications of the Archaeological Survey are very much higher than those which are charged for publications of the same size by other Departments ?

Sir Girja Shankar Bajpai : Sir, I do not think that size by itself is a correct criterion for judging the cost because most of these archaeological publications include a large number of plates and the reproduction of these plates costs money.

Prof. N. G. Ranga : Is the Honourable Member satisfied that these publications have a good sale in the country ?

Sir Girja Shankar Bajpai : As a matter of fact, I think the subject-matter is not interesting to the public at large. It is only those people who are especially interested in archaeology who buy these publications.

Pandit Lakshmi Kanta Maitra : With regard to the important archaeological publications, will Government consider the advisability of lowering the price of these publications so as to make them within the reach of all ?

Sir Girja Shankar Bajpai : We have gone into the question and we have come to the conclusion that any minor lowering of price is not likely to add much to the circulation of these documents.

Pandit Lakshmi Kanta Maitra : Is the Honourable Member aware that these publications cannot be had in principal cities and also on book-stalls at the railway stations and will Government make arrangements to see that these publications are made easily available at all places ?

Sir Girja Shankar Bajpai : I have been a traveller myself and I have never seen round the book-stalls a swarm of people wanting to read archaeological publications.

SECURING OF PREFERENCE FOR BRITISH SHIPPING IN INDO-JAPANESE TRADE.

885. ***Mr. K. Santhanam :** Will the Honourable the Commerce Member be pleased to state :

- (a) whether speaking at the Annual Meeting of the Peninsular and Oriental Company in 1936, the Honourable Alexander Shaw stated that the bargaining power of India should be utilised for securing preference for British Shipping in Indo-Japanese trade ;
- (b) whether the Government of India have at any time received a representation from the United Kingdom shipping interests in this connection ; and

- (c) if the answer to part (b) be in the affirmative, whether Government took any action on that representation ?

The Honourable Sir Muhammad Zafrullah Khan : (a) Government have seen press summaries of a speech by the Honourable Alexander Shaw (now Lord Craigmyle) in which he apparently suggested that Indian bargaining power should be utilised in support of Empire shipping.

- (b) Yes.

- (c) The Government of India did not accept the suggestion.

Mr. S. Satyamurti : May I know the reason why the Government of India did not accept the suggestion ?

The Honourable Sir Muhammad Zafrullah Khan : I am sure if they had accepted the suggestion, the Honourable Member would have taken violent exception to it.

Mr. S. Satyamurti : I am simply asking the reason why the Government of India did not utilise the bargaining power of Indians in Indo-Japanese trade negotiations in order to secure a fair share for our shipping.

The Honourable Sir Muhammad Zafrullah Khan : That is one of the reasons. The Indian bargaining power was not utilised because it could not be utilised in the interests of the Indian shipping also along with those of British shipping.

Mr. S. Satyamurti : Why could not the Indian shipping get a share in this ? After all, the bargaining power is ours.

The Honourable Sir Muhammad Zafrullah Khan : It was found that any bargaining power that India had in the course of the Indo-Japanese trade negotiations could not at that time be utilised for securing better treatment for Indian shipping because at the moment Indian shipping had no share in this trade at all. Therefore, the Government refused to utilise it for the benefit of British shipping alone.

Mr. Manu Subedar : May I ask whether the principle of not sacrificing the Indian bargaining power for British interests has been accepted by the Government of India as a general principle or whether this was an exceptional case ?

The Honourable Sir Muhammad Zafrullah Khan : That is a very large question. Surely, the Honourable Member can draw an inference from the replies I have given.

Mr. Manu Subedar : Will the Honourable Member make an attempt to give a simple answer to the question whether it is a general principle not to sacrifice India's bargaining power for the benefit of England ?

The Honourable Sir Muhammad Zafrullah Khan : I think the Honourable Member has got no justification for that insinuation.

RATE-WAR BETWEEN SHIPPING COMPANIES CARRYING HAJ PILGRIMS.

886. ***Mr. K. Santhanam :** Will the Honourable the Commerce Member please state :

- (a) if it is a fact that there is a rate-war going on between the Moghul Line and the Scindia Steam Navigation Company in relation to the Haj pilgrim traffic ;
- (b) if, in pursuance of this rate-war, the Moghul Line reduced fares from Rs. 172 per passenger to Rs. 20 per passenger ;
- (c) if the Government of India convened a conference in Simla of the representatives of the competing companies to bring about an end of this rate-war ;
- (d) if this conference failed to bring about a settlement ;
- (e) if it is a fact that the representatives of the Moghul Line were responsible for the failure ; and
- (f) what further action, if any, Government propose to take in this matter ?

The Honourable Sir Muhammad Zafrullah Khan : (a) and (b). There was a rate war between the two companies referred to during the last pilgrim season, during the course of which it is alleged that for a short period fares were reduced from Rs. 172 to Rs. 20.

(c), (d), (e) and (f). The attention of the Honourable Member is invited to the reply given by me to starred question No. 447 on the 24th August, 1938.

Mr. S. Satyamurti : The Honourable Member said that war *was* in existence. May I infer from that the rate war has ceased to exist ?

The Honourable Sir Muhammad Zafrullah Khan : It is only seasonal traffic and the question will not arise till the next Haj pilgrimage season begins, that is to say, whether there is a rate war or not, but as I said on a previous occasion, the matter was under consideration of Government.

Mr. S. Satyamurti : In view of the fact that this Conference has failed—I am taking parts (c), (d) and (e) of this question—in view of the fact that there is every chance of this rate war being revived when the next Haj season begins, will Government take any effective steps to bring about co-ordination and stop this rate war ?

The Honourable Sir Muhammad Zafrullah Khan : As I said last time, the Government of India are taking active steps towards that.

Dr. Sir Ziauddin Ahmad : In view of the fact that we have got maximum and minimum fares fixed in the case of railway services, and also in view of the fact that only yesterday, in spite of our protest from this side, the House passed a motion fixing maximum and minimum fares in the case of motor vehicles transport, may I ask why the same procedure should not be adopted in this instance ?

The Honourable Sir Muhammad Zafrullah Khan : I have already said that Government are taking active steps to bring about co-ordination in this matter.

Maulana Shaukat Ali : May I enquire from the Honourable Member whether the Scindia Company has come into this pilgrimage traffic to Hedjaz for the first time last year, whereas the Moghul Company has been in this traffic for the past 40 years ?

The Honourable Sir Muhammad Zafrullah Khan : I am not quite sure that the Scindia Company has come into this traffic only for the first time last year. I will have to make enquiries. I have the impression that on previous occasions also they did enter this traffic.

Maulana Shaukat Ali : As far as my information goes, it was for the first time last year that the Scindia Company came into this traffic. I know there have been the Arab Steamer Company, the Sheister Company and another Company, the Nimazi Company. No discrimination was made then in their favour. We are we showing any partiality now to the Scindia Company ? We want no complications in this pilgrimage to Jeddah, because we ourselves intend to start a purely Muslim Company so that there may be no difficulty for the pilgrims. I want the Members to remember Zanzibar and Afghanistan present crisis and we do not desire to create any unnecessary trouble in this country.

The Honourable Sir Muhammad Zafrullah Khan : That is not a question asking for any information.

Mr. Manu Subedar : May I enquire whether Government have legal powers to interfere if they are satisfied that rate war is going on and there is a case, to their own satisfaction for interference.

The Honourable Sir Muhammad Zafrullah Khan : That does not arise.

Seth Govind Das : Are Government taking only this question of Haj affair or are they going to have some sort of co-ordination among all the shipping companies ?

The Honourable Sir Muhammad Zafrullah Khan : This particular question refers only to Haj traffic.

CERTAIN SUGGESTIONS MADE BY MR. M. P. GANDHI IN THE INDIAN COTTON TEXTILE INDUSTRY ANNUAL.

887. ***Mr. K. Santhanam :** Will the Honourable the Commerce Member be pleased to state :

- (a) whether the attention of Government has been drawn to the Indian Cotton Textile Industry Annual, 1938, by Mr. M. P. Gandhi ;
- (b) whether, in that Annual, Mr. M. P. Gandhi has suggested bilateral trade treaties for the purpose of finding an export market for Indian piece-goods ;
- (c) whether, in the same book, Mr. M. P. Gandhi has complained about the absence of reliable statistics of handlooms and the production of such handlooms ; and
- (d) whether these matters have been considered by the Government of India, and with what results ?

The Honourable Sir Muhammad Zafrullah Khan : (a), (b) and (c). Yes, Sir.

(d) With reference to that part of the question which relates to the possibility of entering into bilateral trade treaties with other countries, I would invite the Honourable Member's attention to the answer given on the 29th August, 1938, to question No. 573, by Mr. Manu Subedar. The other issues primarily concern Provincial Governments.

Mr. S. Satyamurti : In view of the fact that the last answer was that as soon as the Ottawa trade negotiations are over, Government will start bilateral trade negotiations, may I know, now that the end of these negotiations is in sight, whatever the end may be, whether Government have in mind any programme or any policy with regard to the countries with which they will start negotiations for bilateral agreements ?

The Honourable Sir Muhammad Zafrullah Khan : Government will take up active consideration of this question, the moment there is an end of the present negotiations.

Prof. N. G. Ranga : In view of the fact that this subvention of five lakhs for handloom weaving industry is distributed also on the basis of the number of handlooms plying in various provinces what steps will Government take to obtain more or less accurate statistics in regard to the number of handlooms they are protecting ?

The Honourable Sir Muhammad Zafrullah Khan : That is a matter which primarily concerns the Provincial Governments.

Mr. T. S. Avinashilingam Chettiar : May I know whether the Government of India have asked the Provincial Governments ?

The Honourable Sir Muhammad Zafrullah Khan : I would require notice.

Prof. N. G. Ranga : How do Government satisfy themselves in regard to the distribution of subvention that this is to be on the basis of the number of handlooms in various provinces ? They must have some information.

The Honourable Sir Muhammad Zafrullah Khan : The Honourable Member has made a correct assumption in the last part of the question.

Prof. N. G. Ranga : Are they taking care that this information is made more and more accurate.

The Honourable Sir Muhammad Zafrullah Khan : I imagine that whatever information is sent up by Provincial Governments is to the extent to which it goes accurate.

Mr. S. Satyamurti : Is it not a fact that one of the duties of the statistics department which the Government of India maintain is to get statistics about handlooms, which play such a large part in the textile industry of the country ?

The Honourable Sir Muhammad Zafrullah Khan : If the Honourable Member means whether it is part of their duty as laid down, I am afraid I will have to look into the matter.

**CERTAIN SUGGESTIONS MADE BY MR. M. P. GANDHI IN THE INDIAN COTTON
TEXTILE INDUSTRY ANNUAL.**

888. *Beth Govind Das : Will the Honourable the Commerce Member please state :

- (a) whether his attention has been drawn to the Indian Cotton Textile Industry 1938, Annual by Mr. M. P. Gandhi, wherein, on page 60, he has recommended to the Government of India to consider the possibility of entering into bilateral trade treaties with such countries where India can find an export market for her piece-goods ; if so, whether he will make a statement indicating what has been done in this direction ;
- (b) whether his attention has been drawn to a suggestion made in the same book for the publication of the report submitted by the non-official advisers to the delegation for the negotiation of the Indo-British Trade agreement and whether he proposes laying a copy of it on the table ;
- (c) whether his attention has been drawn to page 91 of the same book, wherein is deplored the absence of reliable statistics of handlooms devoted to the weaving of cotton goods, silk goods, etc., and whether he has made any effort to remedy this lack of statistics in relation to the quantity of piece-goods woven in handlooms ;
- (d) whether his attention has been drawn to the necessity of giving adequate protection to handloom woven piece-goods against the mill industry, as suggested by the United Provinces Government at the Ninth Industrial Conference, wherein they recommended that the Government of India should impose some restrictions either by legislation, or by agreement, so that the mills may be obliged to offer yarn of standard tensile strength and counts and in bundles of guaranteed weight ; and whether he has done anything in this direction or proposes to do anything ; and
- (e) whether productions of handlooms during the last five years have been on the increase ; if so, in what proportion ?

The Honourable Sir Muhammad Zafrullah Khan : (a) and (c). The Honourable Member's attention is invited to the answers given on the 29th August to Mr. Manu Subedar's question No. 573 and to Mr. K. Santhanam's question No. 887 today.

(b) Government have seen the remarks referred to. In this connection, I would invite the Honourable Member's attention to the answers given to parts (b) to (d) of his question No. 428 and the supplementaries during the current Session.

(d) The Honourable Member is referred to the answers given to questions Nos. 424 and 574 during the current Session.

(e) Information relating to production of handlooms is contained in the Review of the Trade of India in 1936-37, copies of which are in the Library.

Mr. S. Satyamurti : May I know what is the answer to the latter part of the question, whether he proposes to lay a copy on the table ?

The Honourable Sir Muhammad Zafrullah Khan : I have said on a previous occasion that Government are not prepared to lay documents in this matter on the table of the House piecemeal.

Prof. N. G. Ranga : With reference to part (c), what is the information which the Government have received in regard to the number of handlooms in various provinces ? Will the Government of India place the information in the Library ?

The Honourable Sir Muhammad Zafrullah Khan : I will consider the suggestion whether the Honourable Member, if he wants the information himself, can be supplied with the information.

REPRESENTATION REGARDING IMPOSITION OF AN IMPORT DUTY ON RAW COTTON.

889. ***Seth Govind Das :** Will the Honourable the Commerce Member please state :

- (a) whether Government received a representation from the Bombay Millowners Association with regard to the imposition of a duty on the import of raw-cotton in India of a staple not exceeding 15/16 inches ; and
- (b) whether he has taken, or proposes taking, steps in the matter as suggested, or in any other manner ; if so, when and what action he proposes taking ?

The Honourable Sir Muhammad Zafrullah Khan : (a) No such representation has been received by the Government of India from the Bombay Millowners' Association.

(b) I would refer the Honourable Member to the answers given to Mr. T. S. Avinashilingam Chettiar's starred question No. 174 and Sardar Mangal Singh's starred questions Nos. 189 and 190 and their supplementaries during the current Session.

Prof. N. G. Ranga : Is it not a fact that the recommendation made by the sub-committee on this particular question that an embargo should be placed on the imports of short staple cotton into India was brought to the notice of the Government in the last Session ?

The Honourable Sir Muhammad Zafrullah Khan : I am prepared to assume that if the Honourable Member is sure.

Prof. N. G. Ranga : What action has been taken on that suggestion in view of the fact that the suggestion and the matter concerning that are of such public importance ?

The Honourable Sir Muhammad Zafrullah Khan : That is dealt with in the replies to questions which I have referred to in reply to part (b).

Seth Govind Das : The Honourable Member said that the Government have not received any representation from Bombay Millowners' Association. But does the Honourable Member know that this is the general view of the Indian commercial community ?

The Honourable Sir Muhammad Zafrullah Khan : I am prepared to accept the statement by the Honourable Member that he thinks that is the view of the commercial community.

Prof. N. G. Ranga : In view of the fact that the imports of short staple cotton have increased phenomenally during the last year and a half, what steps do Government propose to take to protect the Indian cotton growers as against the rapacity of the Indian millowners ?

The Honourable Sir Muhammad Zafrullah Khan : That is also one of the matters dealt with in the answer to which I have referred.

RISE IN THE PRICE OF SUGAR.

890. ***Dr. Sir Ziauddin Ahmad :** (a) Will the Honourable the Commerce Member please state whether it is a fact, that the Governments of the United Provinces and Bihar created a sugar selling monopoly ?

(b) Is it a fact that since the establishment of the monopoly the price of sugar has gone up by two rupees per maund during the past eight months ?

(c) Is it not a fact that the prices today are higher by Rs. 1-8-0 a maund than the fair selling price given by tariff ?

(d) Do Government propose to consider the desirability of lowering the import duty on foreign sugar ?

(e) If the answer to part (d) be in the negative, are Government prepared to pass an anti-trust law as in America, specially in regard to food articles ?

The Honourable Sir Muhammad Zafrullah Khan : (a) The Provincial Governments concerned have taken powers by provincial legislation (1) to license sugar factories and to make it a condition of that licence that the factory shall be a member of an organisation approved by the Provincial Government for regulating the sale of sugar, also (2) to regulate the sale of sugar by factories and the price at which it is sold. The Indian Sugar Syndicate has been recognised by them.

(b) Quotations for sugar *ex-factory* have risen by about Rs. 1-6-0 to 1-12-0 per maund—the rise has not been uniform.

(c) No, Sir.

(d) and (e). The rate of import duty to be levied in future on sugar is under examination along with the recommendations of the Tariff Board on the Sugar Industry.

Dr. Sir Ziauddin Ahmad : Is not the price fixed by the Provincial Governments higher than the fair selling price fixed by the Tariff Board ?

The Honourable Sir Muhammad Zafrullah Khan : That may be.

Dr. Sir Ziauddin Ahmad : If it is a fact, will Government consider the lowering of the import duty on sugar ?

The Honourable Sir Muhammad Zafrullah Khan : I have already answered that.

Mr. N. M. Joshi : May I ask whether the growers of sugar-cane and the employees of the sugar factories have gained in any way by the rise in the price of sugar ?

The Honourable Sir Muhammad Zafrullah Khan : That is a matter of opinion.

Mr. N. M. Joshi : I am asking for information.

The Honourable Sir Muhammad Zafrullah Khan : Then, I am unable to say.

Mr. Manu Subedar : May I ask whether Government have considered the question in part (e), namely, the passing of an anti-trust law here as in America ?

The Honourable Sir Muhammad Zafrullah Khan : As I have said, the whole question of the rate and continuation of protection to the sugar industry is under examination by Government. I do not know whether the Tariff Board have considered the specific suggestion made here.

Mr. Manu Subedar : If after Government find that they have to interfere, have they considered whether they have or have not got legal powers to interfere ?

Mr. President (The Honourable Sir Abdur Rahim) : That is a hypothetical and legal question.

Mr. Manu Subedar : If after considering the question of passing an anti-trust law.....

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

GOVERNMENT INTERFERENCE IN PRICE-RIGGING.

891. ***Mr. Manu Subedar :** (a) Will the Honourable the Commerce Member please state whether Government have enquired what the powers of the Board of Trade in the United Kingdom are to interfere when there is any monopoly, rigging up of the price against the public by any monopoly, trust, cartel, pool, or price-fixing agreements ?

(b) If not, are they prepared to make an enquiry and place the results before this House ?

(c) If the reply be in the affirmative, will Government be pleased to state whether they have considered the assumption of similar powers by the Government of India ?

(d) Have Government any representation from commercial bodies, associations and others, requesting them for the assumption of such powers ?

The Honourable Sir Muhammad Zafrullah Khan : (a) and (b). No.

(c) Does not arise.

(d) No.

Mr. Manu Subedar : May I ask why Government are not prepared to find out what powers the Board of Trade have to interfere in the interest of the community when any businesses are fixing prices, pooling or otherwise rigging up prices against public interest ?

The Honourable Sir Muhammad Zafrullah Khan : No necessity has arisen to make that inquiry.

Mr. Manu Subedar : Have not Government received various representations and has not the opinion of the public as expressed in this House reached them on this subject frequently ?

The Honourable Sir Muhammad Zafrullah Khan : That is part (d) of the question which I have answered in the negative.

DISTRESS OF RETURNED EMIGRANTS FROM BRITISH GUIANA.

892. ***Babu Kailash Behari Lal** (on behalf of Babu Baijnath Bajoria) : (a) Will the Secretary for Education, Health and Lands be pleased to state whether his attention has been drawn to the letter of the Reverend Mr. C. F. Andrews under the heading "Returned Emigrants", published in the *Statesman* of the 6th August, 1938 ? If so, what action has been taken by the Government of India to relieve the acute distress of about 1,000 returned emigrants from British Guiana, living around the Docks of Matia Bruz and Akhrabagan near Calcutta ?

(b) Are Government aware that these emigrants are living under appalling conditions of insanitation and diseases, and are practically starving and naked, and some of them have died ?

(c) What is the total number of deaths amongst them since their arrival at Calcutta ?

(d) What amount, if any, have the Government of India spent on these emigrants to relieve them of their distress ?

(e) What steps have the Government of India taken to send these people back to their previous home in India ?

(f) Is it not a fact that many of them were born in British Guiana and are desirous of returning to their place of birth ? If so, what steps have Government taken to send them back to British Guiana ? If none, why not ?

(g) Have Government consulted the Colonial Government of British Guiana to take them back and to utilise the Emigration Fund for the purpose ? If not, why not ?

Sir Girja Shankar Bajpai : (a) The answer to the first part is in affirmative. As regards the second part, I would invite the attention of the Honourable Member to the reply given in the Council of State to the Honourable Raja Yuveraj Dutta Singh's question No. 318 on the 15th November, 1937.

(b) Government have no recent information.

(c) Government have no information.

(d) Rs. 16,894-0-0.

(e) The repatriates on arrival in India had, in fact, been sent to their villages, but later migrated to Calcutta. It has been the constant endeavour of Government to persuade these people to go back to their village homes.

(f) Government have no accurate information as to how many of these persons came from British Guiana. As regards the second and third parts, several attempts were made to persuade the Governments of the Colonies concerned to take back some of their own emigrants. As a result of the attempts made in 1926 and 1928 some of them were sent back. The last attempt, which was made in 1933, was not successful.

(g) Government did consult the Government of the British Guiana but were informed that the Immigration Fund cannot be used for this purpose.

Mr. S. Satyamurti : With reference to the reply to part (f), may I know if Government will find out by active inquiries how many of these emigrants were born in British Guiana ?

Sir Girja Shankar Bajpai : Sir, this is not a new problem. These particular emigrants are not people who have come back to this country recently. They have been there for several years. There are changes now and then, there are sometimes more and sometimes fewer people, from British Guiana and other places. I should be prepared to say myself that the greater number of these were people who had been in British Guiana but as to how many were born there I cannot say.

Mr. S. Satyamurti : In view of the fact that this problem is still with us in some form or other, may I know whether steps will be taken to persuade the Government of British Guiana to take back at least those who were born there and have come back to India and who are still suffering, because they have no occupation and no particular place of residence ?

Sir Girja Shankar Bajpai : I think it would be as well for me to state the fact that although there may be a few deserving cases, most of these people, a great majority of them, are gentlemen who had been offered by the Government of India facilities for settlement in this country. In 1933-34 we actually went to the extent of spending about Rs. 20,000 on a colonisation scheme in Mirzapore which failed because these people would not stay there or work. The British Guiana Government, as I have already informed the House, were approached in 1933 and they said their basic industry was sugar and the sugar industry was in a depressed state and that they could not bring back the people to British Guiana without lowering the standard of living of the Indians who were already there.

Prof. N. G. Ranga : Are Government satisfied that the conditions under which these people had to emigrate from that country do not now exist ?

Sir Girja Shankar Bajpai : No, Sir ; they do not return from there because of the existence of any special conditions. Under the old indentured system people who went across to British Guiana and other colonies were entitled, after a certain period, to claim a return passage to this country at the expense of the colony and they exercised that option and came back here.

Seth Govind Das : Is the number coming back from British Guiana increasing or decreasing ?

Sir Girja Shankar Bajpai : My recollection, as a matter of fact, is that in the last three or four years none have come back from British Guiana.

Pandit Lakshmi Kanta Maitra : With reference to clause (d), the Honourable Member gave certain figures of the amount of money spent by the Government of India for the relief of the distress of the emigrants. May I know what shape this relief has taken ?

Sir Girja Shankar Bajpai : The relief took two forms ; first, distribution of gratuitous relief in Calcutta itself, and then the expenditure on the colonisation scheme up-country.

Mr. Ram Narayan Singh : Does the Honourable Member mean to say that these people are not willing to work ?

Sir Girja Shankar Bajpai : They are, as a matter of fact, very reluctant to work.

TRAINING OF INDIANS IN CERTAIN ENGINEERING SUBJECTS.

893. ***Babu Kailash Behari Lal** (on behalf of Babu Baijnath Bajoria) : Will the Honourable Member for Labour be pleased to state :

(a) whether there is any separate college in India for training in (i) Docks and Harbour Engineering, (ii) Structural Engineering ; and (iii) Re-inforced concrete Engineering ; if so, where such colleges are situated ; and

(b) if the answer to part (a) be in the negative, what steps Government are taking to train Indian students in these important subjects ?

The Honourable Sir Muhammad Zafrullah Khan : (a) No.

(b) This is a matter which mainly concerns Provincial Governments.

DISTRIBUTION OF KEROSENE AND PETROL IN INDIA.

894. ***Mr. Manu Subedar :** (a) Will the Honourable the Commerce Member state whether Government have attempted to secure the book " Raw Materials or War Materials " ? by Alfred Plummer (Gollancz, London), to the following quotation from which their attention was drawn in my starred question No. 208 on the 15th August, 1938 ?

" while as regards oil distribution in India, China, and other eastern countries, the Royal Dutch Shell, and the Anglo-Persian-Burma groups are as one. Amongst the share-holders in this group of companies are the British, French and Australian Governments." ?

(b) Have Government seen the following in " The Growth of Collective Economy " by F. E. Lawley, Volume I, page 241 (P. S. King and Son, London) ?

" The British Government owns, in the Anglo-Iranian Oil Company, £7½ million Ordinary and £1,000 First Preference Stock. It has the right to appoint two *ex-officio* directors to the

Board of this Company and of its subsidiaries, which directors can negative resolutions of the Board ; though the other directors can appeal to the Government. The Company owns all shares of twenty other companies."

(c) Are Government aware that the price of petrol and kerosene, affecting alike the rich and poor, is fixed by agreement from time to time between the Anglo-Iranian Company, the Burma Oil Company and the Indo-Burma Petroleum Company ?

(d) Have the Government of India had any communications with His Majesty's Government with regard to the exploitation of oil consumers in this country by companies, in which His Majesty's Government owns shares and has two representatives and powerful directors ?

(e) Have the Government of India satisfied themselves that this is not one of the reasons why petrol is dearer in India than in the United Kingdom ?

The Honourable Sir Muhammad Zafrullah Khan : (a) No.

(b) Yes.

(c) The Honourable Member is referred to the reply given by me to parts (b) and (c) of his starred question No. 208 and the supplementary questions arising therefrom.

(d) No.

(e) Government see no reason for an investigation of the nature suggested.

Mr. Manu Subedar : With reference to clause (d), may I ask whether Government have failed to find confirmation of the information placed by us that there is a price agreement, or is it that Government have not thought it proper to make any inquiry whatsoever ?

The Honourable Sir Muhammad Zafrullah Khan : That matter has been thoroughly threshed out on previous occasions.

Mr. President (The Honourable Sir Abdur Rahim) : There have been lots of discussion on this point.

Mr. Manu Subedar : If the Honourable Member says that he does not want to disclose this information in public interests, I have nothing to say, but otherwise I am asking with regard to (c) whether. . . .

The Honourable Sir Muhammad Zafrullah Khan : As I have said, I have answered this question I do not know how many times.

Mr. Manu Subedar : Sir, I am asking. . . .

Mr. President (The Honourable Sir Abdur Rahim) : As the Honourable Member has said he has answered all these questions, I think it would be better to look up those questions and answers.

Mr. S. Satyamurti : The question on the floor of the House was whether there was a combine or monopoly among various organisations. That question was not answered.

Mr. President (The Honourable Sir Abdur Rahim) : I cannot remember, but I know that these questions were answered, and the Member should look up those proceedings.

Mr. Manu Subedar : With reference to the reply to part (e) of the question, may I know whether it is the intention of Government to permit the poor population of this country to be exploited by His Majesty's Government as shareholders in certain oil companies ?

Mr. President (The Honourable Sir Abdur Rahim) : It is a contentious question. It is against the rules.

Mr. Manu Subedar : Have Government considered the advisability of representing to His Majesty's Government that it is not proper for them to exploit the poor population of this country through shareholding in certain oil companies ?

The Honourable Sir Muhammad Zafrullah Khan : If the Government of India were satisfied that the Honourable Member's allegation is correct they would take the necessary steps.

Mr. Manu Subedar : The allegation is not mine. It is from English authors. I have referred to authoritative works in which this allegation has been made and one of those books is in the Library of the House.

Mr. President (The Honourable Sir Abdur Rahim) : That is a matter of argument.

Mr. S. Satyamurti : Have Government made any inquiries to satisfy themselves that His Majesty's Government own no shares in these companies ?

The Honourable Sir Muhammad Zafrullah Khan : It is not necessary. The mere fact that His Majesty's Government may or may not hold shares in these companies does not necessarily lead to the conclusion which the Honourable Member who has been putting these questions wants Government to draw.

Mr. S. Satyamurti : The question is whether His Majesty's Government have any shares. May I know if Government have made any inquiries, or will make any inquiries to satisfy themselves that His Majesty's Government do not own these shares ?

The Honourable Sir Muhammad Zafrullah Khan : As I have repeatedly said, the mere fact that His Majesty's Government may or may not own shares in these concerns does not lead to these inferences and therefore it is not necessary to make any inquiry.

Sardar Bant Singh : In view of the allegation that His Majesty's Government own shares in the petrol companies and the petrol is being sold at a very high rate in India, will Government consider the proposal why Indians should be taxed for the benefit of His Majesty's Government in England ?

The Honourable Sir Muhammad Zafrullah Khan : The inference does not follow from the premise.

MEETING OF THE NON-OFFICIAL ADVISERS REGARDING THE INDO-BRITISH TRADE NEGOTIATIONS.

895. ***Mr. T. S. Avinashilingam Chettiar** : Will the Honourable Member for Commerce state :

- (a) whether the non-official advisers regarding the Indo-British trade negotiations have met and given their recommendations ;
- (b) whether Government have found themselves in agreement with the advisers ; and
- (c) if so, whether they have been offered to the British Government and with what result ?

The Honourable Sir Muhammad Zafrullah Khan : (a) Yes, Sir.

(b) and (c). The views expressed by the unofficial advisers are under the consideration of Government.

Mr. T. S. Avinashilingam Chettiar : May I know when they expect to finish consideration of this matter ?

The Honourable Sir Muhammad Zafrullah Khan : The report was received only the day before yesterday : surely the Honourable Member can have no grievance that consideration has not been finished yet.

Mr. T. S. Avinashilingam Chettiar : May I know whether it is a unanimous report ?

The Honourable Sir Muhammad Zafrullah Khan : No, Sir.

Mr. T. S. Avinashilingam Chettiar : May I know whether the Government of India expect to place their decision on this report for the consideration of this House this session or the next ?

The Honourable Sir Muhammad Zafrullah Khan : It is extremely unlikely now.

Mr. S. Satyamurti : May I take it that Government will stay their hands in respect of the conclusion of an agreement till the November session and ask for the verdict of this House ?

The Honourable Sir Muhammad Zafrullah Khan : I am unable to follow what the Honourable Member means with regard to staying their hands with regard to the agreement. There are all kinds of suggestions made in the two reports that the Government have received and surely if the Government have to consider the reports and they come to some conclusion it may become necessary to take up certain matters with the Board of Trade as and when they arise.

Mr. S. Satyamurti : I am only asking if before the conclusion of the agreement—I am not talking about the intermediate stages of negotiations between the two Governments—my Honourable friend will place it before the House.—the entire matter of the proposed agreement ?

The Honourable Sir Muhammad Zafrullah Khan : I have stated on previous occasions that Government have to be satisfied apart from the technical question of concluding an agreement, what agreement it is possible to come to, before they can place it before the House.

Mr. Manu Subedar : Have Government decided to throw overboard the recommendations of the non-official advisers ?

The Honourable Sir Muhammad Zafrullah Khan : I have said that the report of the unofficial advisers has just been received and is now under the consideration of the Government. The Honourable Member wants to know whether the Government have already decided to throw overboard those recommendations.

POSITION WITH REGARD TO INDIANS IN BURMA.

896. ***Mr. T. S. Avinashilingam Chettiar :** Will the Secretary for Education, Health and Lands state :

- (a) the latest position with regard to Indians in Burma ;
- (b) how many have till now been repatriated to India ; and
- (c) whether the repatriation still continues, and if so, for what reason ?

Sir Girja Shankar Bajpai : (a) As regards the position in the districts I would refer the Honourable Member to the statement I made in this House on the 5th September, 1938, in the course of the debate on the adjournment motion. According to the latest information received from the Government of Burma the situation in Rangoon was quiet on the night of the 5th and, on the 6th, tension was less acute.

(b) and (c). According to information available to the Government of Burma 3,473 refugees have left for India since the disturbances started ; a few of these paid their own passages but the majority were provided either with free passages or with passages at concessional rates by the shipping companies. It has been suggested to the Government of India that owing to the recrudescence of trouble in Rangoon, the situation as regards refugees has probably worsened. The question as to what assistance the Government of India can render in dealing with this problem is under active consideration.

Mr. S. Satyamurti : May I know what, according to the latest information of the Government of India, is the number of refugees in Rangoon just now ?

Sir Girja Shankar Bajpai : The Government of Burma have not been able to furnish information as to how many refugees there are in Rangoon at the moment.

Mr. S. Satyamurti : May I know whether Government have any information as regards the provision of food and lodging to these refugees in Rangoon just now ?

Sir Girja Shankar Bajpai : That is the point which is under examination really : the question of food and repatriation both.

Mr. T. S. Avinashilingam Chettiar : May I know whether the latest news from the districts says that there is no more of this trouble in the districts ?

Sir Girja Shankar Bajpai : So far as the districts are concerned the situation has not altered since what I stated in this House on the 5th instant.

Mr. T. S. Avinashilingam Chettiar : May I understand that it has not improved ?

Sir Girja Shankar Bajpai : It means that it has not deteriorated ; and the improvement persists.

Prof. N. G. Ranga : Is there any inter-communal conciliation board or committee appointed by the Burmese Government to bring about better relations between the two communities ?

Sir Girja Shankar Bajpai : In this morning's paper I saw a report to the effect that there had been an intercommunal meeting or meeting of communal leaders convened under the auspices of the Mayor of Rangoon and I believe others : I do not know anything more than that.

Dr. Sir Ziauddin Ahmad : Have the Government of India appointed any agent or any reliable person in Rangoon to look after the needs of those who are coming back to India and what facilities are provided for them ?

Sir Girja Shankar Bajpai : I dealt with the question of the agent the other day. We hope that our agent will be in Rangoon very soon and the form of assistance....

An Honourable Member : " Very soon " is very vague.

Sir Girja Shankar Bajpai : I cannot give the date as to whether he will be there by the 29th or 30th, but I am hoping as soon as possible ; and so far as the question of the form of relief is concerned, I have already stated that the matter is under consideration.

Seth Govind Das : Will the Honourable Member give an approximate idea of the month or date when the Agent will be in Burma ?

Sir Girja Shankar Bajpai : I hope it will be before the end of this month.

Mr. S. Satyamurti : May I know if Government have considered taking active and immediate steps to relieve the refugees just now in Rangoon of their hunger, which is an imperious need and cannot wait ?

Sir Girja Shankar Bajpai : I have not, so far as the information in my possession goes, been given to understand that the problem of hunger is the immediate problem : the problem of repatriation appears to be the more pressing.

Mr. S. Satyamurti : Have not the Government of India heard from the representatives of Indians in Burma, now present in Simla, as also from Indian Associations in Burma, that the problem of giving food to these refugees is now taxing all their resources, that their resources are nearly exhausted, and they want food and money for repatriation ?

Sir Girja Shankar Bajpai : I could not say straightaway as to what points have been made in these representations, but my Honourable friend may rest assured that the question of any assistance we can give will come under consideration.

Mr. Muhammad Azhar Ali : May I know if there is any scheme under the consideration of the Government for the relief of these repatriated people in India itself ?

Sir Girja Shankar Bajpai : The only reference that the Government of India have had from Local Governments regarding refugees has been for the purpose of sending these people to their homes ticket-free, and action in that direction has been taken already.

Prof. N. G. Ranga : Will Government consider the advisability of setting apart some funds for the relief of these people and also starting a relief fund to which subscriptions from the public also may be invited ?

Sir Girja Shankar Bajpai : No : I cannot give any undertaking on that point.

Prof. N. G. Ranga : Is it not a fact that the Government of India or the Viceroy did start a relief fund in regard to the Quetta earthquake ?

Sir Girja Shankar Bajpai : As to what the Government of India did in regard to the Quetta earthquake does not arise out of this question.

Prof. N. G. Ranga : The same can be done here also !

FACILITIES FOR TRAINING OF INDIAN APPRENTICES IN FOREIGN FIRMS.

897. ***Mr. T. S. Avinashilingam Chettiar :** Will the Honourable Member for Commerce state :

- (a) in pursuance of his answer to starred question No. 441 on the 24th August, 1938, whether there are any foreign firms which enjoy contracts with the Government of India, but which have not agreed to entertain Indian apprentices ;
- (b) if so, which those companies are, and to which country they belong ;
- (c) whether Government keep any records of applications of Indian students who seek to learn industries in foreign countries ; and
- (d) if so, to how many of them they have been unable to get admission as apprentices to firms ?

The Honourable Sir Muhammad Zafrullah Khan : (a) and (b). Government have no information.

(c) and (d). The Honourable Member is referred to the annual reports on the work of the India Store and Education Departments of the High Commissioner's Office, London, which are in the Library of the House.

I may add that I have information that by far the greatest number of people who have been eligible for such training and who have applied for it in the last two years have been provided for.

Mr. T. S. Avinashilingam Chettiar : May I know whether there are any particular industries in which people wanted training and could not be provided for ?

The Honourable Sir Muhammad Zafrullah Khan : That I could not say : I think the Honourable Member will find that out from those reports. But as I have said before, in 1936-37, out of 196, 176 were provided for in that way, and in 1935-36, 165 were provided for out of 183.

Mr. T. S. Avinashilingam Chettiar : May I know with reference to clause (a), whether contracts are given to these companies only because they get the best terms and other people do not come forward with such terms, or in spite of the fact that they are not prepared to take in Indian apprentices ?

The Honourable Sir Muhammad Zafrullah Khan : That is not a condition in the contracts. Contracts are given out on a purely competitive basis ; but then efforts are made by the High Commissioner and his department to place Indian apprentices not only in these firms but also in firms which have not been given any contracts.

Mr. T. S. Avinashilingam Chettiar : May I know if alternative firms have not come forward with these terms ?

The Honourable Sir Muhammad Zafrullah Khan : I must inquire. I am not aware that they have.

POSITION REGARDING TRADE BETWEEN INDIA AND AFGHANISTAN.

898. ***Mr. Manu Subedar :** (a) Will the Honourable the Commerce Member be pleased to state the present position with regard to trade between India and Afghanistan in respect of :

- (i) difficulties arising out of the trade policy of Afghan Government by virtue of certain trade monopolies ;
- (ii) difficulties in the matter of securing payment for amounts due to Indian merchants, because of restrictions on currency and exchange of Afghanistan ; and
- (iii) restriction on the freedom of Indians to carry on trade freely in Afghanistan itself ?

(b) Will Government be pleased to state whether they have received any representations on the subject, and whether they have taken any steps to ascertain whether these grievances are real, and what steps they have taken to remedy these grievances ?

The Honourable Sir Muhammad Zafrullah Khan : (a) and (b).

12 NOON. The Honourable Member's attention is invited to the replies given by me to parts (a) to (d), (f) and (g) of Mr. Satyamurti's starred question No. 668 on the 1st September, 1938, to part (d) of the reply given to Mr. Abdul Qaiyum's starred question No. 69 on the 1st February, 1938, and to Mr. G. V. Deshmukh's starred question No. 334 on the 17th February, 1938. I may add that the Afghan restriction on currency and exchange, which have doubtless been necessitated by their own economic policy, apply to all countries alike and not to India in particular. The Government of India are not in a position to dictate the economic and exchange policy of a foreign country. I would, however, invite the Honourable Member's attention to the notice published in the *Indian Trade Journal*, dated the 18th August, 1938, showing the facilities given to Indian traders to exchange all Afghan currency in their possession for Afghan goods. A copy of the journal is in the Library.

Mr. Manu Subedar : May I inquire with regard to (a) (iii), restrictions on the freedom of Indians to carry on trade freely in Afghanistan

itself, whether the Honourable Member's reply covers that portion also because, Sir, to the best of my recollection—I have followed all his answers very carefully,—it does not cover, that I want a statement from the Government of the restrictions which have been imposed on the freedom of Indians to do trade freely in Afghanistan.

Sir Aubrey Metcalfe : A statement was laid on the table some time ago giving those restrictions in full.

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(b) WRITTEN ANSWERS.

PROHIBITION OF INDIAN *Lascars* FROM SERVING DURING WINTER MONTHS IN CERTAIN NORTHERN LATITUDES.

899. ***Mr. Brojendra Narayan Chandhury :** Will the Honourable Member for Commerce please state :

- (a) whether the terms of agreement for *Lascars* sanctioned by the Central Government which prohibit service in winter months in cold latitudes have recently been relaxed ;
- (b) if so, which restrictions have been lifted, and what conditions, if any, have been imposed ;
- (c) whether any representations on this subject were received from shipping companies, seamen or Provincial Governments ; if so, whether he will lay copies of them, or summaries, on the table ; and
- (d) whether he will lay copies of the order referred to in part (b) on the table ?

The Honourable Sir Muhammad Zafrullah Khan : (a), (b) and (d). I would refer the Honourable Member to the Mercantile Marine Department Circular No. 31 of 1938, dated the 22nd August, 1938, a copy of which was laid on the table with reference to starred question No. 795 on the 6th September, 1938.

(c) Yes. Representations urging the removal of climatic restrictions were received from certain shipping companies and seamen's unions.

GROWTH OF ARECA-NUT PEST IN INDIA.

900. ***Sri K. B. Jinaraja Hegde :** (a) Will the Secretary for Education, Health and Lands be pleased to state the areas where the best areca-nut grows in India ?

(b) Are Government aware that serious pests are prevalent in areca-nut growing area in South Kanara district ?

(c) Has the Imperial Agricultural Research Institute been able to suggest any remedies to arrest the pest ?

(d) What is the estimated annual loss to the areca-nut crop for the last five years in India on account of the pests ?

(e) Which are the areas in India where the areca-nut pest has been prevalent for the last five years ?

(f) Do Government intend to take any steps to arrest the areca-nut pest from spreading ?

Sir Girja Shankar Bajpai : (a) Areca-nuts are grown in Madras, Bombay, Bengal, Assam, Mysore, Travancore and Cochin. Madras, Mysore, and Bombay have the largest acreage, but Government have no information about the areas which produce the best quality.

(b) and (e). A certain fungus is prevalent in an area stretching along the Western Ghats from North Kanara to Cochin.

(c) Provincial Agricultural Departments have done considerable research work on these pests and suitable control measures are being adopted in all areas.

(d) Government have no information.

(f) If any Provincial Government or State approaches the Government of India, the question, whether they can give any help in the matter, will be considered.

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IMPORT OF ARECA-NUT.

901. ***Sri K. B. Jinaraja Hegde :** (a) Will the Honourable Member for Commerce be pleased to state the places outside India from which areca-nut is imported ?

(b) What are the ports through which such areca-nut is imported ?

(c) What is the quantity and value of areca-nut imported from each place outside India ?

(d) What is the total quantity and value of areca-nut imported each year into India for the last ten years ?

(e) What is the rate of import duty on foreign areca-nuts ?

(f) What is the total of import duty on an average per year, if the figures for the last ten years are taken into consideration ?

(g) In which areas in India does areca-nut grow on a commercial scale ?

(h) What is the quantity and value of areca-nut grown each year in India during the last ten years ?

(i) Is the production of areca-nut in India increasing or decreasing ?

(j) If it is decreasing, what are the causes ?

(k) What steps have Government taken to arrest the decrease ?

The Honourable Sir Muhammad Zafrullah Khan : (a), (c) and (d). The Honourable Member is referred to Volume I of the Annual Statements of the Sea-borne Trade of British India and the Monthly Accounts under 'Spices—Betelnuts', copies of which are in the Library.

(b) and (g) to (j). Government have no information.

(e) The standard rate of import duty is 45 per cent. *ad valorem*, and the preferential rate on Colonial products 37½ per cent. *ad valorem*.

(f) Import duty realised on betelnuts is recorded separately only from 1931-32. The average of the gross amounts collected in the seven years 1931-32 to 1937-38 is Rs. 54,57,000.

(k) Does not arise.

PRELIMINARY TRADE AGREEMENT BETWEEN INDIA AND SOUTH AFRICA.

902. ***Mr. Ram Narayan Singh :** Will the Honourable the Commerce Member be pleased to state whether there has been a preliminary trade agreement between the Government of India and the Union Government of South Africa and, if so, whether he will make a full statement on the subject ?

The Honourable Sir Muhammad Zafrullah Khan : Yes, Sir. The temporary Commercial Agreement concluded between the Governments of India and the Union of South Africa is contained in the Notes exchanged between the two Governments on the 8th March, 1938, copies of which along with a list of other Commercial Treaties affecting India, were laid on the table of the Council of State on the 8th April, 1938. The Honourable Member's attention is invited to the Debates of that day.

His attention is also invited to the answers given to the two short notice questions asked in this House on the 18th March, 1938, and to the two Press Communiqués on the subject issued by Government in that month, copies of which are in the Library of the Legislature.

JOINT LAC CONFERENCE HELD AT RANCHI.

903. ***Mr. Ram Narayan Singh :** Will the Secretary for Education, Health and Lands be pleased to state whether there has been a Joint Lac Conference at Ranchi of the representatives of the Government of India and various Local Governments to consider the steps to be taken to improve the lac industry of the country, and if so, what are the specific recommendations of the Conference to the Government of India in this matter ?

Sir Girja Shankar Bajpai : A Joint Lac Conference, convened by the Government of Bihar, was held at Ranchi, and was attended by representatives of the Governments of Bihar, United Provinces and the Central Provinces and of the Myurbhanj and Rewa Durbars. The members of the Indian Lac Cess Committee participated in the Conference at the request of the Bihar Government. In addition, the Agricultural Marketing Adviser to the Government of India, the Director, Indian Lac Research Institute, and the Lac Marketing Officer attended the Conference. Proceedings of the Conference have not yet been received.

LAC RESEARCH INSTITUTE AT NANKUM.

904. ***Mr. Ram Narayan Singh :** (a) Will the Secretary for Education, Health and Lands be pleased to state the total expenditure of the Government of India hitherto incurred in establishing and maintaining the Lac Research Institute at Nankum since its very establishment till the end of the year 1937 ?

(b) What have been the achievements of this Institute during all these years in the form of directly benefiting either the lac cultivators, or the lac traders, or the Government ?

(c) What are the scientific researches hitherto made by this Institute which the lac cultivators are successfully applying to their methods of cultivating lac and thereby getting greater and better produce, or which the lac traders are applying to their methods of purchase and sale and thereby getting better price ?

Sir Girja Shankar Bajpai : (a) Expenditure on the Lac Research Institute, Namkum, is met from the proceeds of the Lac Cess ; Government of India do not incur any expenditure on the maintenance of the Institute.

(b) and (c). Attention of the Honourable Member is invited to Appendix V to the Report of the Indian Lac Cess Committee for the period from 1st August, 1931, to 31st March, 1936, and Appendix III of the report for 1936-37. A copy of each of these reports is available in the Library of the House.

RECOMMENDATIONS OF THE ROYAL COMMISSION ON AGRICULTURE.

905. ***Mr. Ram Narayan Singh :** Will the Secretary for Education, Health and Lands be pleased to make a full statement as to whether the Government of India, or to their knowledge any of the Local Governments have given effect to some, or all, of the recommendations of the last Royal Commission on Agriculture and, if so, which are the recommendations hitherto given effect to in this way ?

Sir Girja Shankar Bajpai : Reports are issued by the Government of India biennially showing the progress made in giving effect to the recommendations of the Royal Commission on Agriculture in India and the attention of the Honourable Member is invited to Part I of the fifth report which gives complete information about the action taken up to the end of 1935 on the recommendations concerning the Government of India. As regards the action taken by Local Governments on recommendations which concern them, his attention is invited to Part II of the first five reports. All these reports are available in the Library of the House. The sixth report which will contain information about action taken by the Central and the Provincial Governments up to the end of 1937 is now in preparation and copies will be supplied to the Library as soon as it is ready.

UNWRITTEN PACT MENTIONED BY MR. GANDHI.

906. ***Dr. Sir Ziauddin Ahmad :** (a) In view of the fact that an unwritten pact, called a gentlemen agreement, could only be settled by verbal conversation, will the Honourable the Leader of the House be pleased to state the name of the officer or officers in the Government of India who negotiated on behalf of the Secretary of State ?

(b) Did the Secretary of State for India consult the Government of India about the amendment to the Government of India Act of 1935 ?

(c) If so, what those amendments are ?

The Honourable Sir Muhammad Zafrullah Khan : With your permission, Sir, I shall reply to questions Nos. 906 and 907 together.

I have nothing to add to the replies I gave to starred question No. 446 on the 24th and unstarred question No. 15 on the 29th August, 1938.

UNWRITTEN PACT MENTIONED BY MR. GANDHI.

†907. ***Dr. Sir Ziauddin Ahmad :** Will the Honourable the Leader of the House please state whether the Government of India will ask the Honourable Secretary of State for India whether he is a party to an unwritten pact mentioned by Mr. Gandhi ?

PROTECTION OF MINORITIES.

908. ***Dr. Sir Ziauddin Ahmad :** (a) Will the Honourable the Leader of the House state whether it is not a fact that protection of minorities is included in the special responsibilities of the Governors ?

(b) Did any Governor use this power for the protection of Muslim interest in spite of the demand of Muslims ? Did they refrain from using any such power on account of unwritten pact ?

The Honourable Sir Muhammad Zafrullah Khan : (a) Yes.

(b) The Government of India have no information.

STATEMENTS LAID ON THE TABLE.

Information promised in reply to starred questions Nos. 952 and 1038 asked by Mr. Brojendra Narayan Chaudhury on the 23rd and 28th March, 1938, and also unstarred question No. 114 asked by him on the 23rd March, 1938.

RECOMMENDATIONS OF THE ASSAM FLOOD ENQUIRY COMMITTEE re RAILWAY EMBANKMENTS.

Starred question No. 952.—(a) and (b). Yes.

†For answer to this question, see answer to question No. 906.

(e) The Committee accepted the view of the Surma-Valley Conference of 1913 that it would suffice if railway embankments were provided with waterways on a scale to ensure that in years of normal flood no such raising of the water level on one side would occur as would cause material damage to crops on that side.

(d) Yes.

(e) They still continue—no afflux was shown between 1934 and 1937.

(f) Yes.

RECOMMENDATIONS OF THE ASSAM FLOOD ENQUIRY COMMITTEE *re* RAILWAY EMBANKMENTS.

Starred question No. 1038.—(a), (b) and (c). Yes.

(d) Government have no information of the opinions expressed by individual members in discussion. The Honourable Member's attention is, however, drawn to the fact that these waterways were blocked up very effectively by the road thirty years before the railway was built.

FLOOD LEVEL GAUGES PUT UP ON THE KULAIURA-SYLHET BRANCH OF THE ASSAM BENGAL RAILWAY.

Unstarred question No. 114.—(a) Yes. Eight gauges were erected before the flood season of 1931. They are still there.

(b) The records maintained by the railway are reported to have given the following figures for afflux.

Mile.	1931.	1932.	1933.	1934.	1935.	1936.	1937.
230/6 ..		—1 in.	..	..	..
231		—2 in.	—2 in.	..		..
231/10 ..			—3 in.	..	..	..	..
232	—1 in.	..	..	..

Information promised in reply to parts (b), (c) and (d) of starred question No. 391 asked by Mr. Lalchand Navalrai on the 23rd August, 1938.

CONDONATION IN BREAKS OF SERVICE CAUSED DURING THE STRIKE ON THE NORTH WESTERN RAILWAY.

(b) There have been some instances in which the ex-strikers were asked to produce evidence to show that they offered themselves for employment within the specified time.

(c) It is not possible at this distant date to verify whether such oral promises were made or not.

(d) The General Manager, North Western Railway is issuing instructions that in view of the special circumstances of the 1925 strike production of documentary evidence should not be insisted upon in support of the claim that an ex-striker offered himself for employment within the specified time unless reasonable grounds exist for questioning the claim. The General Manager is also being requested to review the cases in which gratuity was refused for want of documentary evidence.

Information promised in reply to starred question No. 411 asked by Mr. Manu Subedar on the 23rd August, 1938.

XB ENGINES.

A statement showing the information promised is attached.

Statement showing particulars of 'XB' Type Locomotives on various Railways.

Railways.	No. of engines on line.	Price per engine.		Year placed in service.	Name of manufacturers.	Remarks.
		F.O.R. Indian Port.	Completely erected at Railway Work-shops.			
M. & S. M. Ry.	12	Rs. 1,07,721	Rs. 1,10,049	1930	Sir W. G. Armstrong Whitworth & Co.	
	6	95,064	96,878	1931	The Vulcan Foundry Ltd.	
	5	1,13,106	1,16,756	1928	Do.	
S. I. Ry.	2	1,44,181	1,47,194	1936	Do.	Transferred from G. I. P. Ry. in 1933.
	2	1,14,791	1,22,912	1929	Do.	
	9	1,04,741	1,07,946	1929	Do.	
E. I. Ry.	10	95,053	1,00,068	1932	Do.	
	12	1,06,263	1,14,423	1928	Do.	
	2	1,03,343	1,20,049	1928	Do.	
	4	1,06,739	1,20,000	1928	Do.	Transferred from E. B. Ry. in 1931. Transferred from E. B. Ry. in 1931. Transferred from G. I. P. Ry.
	6	1,03,340	1,16,466	1929	Do.	
E. B. Ry.	4	1,13,106	1,16,756	1928	Do.	
	1	1,06,739	1,20,000	1928	Do.	
	6	1,03,340	1,16,466	1929	Do.	
	11	1,01,111	1,10,538	4 in 1930 7 in 1931	Sir. W. G. Armstrong Whitworth & Co.	
H. E. H. the N. S. Ry.	3	1,06,451	1,08,065	2 in 1929 1 in 1930	The Vulcan Foundry Ltd.	
	4	1,05,931	1,08,018	1930	North British Loco. Co.	

Information promised in reply to starred question No. 618 asked by Mr. Satya Narayan Sinha on the 30th August, 1938.

SUPPRESSION OF IMMORAL TRAFFIC IN WOMEN IN THE DELHI PROVINCE.

(a) None. The Punjab Suppression of Immoral Traffic Act has not yet been extended to the Delhi Province.

(b) and (c). One brothel, five hotels and six Ashrams were brought to the notice of the Delhi Police. (The six Ashrams have been closed, most of the persons connected with them having been successfully prosecuted under the Indian Penal Code.) I do not think that any useful purpose will be served by disclosing the names of the persons running these institutions.

MESSAGE FROM THE COUNCIL OF STATE.

Secretary of the Assembly : Sir, the following Message has been received from the Secretary of the Council of State :

“ Sir, I am directed to inform you that the Council of State at its meeting held on the 8th September, 1938, agreed, without any amendment, to the Bill to amend the Criminal Law which was passed by the Legislative Assembly at its meeting held on the 24th August, 1938.”

The Honourable Sir Muhammad Zafrullah Khan (Leader of the House) : Sir, yesterday, I promised to make a statement with reference to a certain incident. With your permission, I would defer making the statement till Monday as the question is being taken up with the Leaders of Parties.

THE MUSLIM DISSOLUTION OF MARRIAGE BILL—*contd.*

Mr. President (The Honourable Sir Abdur Rahim) : The House will now resume consideration of the following motion moved by Qazi Muhammad Ahmad Kazmi on the 26th August, 1938 :

“ 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. Farquhi, 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.”

Syed Ghulam Bhik Nairang (East Punjab : Muhammadan) : Sir, in my unfinished speech made last time I told the House that the Bhopal Government had passed what is called the law to protect the rights of married parties according to the *fatwa* of the Ulema and had accepted the principle of giving relief to parties who are governed by the Hanafi school of law, when the application of Hanafi doctrines involved hardship, by the application of the doctrine of the Maliki law. But the Bhopal Government stole a march over the rest of India in this matter, because a highly educated and enlightened lady ruler, Her late Highness

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Sultan Jahan Begum Sahiba presided over the destinies of Bhopal and felt very strongly for the oppressed members of her sex. A little later a Bill practically to the same effect and also based on the principles of the Shariat was introduced in the Hyderabad Legislature, and, on inquiry, I understand that it is still on the legislative anvil. Meanwhile, the book which has already been referred to by Mr. Kazmi in his speech which contains a thesis on four different but correlated topics *Al Hilatul Najiza* was prepared by Maulana Ashraf Ali of Thanā Bhawan, who is one of the greatest divines of the present age in India, and after very exhaustive investigations he came to certain conclusions, the gist of which may be stated as follows : that in matters of dissolution of marriage by a judicial decree the principles of Maliki law may be applied to parties which are ordinarily governed by the Hanafi law ; it is also explained in that book what the principles of Maliki law are. In the closing portion of the book, the doctrine relating to effect of change of religion by a Muslim married woman on her marital status has also been investigated. That book was compiled after very great labour and research, and any one who can read Urdu can easily understand by going through that book how much research it involved. For months and months the learned Maulana was carrying on correspondence with the Maliki Ulema at Madina Sharifa, because that is the great centre of jurisprudence relating to Maliki law. Questionnaire after questionnaire was sent to these Maliki Ulema and very exhaustive answers were obtained, and after verifying the answers by reference to the books available in India, the Maulana came to certain conclusions and embodied them in this book. So this book is most authoritative, being written by that great Mufti Maulana Ashraf Ali Saheb and endorsed by the Ulema of Deoband and Saharanpur, their signatures and seals being borne by this book. When this book came out the vexed question of relief of oppressed married Muslim women appeared to all to have been satisfactorily solved, but the difficulty which I have already pointed out still remained, that it would be difficult to induce the courts to believe that the principles of the Maliki law should be applied under certain circumstances to people governed by Hanafi law. For that purpose, after mature consideration, we 15 Muslim Members of this Honourable House came to the conclusion that we must introduce a Bill, and thereupon gave notice of the Bill which, in a slightly altered form, is now under consideration in this House in the name of Mr. Kazmi.

Sir, in the speeches which have been made on this Bill by speakers who have preceded me, certain comments have been made on clauses 3 and 4. It was stated that the drafting of those two clauses was not satisfactory, that portions of these clauses are indefinite and vague and require further clarification. As to that, I need not try to defend the drafting or the wording, because we are now seeking to get this Bill committed to a Select Committee, and the Select Committee can among other things criticise the drafting as well and improve it. It has also been said that clauses 3 and 4, instead of stating what the Hanafi and Maliki law is, merely say that the cases under " A " shall be heard and decided according to Maliki law, and the cases under " B " shall be heard and decided according to Hanafi law. The reason for that is that there are certain matters of detail as to the way in which these questions are

to be considered and decided by the court and if all these matters of detail had been embodied in so many clauses, the Bill would have become inordinately long and, perhaps, this House would have felt embarrassed in considering such a Bill and we thought that books on Hanafi, Shafe, and Maliki law are available in the market. Even in the English language there are very authoritative books. Once we recognise that such and such a thing is to be decided according to Maliki law or Hanafi law, there will be no difficulty for the courts to refer to those books and the questions will be easily solved. Anyhow, at the present stage, I would say that the precise points which are laid down in those systems of law were not embodied in the form of so many sections and clauses but, if the Select Committee think that definite statements of law should be embodied in the clauses, I think it can be very easily done without, in any way, altering the character of the Bill. I may point out that the Bhopal Code to which I have referred contains 12 sections, while our Bill contains only six clauses. In spite of the fact that those 12 sections go into some detail, I find that in several clauses there are references to certain books. That is in the very nature of the subject treated, as minute questions have to be left to be decided by the court by a reference to the authoritative books on the subject.

Now, I want to make a few remarks on clause 5 which has been the target of many an attack and, I may be excused for saying, the bugbear of many an imagination. A good deal has been read into Clause 5 by panicky people which, I assure this House, was not in the mind of those who put forward this Bill for the consideration of this House. In fact, I am responsible for drafting the whole thing and, in my mind, no thought of the kind which has been said to be lurking in Clause 5 ever entered. Anyhow, I will deal with those points. The position of the Muslims is simply this, as stated in the Statement of Objects and Reasons. For a very long time the courts in British India have held without reservation and qualification that under all circumstances apostasy automatically and immediately puts an end to the married state without any judicial proceedings, any decree of court, or any other ceremony. That has been the position which was taken up by the Courts. Now, there are three distinct views of Hanafi jurists on that point. One view which is attributed to the Bokhara jurists was adopted and even that not in its entirety but in what I may call a mutilated and maimed condition. What that Bokhara view is has been already stated by Mr. Kazmi and some other speakers. The Bokhara jurists say that marriage is dissolved by apostasy. In fact, I should be more accurate in saying—I have got authority for that—that it is, according to the Bokhara view, not dissolved but suspended. The marriage is suspended but the wife is then kept in custody or confinement till she repents and embraces Islam again and then, she is induced to marry the husband, whose marriage was only suspended and not put an end to or cancelled. The second view is that on apostasy a married Muslima ceases to be the wife of her husband but becomes his bondwoman. One view, which is a sort of corollary to this view, is that she is not necessarily the bondwoman of her ex-husband but she becomes the bondwoman of the entire Muslim community and anybody can employ her as a bondwoman. The third view, that of the Ulema of Samarkand and Balkh is that the marriage tie is not affected by such apostasy and that the woman still continues to be the

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wife of the husband. These are the three views. A portion of the first view, the Bokhara view, was taken hold of by the Courts and rulings after rulings were based on that portion.

Now, from the very beginning, when one or two cases were decided by the Courts in that way, the Muslims began to protest and protest vehemently. Agitation has been going on spasmodically in order to get this view corrected, but the Courts, as you know, Sir, are very difficult to persuade to go against an established precedent, when it happens to take the form of a ruling of a High Court. Now, when we introduced this Bill in this House, I did not remain contented with what Maulana Ashraf Ali had done by investigating the doctrine, pronouncing definite *fatwa* about the matter, and getting them supported by the Ulema of Deoband and Saharanpur. I issued a questionnaire and a very detailed printed circular letter and a copy of the Bill to 89 different Ulema throughout India, as many as I could think of and ascertain names and addresses of, and I asked them to pronounce their authoritative opinion on the matter. Out of those 89 people addressed by me, 65 have sent replies. The rest did not send any reply. Out of the 65 who have sent their replies, some have not gone into the details of the question put to them and have given vague answers. Some of them—very few, one or two—did not agree with Clause 5 and the rest of them 48 in number very distinctly agreed with the Bill as it stands and supported Clause 5 ; some of them writing very elaborate *fatwas*, extending over several pages, quoting all possible authorities and discussing them in a most intelligent and lucid manner. I have got those *fatwas* with me here but they are written in Urdu and contain very large extracts from the original authorities in Arabic. It will not be of any use to this House if I start reading them and the time at my disposal is also very short. By the time the consideration stage of the Bill comes in the next Budget Session, I hope to translate literally all these *fatwas* and get them printed in book form and circulate them to the Honourable Members of this House and all others concerned so that they may know, at first hand, what the *fatwas* say. That I hope will establish the position, which to my mind is absolutely unassailable, viz., that the true doctrine of Muslim law is not that which has been accepted in the so many rulings but that which is embodied in Clause 5. It is very funny that in the opinions which have been elicited, during circulation, some people have been at great pains to collect all those judicial pronouncements and rulings which hold that the apostasy of a woman automatically results in the dissolution of marriage and who triumphantly show them to us and say, "what about Clause 5 ? Here is an authoritative opinion against it."

Now, I have really great admiration for the innocence and simplicity of these gentlemen. They quite naively forget that it is precisely because these rulings are there that we have introduced this Bill and we ask this House to pass Clause 5. Our position is that those rulings are erroneous. These rulings are a heap of blunders piled one upon another. Sir, two wrongs do not make one right; not even a hundred wrongs can make one right, and we challenge the correctness, the authority, the binding character of these rulings in the light of Muslim Law. With all due respect for these judicial pronouncements, we cannot forget that every profession or vocation or calling breeds and develops its own peculiar

mentality, and the mentality of a judge, among other things, makes him entertain a habitual respect for precedents, so much so that judges practically become precedent-shackled, so to say, and they cannot think of thinking independently, being committed to precedents established by their predecessors or by other High Courts. It is in that groove that their minds constantly move. I say all this with all respect to them. Sir, it is no use showing me those rulings when you know that it is precisely against these rulings that I am appealing to this House. This House is well aware that it is not only in this one solitary instance that judicial error is sought to be corrected by legislation, but in many other cases, too, there have been judicial errors or conflicts of judicial opinion or uncertainties and vagueness of law. Errors of judicial view are being constantly corrected by legislation. In this particular matter there has been error after error and a tragedy of errors. To show me those rulings is begging the question. Surely, it should be realized that it is no answer to my Bill that because the High Courts have decided against me, I have no business to come to this House and ask it to legislate this way or that way. The question is—what is the Muslim Law? I think it will be readily conceded that in order to ascertain the correct Muslim law we have to go to the original sources and to the experts who have made it their life business to study that law and to pronounce upon that law.

The rulings of the High Courts and of even the Privy Council—I say this with all the respect due to them—in the matter especially of such special laws as the Muslim Law or the Hindu Law—cannot always be relied upon, these learned Judges are, after all, amateurs so far as these laws are concerned, and whenever any tough question arises, we must go, in the case of Muslim Law, to the Maulvis—to the best of them of course—such of them as possess not only the soundest learning but also the best legal acumen and have the widest experience in the matter of pronouncing upon questions of Muslim law. We cannot go to Wilson or D. F. Mulla or even to Sayyid Amir Ali in preference to the Ulema. We have to go to these Maulvis and they alone are competent to pronounce upon questions of Muslim Law. That we have done and when their view is there, then clearly, I submit, we can very safely ask this House to ignore what has been judicially laid down on the point. Sir, while talking of the judicial mentality I am reminded of Sayyid Amir Ali. Everybody in this House knows that he was a judge of the Calcutta High Court and later on he became a member of the Judicial Committee of His Majesty's Privy Council, the highest judicial tribunal in the Empire. Well, when sitting in the Judge's chair, in the High Court at Calcutta or sitting as a member of the Judicial Committee and hearing and deciding a case of law, he lays down a proposition of law, that is at once accepted as binding, but when that very Sayyid Amir Ali, an expert in Muhammadan Law as he was, a specialist in that special law, a Tagore law lecturer and all that, and having as he had had life-long experience of Muslim Law and written three volumes of Muhammadan Law, expresses certain opinions in his books and the opinions contained in those books go before a Judge or an author who finds certain rulings of a High Court, on a certain point, and Sayyid Amir Ali lays down a contrary proposition, what do we find? He would say, "I cannot afford to go by the opinion of Amir Ali". Sir, this is judicial and legal red-tapism. I do not blame anyone, but anyhow that is the position and the only remedy is to legislate. In

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fact, Sir, as an instance, the views of Sayyid Amir Ali on questions of *waqf al-awlad* were ridiculed for a long time. For about two or three generations the Privy Council rulings laid down that a settlement by way of a *waqf* on one's family and children offended against the law prohibiting perpetuities, and the Muslim community protested and agitated and went on doing so in vain. The Courts followed the lines laid down by the Privy Council till in 1912-13 our learned and talented leader, Mr. Mahomed Ali Jinnah, introduced a Bill which later on, after being passed, came to be called the Mussalman Waqf Validating Act, and, in spite of all the current of decisions of the Privy Council to the contrary, it was declared that such *waqfs* were valid. Surely, Sir, that was only one matter, and there are many other instances of an error committed by a judicial authority being corrected by the Legislature. That is also an instance of the way in which true and correct and right opinions, held for any length of time by those qualified to express them, are derided till they are eventually accepted by the Legislature.

Now, Sir, I wish to touch upon a few points arising out of the remarks made by various Honourable speakers who have preceded me. I will, first of all, take a few points touched by my Honourable friend, Mr. Asaf Ali. It was he who told us on behalf of the Congress Party that the final attitude of the Congress Party towards this Bill could not be declared at this stage and would be made clear after the Bill had been through the Select Committee. Till then, the official attitude of the Party will not be declared. So, Mr. Asaf Ali has discussed the subject from his personal point of view. After criticising Clauses 3 and 4 he proceeded to discuss Clause 5 and he said that the position taken up in Clause 5 is opposed to the *nas* but in spite of my demand he did not quote the *nas*. I do not blame him for that. I am myself not competent to quote the *nas* and to support my position with reference to it in an authoritative way, because I am not qualified to properly construe and interpret and apply the text of the Holy Koran. I can tell you what the texts of the Holy Koran bearing on the point are. I can translate them and can also make a few observations on them as a layman or an amateur, but I dare not say that my opinion would be binding on anyone. So, as far as the matter of the texts of the Holy Koran or the Hadis or the texts of the authoritative works on jurisprudence are concerned, they must be left to those who are qualified to handle them, namely, the Ulema, whom I have already consulted and from whose opinions I am satisfied that the position taken up in Clause 5 is correct. Mr. Asaf Ali has said that a marriage between a Muslim and an athiest and so on is void *ab initio*, that is to say one of the parties to the marriage is in that irreligious condition at the time when the marriage is contracted, but how does it follow from this that if originally the marriage was perfectly valid, it becomes invalid because something supervenes subsequently? He did not support his contention by any authority and I fail to see the reasonableness of it. He further said that according to the Muslim Law, marriage is a contract and if one of the conditions of the contract is broken, the marriage becomes void. That perhaps could be contended if the parties were not only Muslims at the time of the marriage but also undertook as part of the marriage contract that they shall remain Muslims for ever and ever. The latter thing is

never mentioned at the time of contracting a marriage. I do not know how a condition of the marriage contract fails when one of the parties subsequently becomes an apostate. So, this objection, to my mind, does not affect the correctness of my proposition. Then he said that this is really imitating the Hindu Law because, under the Hindu Law, a marriage is indissoluble in spite of apostasy. I have very clearly stated that it was the Ulema of Samarkand and Balkh who laid down this doctrine centuries ago. They never knew anything about the Hindu *Dharamshastra* and they could never dream of the rulings of the High Courts in India which lay down that the Hindu marriage is indissoluble. So, to say that I am imitating the Hindu Law or the Hindus is unfounded. I am simply trying to enforce the Muslim Law.

Then, Mr. Asaf Ali also said that very complicated questions will arise if the wife, in spite of a change of religion, still remains the wife of her Muslim husband. He said it would lead to questions of inheritance, questions of guardianship of children and questions relating to dower. I do not fear any of these things. I know that under the universally admitted rule of Muslim Law, a Muslim is free to marry a Christian wife or a Jewish wife, who may remain a Christian or a Jew from her marriage till her death and yet, as the wife of a Muslim husband, she would be entitled to succeed to her legal share in the property of her husband. That is the clear Muslim Law. What do I care if she changes her religion subsequent to the marriage and sticks to it. (Interruption.) You will learn more by listening to me than by interrupting me. Suppose, Mr. Asaf Ali gets rid of the inconvenient contingency of an apostate wife succeeding a Muslim husband by saying that the marriage becomes void *ipso facto* and immediately on apostasy, then what about the same apostate lady succeeding as daughter or succeeding as sister under given eventualities? For that there is Act XXI of 1850, the Caste Disabilities Removal Act. Under that Act she would still be entitled to succeed as daughter. If she can succeed as daughter to a Muslim father in spite of her apostasy, what difference is there if she also succeeds to a Muslim husband?

Mr. M. S. Aney (Berar : Non-Muhammadian) : May I ask my Honourable friend if he thinks that the law of 1850 is in conformity with the position of the Muhammadan Law?

Syed Ghulam Bhik Nairang : I consider that law from the Muslim point of view to be wrong, but I know it is binding on me all the same and in the present condition of things I have got to put up with it. I see no difference between that hardship and the new hardship.

Now, Sir, I will briefly touch upon the speeches made by Bhai Parma Nand and Mr. Bajoria. Bhai Parma Nand was very moderate and temperate, and I must admire him for that. That is the proper attitude of a responsible man, but Mr. Bajoria was very much heated over clause 5, and I do not understand his attitude. To quote his actual words, he said that he was opposed to that clause lock, stock and barrel. This Marwari gentleman appears to be very fond of that phrase, and I have noticed that whenever he opposes anything, he does not believe in any half-way house, but must oppose it lock, stock and barrel. Now, what was the reason for his opposition? The reason is that he is

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informed by the Rajputana Hindu Sabha and probably also by a press statement issued by Mr. Savarkar that there is a great danger lurking in this clause for the Hindu community, and, according to Mr. Savarkar, God alone knows how many Hindu married and unmarried women are being abducted by Mussalmans who are forcibly converted, and, thereafter, forcibly married to Muslim husbands. Such being the case, if this law is passed, and if those women are subsequently so minded and want to return to their original faith, they will be prevented from achieving that desire because they would know that under this clause they still remain the wives of the Muslim husbands. Now, Sir, as far as this piece of information goes that thousands of Hindu women are abducted in that way and converted and married in that way, it is not only news, but startling news to me. I can believe, as a reasonable man, that some Hindu women, perhaps, under certain circumstances, fall into the hands of bad characters and they are abducted, they may also be converted not for the sake of religion but to give a legal colour to the marriage which they undergo after conversion with those who abduct them or with those to whom they are passed on. In a few cases it may happen, but I am unable to believe that thousands of such cases or even hundreds of such cases take place. Such cases if they take place must be very rare, but let me, for a moment, take the statement for what it is worth. It is admitted that they are abducted, and we know the definition of abduction given in the Indian Penal Code. It is alleged that they are forcibly converted. If they are forcibly converted, then I tell you that they are not Muslims at all.

The Holy Quran says :

“ *La ikraha fī dīn.* ”

“ There shall be no compulsion in the matter of faith.”

That is laid down most clearly, that is the declared principle in the matter of conversion. Then it is said they are forcibly married. There can be no such thing as forcible marriage. Marriage is the result of free consent. Forcible marriage is a contradiction in terms. Now, I say, if any woman is really abducted, and forcibly converted and then forcibly married, she is not governed by Clause 5. Clause 5 contemplates a Muslima, a *bona fide* real live Muslima, married in the real *shara sharif* sense to another *bona fide* Muslim. That is what Clause 5 contemplates. As soon as you give me a case which is on the facts covered by the terms of your report, I would say it does not come within Clause 5. I do not care what happens to such a woman. If the woman regains her liberty let her go back to her former faith because she has never come to the Muslim religion at all. So, either you are thinking of a real genuine conversion to Islam and a *bona fide* real genuine marriage or you are thinking of this so-called marriage, that is to say forcible marriage after forcible conversion. If it is the former that is passing in your mind, then of course I cannot help it, because you do not mean what you are saying.

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. S. Satyamurti (one of the Panel of Chairmen) in the Chair.

Syed Ghulam Bhik Nairang: Sir, I have practically disposed of all the points that I had to urge in connection with the motion before the House because I do think that the present is not a fit occasion to go into minute details about the provisions of the Bill. I was dealing with the objection by some of the non-Muslim speakers that Clause 5 had the effect of injuriously affecting Hindu interests. I have practically disposed of that point but I may say this that, as already indicated in the speech of the Honourable Member, if there is any possibility of any harm being done to Hindu interests or non-Muslim interests by any application of Clause 5, that is a question which can be considered at leisure coolly and calmly. I do contend, and in fact it is an appeal I make to the House and to all Honourable Members, that in considering a matter of this kind we should be cautious in stating the facts and cautious in drawing any inferences from them. To use strong language or show excitement over a matter of this kind, as was evident from a certain press statement of the President of the Hindu Mahasabha, Mr. Savarkar, is not the proper kind of attitude towards matters of this kind. We, here in India, are different communities, with different social organisations and different social laws, and it may be that on certain occasions some of the social institutions of one community may come into conflict with the social institutions of another community. I think if we are only reasonable and mind our duty as citizens of this vast sub-continent, we can arrange to solve our differences and to come to understandings which will promote the happiness of all the communities. I may, in this connection, remind the House of a few remarks that I made when the Arya Marriage Validation Bill was under consideration in this House. We are talking of married people and of the married state and are trying to remove the causes of the unhappiness of married Muslim women, but let us think broadly of the married state in all the communities; and in that, connection, I would call attention to my speech on the Arya Marriage Validation Bill. I said :

“ I would appeal to this House to consider this subject in all seriousness. Married life irrespective of caste, creed, religion or nationality is sacred and ought to be held sacred by all right minded men. Anything tending in the least to disrupt homes, and interfere with the peaceful course of married life should be simply discouraged. There ought to be no encouragement given to the nefarious activities of people who may pretend to be Arya Samajists or Muslims or others, whose real trade is to abduct women, take them from one part of the country to another and pass them on to others for a consideration. It is a well-known fact that in certain parts of the country the number of women is smaller than the number of men and therefore constantly a trade is going on in some parts of India by which women are taken to certain other parts where there is a shortage of women and where women are wanted in larger numbers. That traffic is flourishing and as a consequence of this so many homes are being ruined every day. I think, Sir, under the colour of effecting a social reform among the Arya Samajists, we should not take any dangerous step, because, although it may be honestly meant that that clause is not intended to in any way help such people, yet it has the potentiality, and that dangerous potentiality should be guarded against.”

Now, I say that what is sauce for the gander is sauce for the goose. If I held out a warning against any possibly dangerous application of

[Syed Ghulam Bhik Nairang.]

a clause which was then under discussion,—and the House will remember that eventually we came to a certain compromise and the whole dispute was settled,—I am equally open to an offer of a reasonable, rational, *bona fide* compromise. We should always be willing to come to reasonable compromises and that is not a thing over which we should quarrel or lengthen the debate. We can take it that if there is anything which, after mutual consultation, we consider should be suitably amended, it can be amended. That I think should decide the attitude of my non-Muslim friends in this House. As to the Government, allow me to say that I expect Government to support this Bill, because I know that Government have been in the past supporting all *bona fide* measures for the social amelioration of the Indian community. This very thing that I was just now referring to, the Arya Marriage Validation Bill, was supported by Government; and the Leader of the House, Sir N. N. Sircar, clearly declared in his speech that Government would support the Bill and they did as a matter of fact support it. On another occasion, when a similar measure, the Hindu Women's Property Act, which was passed as a private measure, having been introduced in this House by Dr. Deshmukh, was found later on to suffer from certain defects which made its provisions nugatory for achieving the objects aimed at, the Government themselves brought in an amending Bill and that amending Bill was duly passed in this House. So Government have been taking paternal interest in the social welfare of the people of this country, and I expect Government to take the same kind of interest in the measure now before the House. With these words, I support the motion for sending the Bill to a Select Committee as proposed by my Honourable friend, Mr. Kazmi.

Mr. Govind V. Deshmukh (Nagpur Division : Non-Muhammadian) : Sir, my approach to this Bill will be that of a reformer or, as has been aptly described now, one who wants to ameliorate the condition of women. I have, therefore, full sympathy with the Bill, but my approach will not be the same as that of the Mover of the motion for Select Committee or that of the last speaker. It will be evident that their approach is the restoration of the Muslim Law as it existed according to their view. In other words, what they wish to do is to perpetuate the doctrines of certain schools of Muslim Law. This is what they say in the Statement of Objects and Reasons :

“ The Hanafi jurists have, however, clearly laid down that in cases in which the application of Hanafi law causes hardship, it is permissible to apply the provisions of the ‘ Maliki, Shafi‘i or Hambali Law ’. Acting on this principle the Ulemas have issued *fatwas* to the effect that in cases enumerated in Clause 3, part A, of this Bill, a married Muslim woman may obtain a decree dissolving her marriage.”

In other words, this is a Bill to give effect to the *fatwas* given by the Ulemas. We are not here—and I do not want any one here—to give sanction to what are the religious views of certain persons. As reformers, they will find it very difficult, if once they take up this attitude, that they should stick to the old law or restore the old law, the reformers will find it very difficult to make any advance in the progress that is necessary, whether as regards the right of women or the right of men. So let us bear this in mind, that we will not lend any support—and I would request the

House not to lend any support—to whatever the *fatwas* are or the decrees are of the Ulemas, or the edicts or the decrees or judgments pronounced by shastris. My attitude towards the priestly caste of any religion is the same, whether he is a shastri or a Ulema. It will appear from the observations mentioned in the Statement of Objects and Reasons that the object is to give effect to the *fatwas* which the Ulemas have issued, supporting non-dissolution of marriage by reason of the wife's apostasy. So let us remember this. I want to make my position clear absolutely, that though I am a Hindu—and I am proud to be a Hindu—still I do not approach this question as a Hindu Sabhaite and I do not want anybody else to approach this question from any other point of view but the point of view of a reformer who finds that there is a grievance from which a particular sect or community is suffering, and that grievance has got to be removed in the interests and for the welfare of that community. Having made this absolutely clear, I desire to take and I desire that others also should take their stand on what is reasonable, what is equitable, what is in accordance with equity, justice and good conscience. Those who wish to take their stand absolutely on the text of the orthodox law as it is, for their benefit let me read out a few passages. No law can make any advance if they were to stick and if the subsequent jurists were to stick in spite of the fact that the conditions may change, that the society may develop : if it is an agricultural society it may develop into an industrial society or a community. Their requirements may differ and yet, to say that in spite of the advanced views and the intelligence of the community and the requirements of the society, the same law shall hold good does not appeal to my reason, and I do not know how far it will appeal to anybody else's reason.

As a matter of fact, let me give an instance of how we ought to look at any question. According to the Hanafi law, a forced *tallak* or divorce, i.e., a divorce under compulsion is a valid divorce. You will find this mentioned in paragraph 234 of Mulla's book on Muslim Law and he has referred to the authorities there. You will find, according to the Shia school, that such a *tallak* or divorce is void. The original texts must have been the same, but persons with reasonable views interpreted the law differently and that interpretation according to what they thought should be the justice in the case. This interpretation is in accordance with equity, justice and good conscience if you take into consideration that the Muslim marriage is a civil contract, then certainly it is the basis of contract that the contracting parties must contract under free consent. The consent must be free. If, under some sort of mistake or misrepresentation or coercion or undue influence, a contract takes place, certainly that contract does not hold good. If that is so, then we would certainly expect that this particular divorce that has been brought about between the parties by coercion or duress or threat or misrepresentation should be held invalid. According to the ideas of modern jurisprudence, the Shia school developed itself on what we should call rational lines. But if somebody were to say "No, the Hanafi law should be restored or the other schools of law, whatever they may be—their doctrines should be the doctrines which should get recognition of this House", I am afraid I will not commit myself to that position. Let me say

Dr. Sir Ziauddin Ahmad (United Provinces Southern Divisions : Muhammadan Rural) : You leave the matter to us.

Mr. Chairman (Mr. S. Satyamurti) : The Honourable Member will go on addressing the Chair, and not answer interruptions.

Mr. G. V. Deshmukh : Whether persons should pay more respect to one's judgment, to advanced doctrines or to the old law for their benefit—as I have said already I stick to the former view—that means I will follow my own judgment as to what I consider to be in the interests of the community, and to be right according to equity and good conscience—I will read from Ameer Ali's Volume I (4th Edn., page 12) :

“ The M'utazalas maintain that justice is the animating principle of human actions, justice being the embodiment in action of the dictates of reason.”...

So, we have got to follow the dictates of reason. Then, he says :

“ They maintain further that there is no eternal immutable law as regards the actions of man, and that the divine ordinances which regulate his conduct are the result of individual and collective development ; that, in fact, the commands and the prohibitions, ‘ the promises and the threats ’, which have been promulgated among, or held out, to mankind, have invariably been in consonance with the progress of humanity, and that the Law has always grown with the growth of the human mind.”

There is no eternal immutable law. That is the point I wish to emphasise. What was good enough for a society which had not intellectually developed or otherwise progressed certainly cannot be good enough for a society which has advanced in every way, in every walk of life centuries after :

“ The doctrines of the Ahl-ul-'Itizal were adopted by Abdullah al-Mamun. He and his two immediate successors strived to introduce the Mutazalite philosophy and theology throughout the Moslem world.”

“ Unfortunately for Islam ”,—these words are very important.—

“ Patristicism proved too powerful even for those sovereign pontiffs, and the triumph of a factitious orthodoxy, opposed to all improvement and progress, under the bigot Mutawakkil, led eventually to the downfall of the Caliphate.”

Remember the effects produced by orthodoxy opposed to all improvements and progress.

Let me read again on the same point that one must follow the dictates of one's own reason, decide cases in the light of the prevailing circumstances and what is good for the society as it exists at the time of consideration of such cases :

“ But although the respective authority of the ‘ masters ’ is sometime enunciated in rather wide terms, a careful study of the law shows that considerable latitude is left to the Judge to follow the rule which is most consistent with justice, the changed conditions of society, the requirements of particular localities and the needs of the inhabitants.”

Then, Sir, I am reading again from page 30 :

“ Among the Shia communities also, the same blight has fallen over the ideas of men by the introduction among the common folk of the Akhbhari, in preference to, or supersession of, the Usuli doctrines. The freedom of judgment allowed by the latter school gave ample scope to social progress and moral development.

The Akhbhari submits himself implicitly to the law as enunciated by its constituted expounder, called in Shia countries the Mujtahid, and rejects all liberty of thought.

This suppression of the human mind has naturally given birth to that movement in Islam, symptoms of which are perceptible on all sides and which are so full of the most hopeful auguries for the future of the Moslem world. Shafeism seems to have

shaken off its ancient fetters, and now stands forth in the presence of the Sunnis as the embodiment of those aspirations for moral regeneration and legal reform which are agitating so many minds in Islam."

This emphasises, if anything, liberty of thought ; this emphasises, if anything, that importance should be given to one's own judgment, this emphasises again, if anything, that to stick to the old orthodox precedents or old orthodox texts is ruinous to the interests of society. I must make my position absolutely clear. I am not here to give sanction to any particular school of law. I am a social reformer. I would certainly omit section 2 as I am entirely opposed to it. Section 2 reads thus :

"In this Act, unless there is anything repugnant in the subject or context,
(1) 'Maliki law' shall mean Muslim law as laid down by the 'Maliki School'; and
(2) 'Hanafi Law' shall mean Muslim law as laid down by the 'Hanafi School'."

Again, we find in section 4 the same thing, where it says :

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

Then, what becomes of the other schools of law ? Why should this Legislature by reference specifically to these two particular schools of law give any more importance than to other schools of law ? I, therefore, suggest, Sir, that Clause 2 and Clause 4 should be omitted, and what is contemplated should be put down, what is at the back of the minds of the authors should be clearly stated in most unambiguous language. If they wish that suits should be decided in accordance with certain principles or on the basis of certain grounds of law, let that law be clearly laid down in this Bill, instead of saying that suits should be decided according to Hanafi Law or Maliki Law. When you refer only to these schools and mention the five grounds specified in 3 (A) and in 3 (B), the question arises whether there cannot be any other grounds for dissolution. They should have made specific mention of them. I am of this opinion, and there are Muslim ladies also who are of my opinion, that in case a man is suffering from leprosy or venereal diseases or he has some other physical incurable disqualifications, there should be a dissolution of marriage. Should those grounds be brushed aside or should those be included ? It may be that according to both the laws those grounds cannot be included, and yet we find that public opinion, even among Muslim women, is strong and it appeals to one's reason that a woman should not be required to spend all her life with a leper or a person who is suffering from incurable loathsome diseases. What is the meaning of (B) (5), "for any other reason which may be sufficient under Muslim Law for the dissolution of marriage". Why should it be so very ambiguous ? Why not put down what you want ? If you leave it for the interpretation of Judges, one Judge will interpret in one way and another Judge will interpret it in another way. If you are going to have legislation, why not have the whole thing made clear and put down everything in clear and unambiguous language ? Let there be no ground for misunderstanding, let there be no opportunities for misunderstanding or misinterpretation or different interpretations of a clause or sub-clause. When you are enacting a legislation, you have to consider that there are so many schools of law ; in one province alone there may be different schools of law, and all of them differing from one another in material respects. In a measure of this kind you must set down everything you want in clear unambiguous language, you must set down all the grounds on which you desire that there should be a dissolution of married Muslim women.

[Mr. Govind V. Deshmukh.]

I learnt this morning, that the father of the Bill is Mr. Ghulam Bhik Nairang. His approach to the Bill has been really a religious one. There was a discussion, about Clause 6. Mr. Kazmi suggested that section 6 has been condemned by everybody, that it has been universally condemned.

Some Honourable Members : No, no.

Mr. Govind V. Deshmukh : He has said it has been almost universally condemned. If you will go through his speech, you will find that he has said so. If you take into consideration the public opinion, you will find that there is not much support for this clause. I have taken particular care to see whether Muhammadan Judges and Muhammadan gentlemen have differed on this point or not. He suggested a modification of having assessors with a non-Muslim Judge. During the course of his speech. Mr. Muhammad Nauman approved of this amendment of the assessors. Speaking about these assessors, what does Mr. Nauman say ? This is what he said :

“ 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 Mussulman 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.”

We do not want to consider these questions in the light of religion only. We want to consider these questions referred to in the Bill from one viewpoint only. Are these questions desirable in the interests of a particular community or not ? We cannot commit ourselves to any particular religion or say that a particular *Fatwa* should be sanctioned or enacted into the form of a law by the Legislature. Somebody tomorrow might come forward with some other *Fatwa* or the edicts of a Pundit and ask us to alter the position according to his view. The legislature, in a way, is committing itself to these *fatwas* and giving them a sort of legislative sanction. Speaking personally for myself, I want to consider, and I request you to do the same, questions that come up here as gentlemen who can think on these matters rationally, men who follow the principles of equity, justice and good conscience and who do not belong to any religion. They, i.e., the Muslims ought to come and tell us : ‘ Here are our grounds, apart from religion, why you must give us your support to this measure on its merits for the dissolution of the marriage of Muslim women ’.

Mr. K. Ahmed (Rajshahi Division : Muhammadan Rural) : *Fatwas* are based on reasoning.

Mr. Govind V. Deshmukh : This is what the Mover of the motion said :

“ What I want is only freedom to exercise our religion liberally and without any restriction.”

I say if this Muslim marriage is a civil contract, what has religion to do with it ? Why do you mix up the two things ? Your form of marriage is a contract form and not a religious or sacramental form.

Now, Sir, I will come to one or two of the contentious clauses, Clauses 5 and 6. The contention is raging more round Clause 5 than round Clause 6. The Mover of the Bill and the motion for reference to Select Committee

takes certain responsibility, though the Bill has not been drafted by him and he wants to get this Bill passed. What does he say about Clause 6 :

" 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 every human being must possess."

He thinks that if there has not been any dissolution of marriages among Muslim women, although they have been ill-treated and maltreated, it is because the personnel does not exist. He forgets that that there can be other causes also. Although the Bill was not drafted by him he had to introduce and to move the Bill and so he had to make a speech to support it. (Interruption by Mr. Kazmi.) The sole cause that has been attributed to the absence of cases of dissolution is attributed to the lack of personnel, as if ignorance of the right they possess is no ground, as if the expenditure that is involved is no ground. Besides the lack of personnel there can be other considerations for not acting upon the law. For instance, take the Hindus. Among the Hindus right of partition of joint family property has existed since the days of Manu but there were very few cases of partition. Would it be reasonable on the part of anybody to say that there have not been many cases of partition because the personnel was wanting ? The fact is that they did not feel the necessity for partition and they might have accommodated themselves. There might have been 101 reasons why the men who did not wish to have the partition settled the matter among themselves. There might have been other considerations. Do not, therefore, think that the want of personnel was the sole cause for the Muslim women not getting their marriages dissolved, in spite of the cruel treatment or maltreatment they are having.

Now, let us see the practical difficulties about this clause 6. This Bill has been brought to confer a boon on the Muslim women, it is for their benefit this is intended. Let us see how many Muslim judges there would be to dispose of these cases. There is a Muslim woman in a village. Consider the difficulties she would have in getting a suit filed, in engaging a pleader, in attending the hearings and, supposing, in that Tahsil or district, there is no Muslim judge, to what other district or place will she go ? It means bother. It means delay. It means expense. You cannot give a right by one hand and take it away by the other. You give a right and then you make it almost impossible for the person concerned to exercise that right. We are here, just as you are here, to remove obstacles from their path, to remove these obstacles to the dissolution of marriage. I should like to make their path smooth by helping them in a reasonable manner. Similarly, you must facilitate their progress of getting their rights and allowing them to exercise in such a manner that it can be done speedily, at less cost and with all proper facilities. This is from the woman's point of view. Even from the point of view of the judicial administration it is the same thing. It is difficult to provide Muslim judges to decide these cases.

[Mr. Govind V. Deshmukh.]

Now, let me say a few words about the assessors or the delegates. My friend said that the judge may be helped by the assessors or the delegates who certainly, it was said, should be Muslims. I know that it is the intention of the persons who wanted to suggest this modification that they should be Muslims. Now, I have gathered from some gentlemen who have given their opinions that it is very difficult to get these books on Maliki law even in big places. What are the assessors then to say? Is the judge then to take the law from the assessors?

Qazi Muhammad Ahmad Kazmi (Meerut Division : Muhammadan Rural) : Not "law", but "facts".

Mr. Govind V. Deshmukh : One gentleman, Mr. Nauman, has said that they will advise on law also. So the question of law, according to him, would rest with the assessors. The assessors, Mr. Kazmi says, will decide only facts. The question of facts would be concerning the evidence about cruelty, etc., maltreatment and illtreatment. Now, is the judge incompetent to decide upon all these things? Sir, is a man who has been well-trained to assess evidence incompetent to do all this? (Interruptions.) So the assessors are persons who are to give their decision on points of facts. The law, which is the principal point of difficulty, is left to the judge. Now how do you satisfy Muslim susceptibilities if it is a non-Muslim judge who gives the judgment?

Qazi Muhammad Ahmad Kazmi : Sir, on a point of personal explanation, I only want to bring to the notice of the Chair that I suggested all these things as possible ways of meeting the difficulty. I did not suggest any of them as the final method and therefore detailed discussions on all these matters can be had in Select Committee. This is not the proper stage when all these details can be gone into with any profit to the House.

Mr. Chairman (Mr. S. Satyamurti) : Mr. Kazmi has raised two points. He has explained his own point of view and he appeals to the Honourable Member who is speaking now that he cannot go into a detailed discussion on every word or phrase in this Bill. We are now on the second reading stage, that of reference of the Bill to a Select Committee; and the discussion ought to confine itself to the general principles of the Bill, and not to detailed provisions of the clauses.

Mr. Govind V. Deshmukh : Thank you, Sir. As my predecessor criticized certain observations made by other speakers in order to support his own point of view, and as I am not on the Select Committee I think that this would be the best occasion for me to say all these things.

Mr. Chairman (Mr. S. Satyamurti) : It is a very great misfortune to the Honourable Member that he is not on the Select Committee, but he cannot make up for that misfortune, by saying here what he might have said in the Select Committee.

Mr. Govind V. Deshmukh : All right. All I want to say is that the modification will not hold good, it will not please anybody. I now come to Clause 5 round which ranges a hot controversy. Now let me start with this thing which has not been controverted. My friend, Mr. Asaf Ali, has made a statement and it has been admitted by Mr.

Nairang that the marriage of an idolatress with a Muslim is not valid ; in other words, that it is void, there can be no legal marriage. The dissolution of marriage in the case of a woman, presupposes that there should be a valid marriage first ; in other words, the man and the woman must be so situated that according to law there can be a valid marriage, and this valid marriage can only be amongst persons who belong to the scriptural or revealed religions. In other words, those who are idolators must be excluded from this Clause 5, for between Hindus and Muslims there can be no valid marriage.

Mr. M. Asaf Ali (Delhi : General) : All Hindus are not idolators.

Mr. Govind V. Deshmukh : True ; but there are idolators amongst Hindus, and I am speaking of them and other idolators. Marriages, according to Muslim Law, can only be valid between persons that are *Kitabi*, they cannot be valid between a *Kitabi* and a non-*Kitabi*. Now, according to the opinions of two schools over this question of dissolution of marriage let me see what the position is. According to one, apostasy *ipso facto* dissolves marriage and, according to the other, it does not. Now, why should I lend my support to a particular doctrine, to a particular school when there are so many schools amongst the Muslim lawyers ? That is the first consideration. The next consideration from the point of view of others would be this. According to Muslim Law there cannot be a valid marriage between certain persons. A point was made by Mr. Nairang while criticizing my friend, Mr. Asaf Ali's speech, that he had not stated his grounds as to why a particular marriage which was a valid one because the persons married belonged to Islam became void if the woman is converted into the non-scriptural or non-revealed religion ? Well, it is void because the primary thing is that valid Muslim marriage can only exist between persons who belong to a revealed religion. We have not been given any reasons as to why Mr. Asaf Ali's statement that the marriage after conversion is not valid is wrong. If the going over to the other religion does not render the marriage void, then we have not been supplied by Mr. Nairang during the course of the whole of his speech why it does hold good in spite of the person going over to a religion in which idols are worshipped. We have not been given any reasons.

Prof. N. G. Ranga (Guntur *cum* Nellore : Non-Muhammadan Rural) : On a point of order. Sir. Can Honourable Members dispose of their official files in the House ?

Mr. Chairman (Mr. S. Satyamurti) : Who are doing it ?

Prof. N. G. Ranga : I see some of the Honourable Members doing it on the other side, Mr. Conran-Smith is doing it.

Mr. Chairman (Mr. S. Satyamurti) : May I ask Mr. Conran-Smith whether he is reading the files in connection with the debate which is going on in the House or whether he is disposing of other files ?

Mr. E. Conran-Smith (Government of India : Nominated Official) : I am not at the moment disposing of any files, but the file which I am reading at the moment is not concerned with the debate that is going on.

Mr. Chairman (Mr. S. Satyamurti) : I give it as my ruling that it is wholly out of order for Members on Official Benches to read or do

[Mr. Chairman.]

anything with files not connected with the matter which is being discussed on the floor of the House.

Mr. Govind V. Deshmukh : As regards Clause 5, Sir, I have already said that I rather approve the precedents that were laid down according to a certain interpretation of the Muslim school that apostasy *ipso facto* dissolves the marriage. Now let us see if they have advanced any arguments to have this particular ruling changed. This is a particular right, a right to get divorce on the ground of apostasy. Why do you wish to curtail it ? Have we been supplied with any grounds as to how this inflicts a particular hardship on the community ? How has it proved detrimental to the community ? Why do you want this right to be abrogated ? We have not heard any reasons. All that has been said is that there is another school of law and they want to follow the *Fatwas* of this particular school of law. That does not appeal to me. I am prepared to have certain grievances removed if they are real and manifest. So far as this particular ground is concerned, we have not been told how it has operated to the prejudice of this particular community. What I say is this. The reason given why this particular clause has been put in is that there were other difficulties in the way of the Muslim women and, therefore, they have taken recourse to this form of faked apostasy as a ground for divorce. But you have enacted Clause 3 which mentions the grounds for the dissolution of the marriage. Include more grounds in it if you please. Having made this provision in Clause 3, there is no justification for enacting Clause 5. That is one of the grounds why I would certainly like this clause to be eliminated. I am speaking on this particular point from the point of view of those who are idolators. Now, take this particular instance and let us see how it will work as a hardship. Suppose there is a Muslim woman who embraces the Hindu religion and they want that this particular lady should have the freedom of religion and thought and everything else. Now, is it possible for this Muslim lady, who has embraced Hinduism, and her husband to live under the same roof ? One is an idol breaker and the other is an idol worshipper. Their religious rituals are absolutely different and the Hindu rituals are many and worship is accompanied by blowing of conchshell and ringing of bells, and if both are allowed to practise them according to their different faiths, I am afraid orders will have to be passed under section 144 of the Criminal Procedure Code to keep peace in the house. So, the practical difficulties are there. One ought to take this fact into consideration and I quite agree with the Muhammadan Judge, Mr. Justice Din Mohammad of Lahore High Court, who has said that you cannot very well compel the lady to live with her husband. "It will be most unconsonable to compel a wife to continue to owe her marital allegiance to a person whose religion she has relinquished and whose society she abhors". An apostate is looked down upon by his or her society, so she will be boycotted and there will be so many other difficulties. There lives would become miserable. From all these practical points of view and because of the legal disabilities that have already been pointed out by my Honourable friend, Mr. Asaf Ali, I am of opinion that Clause 5 must go out. With these remarks, Sir, I resume my seat but I support the motion that the Bill be sent to the Select Committee because it gives the Muslim women a very valuable right and I do not desire to come in their way.

The Honourable Sir Muhammad Zafrullah Khan (Leader of the House) : Sir, there is not the slightest doubt that the measure before the House, whatever its merits or demerits, is an extremely important measure, not only from the point of view of the Muslim community but also, as has been made abundantly manifest, in some of its aspects, at any rate, from the point of view of several other communities. May I, therefore, strike at the beginning of my speech the same note as was struck towards the end of his speech by the Honourable the Deputy Leader of the Muslim League Party, that is to say, that this is a delicate matter in which religious sensibilities are involved. Therefore, our approach towards the various aspects of this measure should be a studied and a calm approach. There can be no question of tactics or of scoring debating points with regard to a measure of this kind. There is bound to be difference of opinion as has manifested itself already with regard to some of the proposed provisions of this Bill. There may even be difference of opinion on some of the minor details among the Muslim Members themselves. But that is no ground why the House should not accept the principle of the Bill if it finds there is justification for it.

Let me at the outset make a few observations in regard to the principles of the Bill as I apprehend them. I am afraid, Sir, my observations upon the Bill will be somewhat lengthy for the reason that a good many controversial points have been raised. I will not at this stage go into the details of the Bill except by way of illustrations of the points that I may wish to make. I would, therefore, Sir, appeal to the House that Honourable Members shall bear with me while I proceed to examine first, the principle of the Bill and then, the general effect of the various clauses and finally, set out with regard to those clauses the attitude of the Government so that there should be no misapprehension that because Government support the motion for reference of the Bill to Select Committee Government approve of everything in the Bill.

Now, Sir, with regard to the principles of the Bill I conceive that the main object of the Bill is this : British Indian Courts when called upon to interpret the principles of the Sunni schools of law with regard to the grounds upon which a married Muslim woman, or, I should perhaps say having regard to the observations that I shall have to make with regard to that expression later on, grounds upon which the wife of a Sunni Muslim might obtain divorce by the intervention of the Courts, have placed upon that part of the Muslim Law an unduly narrow interpretation ; that not only upon the proper interpretation of the doctrines laid down by the Sunni schools of law but also, having regard to the practice prevalent in Muslim countries, the interpretation that has been so placed upon those provisions is not sustainable. So that the main object of this Bill by means of Clause 3 is to prescribe that Courts in this country shall recognise, as valid grounds of divorce, certain grounds that have been recognised as valid grounds of divorce in Muslim Law. Then an attempt is made to put right another matter which has become involved—though in itself a distinct matter—with the question of divorce, in British India at any rate, and that is a matter with which Clause 5 of the Bill attempts to deal. That is to say whether the mere fact by itself, apart from any

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other independent doctrine of Muslim Law, the mere fact that a Muslim married woman adopts a faith other than Islam, should operate automatically, not as a ground of divorce as one Honourable Member has observed, it is not a ground of divorce in Muslim Law at all, whether it should operate to dissolve the marriage whether the lady desires it or not, even if she and her husband both desire that the marriage should not be dissolved. These two matters have become involved in this way. British Indian Courts, as I have said, have unduly narrowed the grounds upon which the wife of a Muslim might obtain divorce and this doctrine having, unfortunately, been accepted that if a Muslim woman adopts any faith other than Islam, one of the consequences of this change of faith shall be that her marriage shall automatically be dissolved, resort has often been had to this device for the purpose of obtaining relief from a marriage tie that has become intolerable. That is how that doctrine has come in. Attempts have been made in British Indian Courts occasionally to argue that even if that is so, the Courts should at least find that the alleged conversion is not a device or a trick for the purpose of bringing the marriage to an end and they have ruled that all that they are concerned with is that the woman says that she is no longer a Muslim and that is enough to enable the Court to hold that she is no longer the wife of the person to whom she was married. I am not for the moment saying whether that is right or wrong. I am merely describing the state of the law which made it necessary to have it clearly declared by means of a legal enactment. These are the two principles behind the two main clauses of the Bill.

Coming to the Bill itself, regarding the manner in which these objects are sought to be achieved, it will be readily recognised even by the Honourable the Mover of the Bill himself that in the way of drafting the Bill leaves a good deal to be desired. I shall not go in detail into that matter, I shall merely point out one or two matters which clearly indicate that a good deal of re-drafting will have to be done if this Bill is to become law. For instance, take Clause 3. It purports to provide grounds of divorce for a Muslim married woman and, inasmuch as Islam prescribes that a Muslim woman cannot marry a non-Muslim, that of course obviously means a Muslim woman married to a Muslim husband. But a Muslim man may be married to a Christian woman or a Jewish woman. Is it or is it not intended by the Mover of the Bill that a non-Muslim wife of a Muslim husband should obtain divorce on those grounds? I am not seeking to argue the point, but am merely trying to draw attention to an aspect of the matter which will necessarily have to be considered in Select Committee. Again, Clauses 2, 3 and 4, taken together, indicate that provision is here being made for people who are governed by the Hanafi or Maliki schools of law or even Shafai and Hanbali schools of law, for after all these are schools of law and not sects. These are schools of law recognised among the Sunnis. My point is that obviously Clauses 2, 3 and 4 are intended to apply to Sunnis, irrespective of the school of law they may prefer to follow. And, therefore, the position will have to be cleared up whether those provisions should or should not apply to the Shias. So far as Government are concerned they have considered these

clauses and they are of the view that these clauses, as they are at present framed, must be confined in their application to Sunnis and must not apply to Shias ; because, as everybody knows,—the Honourable the Mover of the Bill as well as all other Muslim Members of the House,—there is a separate school of Shia jurisprudence which, on many points, differs vitally and fundamentally from the doctrines of the four Sunni schools of jurisprudence. Further, with regard to this question of Maliki or Hanafi law no doubt the Honourable the Mover of the Bill and other Muslim Members of the House are actuated solely by the desire to bring the law into conformity with what they think is the original intention of the Muslim law. But the concern of Government does not stop there. Government will have to make provision, whatever the final shape of the Bill may be, to give administrative effect to it ; and if the Bill, particularly these three clauses, emerges from the Select Committee in some form which makes it impossible for Government to give administrative effect to the provisions of the Bill, Government would then, I am afraid, not be bound to support the Bill in its final stages. Let me make my meaning clear. Clause 3 prescribes certain grounds upon which divorce may be obtained by people to whom this Bill will apply when it becomes law. But, if the matter is left in doubt as to what is meant by these grounds and what are the doctrines and principles upon which those grounds are to be determined, there will be confusion when the Courts come to apply those grounds in practice and, I am afraid, Government will not be able to support the Bill. One suggestion has been made by Mr. Deshmukh, and though I am sure Muslim Members will disagree entirely with the point of view that he has expressed that these matters should be looked at from the point of view solely of a social reformer and not from a religious point of view at all, I am sure that there is a good deal in the suggestion that he has made in regard to Clauses 3 and 4 which is worth considering in Select Committee. The suggestion that he has made is this. Why not make an attempt to define these grounds precisely in the legal provision itself, *i.e.*, in the Bill, and then leave it to the Courts to apply them in accordance with the general principles of Muslim Law, instead of saying that a certain set of grounds shall be determined in accordance with the principles of Hanafi law and certain other sets of grounds shall be determined in accordance with the principles of Maliki law ? I am aware that the matter does not end there ; it is not so simple as all that. Nevertheless I do feel that that is one method by which in Select Committee the Bill might be improved. As I have said, there are several matters in respect of which improvements have to be made. Take a simple instance concerning which there may be no difference of opinion and see what will happen if that provision stands as it is and comes before a Court for interpretation. Clause 3 (1) describes the first ground as :

“ If her husband is absconding and there is no provision for her maintenance.”

Suppose a woman instituted a suit for divorce on that ground saying that her husband had been absconding for five years and there was no provision for her maintenance and she desired a divorce, the very first thing that the Court will say is : Is absconding defined anywhere ? Does it mean here what it means in the Criminal Procedure Code, *i.e.*, a person against whom a charge has been pre-

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ferred of having committed an offence, who has made himself scarce and for whose appearance in court a proclamation has been issued by the court? I am sure that that is not the meaning which the Mover would wish to have attached to that expression in this clause. What he probably means by that expression is a person who has not been heard of for a number of years; he need not have committed any offence or been charged with the commission of an offence nor need any process or proclamation have been issued by any Court for his apprehension or for his appearance in Court. These are merely illustrations to show that the Select Committee, upon which the task will be laid of scrutinising this Bill, will have a fairly heavy duty cast upon them and they will have to approach their task with considerable care.

Now, let me go on to the last two clauses of the Bill and I wish, for the purpose of convenience, to take Clause 6 first because on that clause my observations will be very brief. Sir, the Government view with regard to that clause is that in addition to its being seriously open to objection on the merits it would also be entirely unworkable in practice and that, therefore, Government will not be able to accept that clause. So that, if the Bill, in its final shape, contains a provision to that effect, I regret very much that Government will have to oppose the Bill as a whole. If this clause goes out,—and let us hope it will go out in Select Committee,—then Government will be prepared to give support to the principles of this Bill to the extent to which I have already indicated and shall proceed to indicate. With reference to Clause 5, I may say that that is the most controversial clause in the Bill and demands still greater care, if possible, than the other matters with which the Bill deals. One objection which has been taken is this. You may regulate these matters and cognate matters to the extent permitted by the general law by the application of the provisions of Muslim Law to Muslims; but in the case contemplated in Clause 5, *i.e.*, where a Muslim married woman has ceased to be a Muslim and has adopted another faith, you are trying to regulate her relationship and, therefore, you are trying to apply the principles of Muslim Law to a person who has ceased to be a Muslim. At first sight that objection appears to have an air of plausibility. But if we consider it with any care at all, it will at once become apparent that that kind of reasoning is fallacious. The simple question with reference to this aspect of the matter is this: when any married woman—let us get away from the question of Muslim married women for a moment—adopts a faith, different from the faith of her husband, the question whether after this change of faith her marriage shall continue to subsist or shall be automatically dissolved, has to be governed with reference either to one or to another system of law, at any rate in this country; either with reference to the system of law under which the marriage was performed when both the husband and wife professed the same religion, or with reference to the system of law to which, in certain respects at least, the woman has now become subject after her change of faith. Which of these two systems of law shall pronounce upon this question as to whether the marriage continues to subsist or shall be automatically dissolved by reason merely of the change of faith? Let us take first the case of a marriage to which both parties are

Christians, and let us assume that the Christian wife embraces Islam ; which law, the law regulating the marriages of Christians or the law regulating the marriage of Muslims, shall decide whether the marriage shall continue to subsist or shall be dissolved ? If the law regulating the marriages of Christians is applicable there is no provision in that law that on a change of faith by the wife the marriage shall be dissolved. According to that law the marriage will continue....

Mr. M. Asaf Ali : According to the Indian Christian Marriage Act, yes.

The Honourable Sir Muhammad Zafrullah Khan : Let us take the case of European Christians for this purpose, for, if there is no conflict no question arises. I am taking as an illustration a case where there will be a conflict between the two laws. The Muslim Law says that a Muslim woman cannot continue in lawful wedlock with a non-Muslim husband.

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

Therefore, if the Muslim Law were to be applied, the marriage would come to an end, as the doctrine of Muslim Law will come into operation that the marriage cannot subsist. But, obviously, it cannot be contended in British India today that to such a case the Muslim Law shall apply. The Muslims have never claimed it and even if they did claim it, nobody would accept their contention. Obviously the marriage must continue to be governed with reference to this aspect of it, that is to say, whether it shall continue to subsist or not, by the law under which it was performed. Take the case of a Hindu wife and a Hindu husband. The wife becomes a convert to Islam. The same question arises. Shall this question be governed by Hindu Law or by Muslim Law ? Obviously by Hindu Law....

Mr. M. Asaf Ali : Not in Bengal.

The Honourable Sir Muhammad Zafrullah Khan : Let us take provinces other than Bengal. I say again let us take a case where there may be a conflict between the two laws. I, therefore, say that this very first question whether in a case covered by clause 5 the system of law applicable shall be the Muslim Law or the law of the community or faith to which the lady now belongs, must be answered in favour of the applicability of the Muslim Law. It is not a case of attempting to legislate for non-Muslims. It is a question merely of saying whether certain consequences shall or shall not follow with regard to a relationship already established under another system of law. If it is a question of Muslim Law then what should be the principle ? The general principle which should guide us, having regard to the composition of the House and the constitution under which this House works, not as a matter of law, not as a matter of rules or standing orders, but as working convention having regard to all the conflicts that may arise whenever an attempt is made to regulate any part of these relationships by means of an amendment of the personal law which may be applicable in any particular case, I say as a general principle—there may be justifiable exceptions—but as a general principle—so long as other peoples' right are not being interfered with—and I shall come to the question whether

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with reference to Clause 5 that is so or not—the general principle should be that the decision should be mainly on the consideration as to what is the view of the overwhelming number of representatives or, if you like, the jurists, of the community whose law is to be interpreted. Then it becomes a question with regard to Clause 5, first, to find out, if it is possible to do so, the historical background of the question, how is it that this conflict arises that the British Courts have made pronouncements on this question laying down one rule and the representatives of the particular community whose law is being interpreted strenuously urge that in this respect their law has been entirely misinterpreted by the British courts—how that conflict has arisen? I am speaking with a certain amount of diffidence on this matter—I know I have to speak with circumspection; but I proceed to give what I have conceived to be the correct view as the result of such study as I have been able to make of this question, though I am bound to tell the House that that study did not start after this Bill came before the House, but many years ago. I am afraid on this part of the case I will have to be somewhat academic, but the question has arisen and, I believe, that unless one realises the background of the question one really cannot arrive at a just appreciation of the position; and it is so necessary that in a matter of this kind the House should come to a just appreciation of it, because, as I have said, not only so many susceptibilities are involved, but it is a question affecting the civil rights of a very large community. The purport of this clause is that the conversion of a Muslim married woman to a faith other than Islam shall not by itself operate to dissolve her marriage.

Though the expression “conversion to another faith” is used, and though for all practical purposes it makes no difference, I have no doubt that what is meant is renunciation of Islam rather than the acceptance of any other particular faith. So far as I have been able to discover, the historical background of the question is this. At a certain time it was laid down by a majority of Muslim jurists, and having been laid down by majority of Jurists it was accepted in Muslim countries, that the renunciation of Islam by a Muslim was tantamount to treason to the Muslim State, and that, therefore, any such renunciation was a capital offence. Since that doctrine was accepted, it has continued as part of Muslim jurisprudence, though at all times there have been jurists,—I shall mention some of them later on, who have dissented from that view. That is the genesis of this doctrine. When British Indian Courts came to interpret the Muslim Law, they said: “We cannot constitute ourselves into Muslim jurists. We must accept what has been accepted by the majority”. Now, if renunciation of Islam by a Muslim was a capital offence, then where the capital sentence could not be carried out for some reason or other, for instance, because the offender was a woman then they used to pronounce what is known as the sentence of civil death, that is to say, the loss of all civil rights which included dissolution of marriage. That is the genesis of this doctrine. Now, Sir, as I have said, as the result of such study as I have been able to devote to this question over a number of years, I venture to submit that in Islam as interpreted in the time of the Holy Prophet and in the time of the

first four Caliphs, for mere change of faith unaccompanied by anything else which might constitute an offence against the State, there is prescribed no penalty whatsoever. Even at the risk of wearying the House, I shall proceed to state my authority on this matter. It will not be possible for me to go into and cite minor authorities on this question. After all, there must be some limit to the time which one may occupy over matters of this kind in this House. I shall, therefore, confine myself to the authority with regard to which there can be no difference whatsoever among Muslims, that is to say, the authority of the Holy Book itself. I have selected eight verses from the Quran, from among many, to show that Islam lays that down beyond any possibility of doubt whatsoever.

First,—

"Qul al haqqo mir Rabbi kum, faman sha a fal yumin wa man sha a fal yakfur."

"Say (to these people) the Truth is from your Lord, then let whosoever desires believe, and let whosoever desires disbelieve."

The principle is stated here quite clearly. Everybody is free to believe or to disbelieve, no penalty is mentioned.

Second,—

"La ikra ha fid din, qad tabayyanar rushdo min al ghayy-i."

There shall be no compulsion in faith; guidance has become manifest from error. Also, there can be no compulsion in faith. Faith is a matter of the heart. It is not merely a matter of profession. Force or coercion might make a man profess something in the sense that he might say he believes in a certain thing, but no amount of coercion and no amount of force can make a man believe. That is the injunction. There shall be no compulsion in faith, and there can be no compulsion in faith, because faith is a matter of the heart and guidance has been made manifest, therefore, whoever chooses guidance can follow it.

Now, let us come to more specific directions about this matter.

Third,—

"Wa law sha-a Rabbuka la amana man fil ard kulluhum jamia"

Afa anta tukrihun nasa hita yakunu muminin."

"Had Thy Lord desired to force people to believe then everybody in the world would have believed."

That is to say, even God has not desired that He shall force people to believe. So the Verse proceeds:

"If God had desired to force people to believe, then everybody on earth would have believed. Then dost thou (O Prophet) desire to compel people to believe?"

Now, we come to the specific question of apostasy. According to me even on the basis of the verses that I have already cited there can be no physical penalty for mere change of belief from one faith to another. Let us now go further because it might be argued that while you cannot compel a man to believe, once a man has believed and then falls into disbelief then there shall be a penalty. Let us see what the Quran says on that:

"Wa man yartadid minkum an dinihi, fa yamut wa huwa kafrun fa ulaika habibat amal-u-hum fid dunya wal akhira."

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Let me explain one matter. It is immaterial when the first three verses were revealed because they only lay down broad principles. The five remaining verses which I have selected for citation in connection with this matter, and the first of which I have read out, were all revealed at Medina when the secular power of Islam had been established. Islam was at that time not only a faith, but also a State. I explain this for the reason that it might be said, 'some of these verses were revealed at Meca at a time when the Muslims themselves were being persecuted, there was at that time no question of their punishing anybody'. But the five verses which I have selected were revealed at Medina at a time when Muslim secular power had been established and the Holy Prophet was not only a Prophet, but was also the Ruler of Medina and the territories surrounding it. The translation of the verse is :

"And he from among you who turns away from his faith and dies while he is still a disbeliever, These people are they whose actions shall be vain in this world and the next."

The point is this. If a man becomes an apostate and remains a disbeliever right till the moment of his death, then the spiritual penalty follows, but there is no mention whatsoever of any physical penalty.

Then, I come to No. 5 :

"In na'l lasina kafaru bada imanihim summa adadu kufran, lan taqabbala taubatahum wa ulauka humuddhaloon. In na'l lasina kafaru wa matu wa hum kuffarun, falan yaqbala min ahad-i-him mil ul ard-i zahaban wa lau iqtada bhi."

Those people who have become unbelievers, after they had become believers, and then they go on growing in their disbelief, their repentance shall not be accepted and they are those who are on the wrong path. Those people, who have thus disbelieved, if they die, still in a condition of disbelief, from them shall not be accepted even the whole earth's weight of gold as the price of repentance. There again no molestation is to be offered to people who become apostates and continue in that condition. Certain spiritual consequences will, however, follow from their disbelief. The point I am concerned with at the moment is that the Quran contemplates people becoming apostates and remaining in that condition till they die, without being molested.

Then, No. 6 :

"Kaifa yahdi illahu qauman, kafaru ba'da imanihim wa shahidu anna rasula haqqun wa ja a humul bayyanatu, wallahu la yahdi qauman zalimin."

How shall God give guidance to a people who have fallen into disbelief after they had believed and after they had

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borne witness that the Prophet is righteous and they had seen signs in support of him. God will never give guidance to people who transgress.

Then, No. 7 :

"Wa qala taifatun min ahli'l kitabi aminu bil lasi unsila alal lazina aminu ussahan nahare wa kafaru a'khirahu laallahum yarji'un."

Some of the people of the Book (viz., the Jews of Medina) say : 'Let us declare our belief in what has been revealed to the Muslims in the morning and then declare our disbelief at the end of the day perchance the Muslims will also then turn away (from their faith). Now,

how could they make these plans and do this kind of thing in Medina, where they were living, where the Muslim power was established, if there was the penalty of capital punishment for apostasy ?

And now, I shall cite a verse which is far clearer than those that I have already cited.

Then, No. 8 :

"In nal lasina amanu summa kafaru, summa amanu, summa kafaru summa as dadu kufra lam yakun-llaha liyaqfiru lahum wa la liyahdiya lahum sabila."

Those who believed, then became disbelievers and again believed and again disbelieved and grew in their disbelief, God will not forgive them nor guide them along the right path. Surely, this could not go on happening if there had been a penalty for change of faith. The question arises then how did capital punishment come to be prescribed as the penalty for apostasy. If one studies the question historically, the reason is simple. As I have said, in those days, wherever change of faith was accompanied by an offence against the State, the offence against the State naturally was punished ? I might illustrate this by dividing apostasies into two broad groups—one, apostasies of those who had been converted from among the Jews of Medina. If any of them became an apostate, as some of them were in the habit of becoming, no molestation was offered to them. They were citizens of Medina. They remained there and their transgression was spiritual or religious. On the other hand, if an Arab belonging to a non-Muslim tribe became a Muslim, what invariably happened was he made an attempt to join the Muslims. Conversely, if an Arab from among the Muslims renounced Islam, he would at once try to go and join the non-Muslim tribes, between whom and the Muslims there was almost continuous war in those days. Islam was then fighting continuously for its life. There were raids and campaigns against the Muslims in Medina by the other tribes and the moment anybody renounced Islam, they attempted to go and join the enemies of Islam. When they did that they became traitors to the State and if their offence was proved, they were no doubt punished. That is the origin of the doctrine of capital punishment for apostasy and, therefore, I venture to submit that to mere change of faith there can be attached no penalty of a secular kind.

Mr. M. Asaf Ali : What about *Mushrakim* ?

The Honourable Sir Muhammad Zafrullah Khan : I am not on that point. For mere renunciation of Islam, which does not involve renunciation of the allegiance to the State or some other offence against the State, there has been prescribed no punishment. Let us look at it in another way. Everybody who has made a study of these matters knows that in the Quran there are frequent references to hypocrites. They are described as being worse than infidels, that is to say, straightforward but honest disbelief is not accounted as so serious from the spiritual point of view as hypocrisy, that is professing belief while there is disbelief in the heart. With regard to *munaṣṣikin* (hypocrites) it is said :

"In nal, munaṣṣiqina ṣid-darḳil asfal min an nar."

'Hypocrites shall be consigned to the nethermost regions of fire'. (Hear, hear.)

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Therefore, any person who says that for a mere change of faith Islam prescribes a penalty is trying to establish, that Islam wants us to be hypocrites, that is to say, Islam says to the Muslims 'Although in your hearts you may not believe in Islam yet you must not say so, because the moment you say so, you will be subject to punishment' and that, I submit, is a gross libel upon Islam. We arrive at this position then, that this doctrine of the automatic dissolution of marriage in the case of a woman who renounces Islam is a legacy from the doctrine of capital punishment for traitors, which was misapplied to apostates, and the attempt is being made by means of this clause to abolish one of the consequences of that penalty. Now it is said—what happens if a woman renounces Islam and adopts a faith with the followers of which Islam does not permit marriage? I think that is the fairest way of stating the point. My submission on that is that that is an independent doctrine of Islam—with what persons marriage is permitted and with what persons marriage is not permitted. Suppose a person places himself or herself in a category between the members of which and a Muslim there can be no valid marriage, that doctrine will apply and the marriage will become invalid. Now, I am afraid, with regard to this part of the matter Honourable Members have devoted their attention too much only to one aspect of it. Why should not the marriage be dissolved? One Honourable Member says—this is a right of divorce. That is not so. I hope I have made it sufficiently clear that it is not a case of a right of divorce. That arises where the woman who is seeking a dissolution of the union says—"here is a valid ground upon which the union should be dissolved".

Mr. Bhulabhai J. Desai : That is one of the qualifications.

The Honourable Sir Muhammad Zafrullah Khan : No, it is not a ground for divorce at all. The parties have no choice in the matter. It operates automatically to dissolve the union. Another objection taken to the clause is that it would operate as a restriction upon liberty of conscience. Now, Sir, a moment's reflection will show that the case is the other way about. Let us for a moment get away from cases where the conversion is either forcible or colourable, that is to say for some ulterior purpose, it may be for the purpose of obtaining release from the marriage tie. Let us get away from those cases. After all, they are devices either imposed or adopted for an ulterior purpose. Let us take the case of a genuine conversion, in the sense that the woman has genuinely come to believe in the truth of another religion and prefers it to Islam. Let us take the case of a husband and wife both Muslims. They have been married a number of years and they have children. One day the wife says to the husband : "I have been thinking over a particular matter which I desire to mention to you. You are a very sincere man, you are passionately devoted to Islam, you have often told me and I know it myself, that Islam lays the greatest stress upon sincere belief and is more averse to hypocrisy than it is even to sincere disbelief. I have been studying various matters and I am bound honestly and frankly to tell you that I feel that the principles of Christianity make a stronger appeal to me than the principles of Islam, and, therefore, I cannot continue honestly to profess Islam in preference to Christianity. I am just as faithful to you, just as fond of you, just as fond of the children as in the past, I have no desire to break up the home, what

do you say ?" Supposing the husband, says, " I am sure you are making a grievous error. I am certain that reflection in the course of time will bring home to you the depth of your error. I accept your declaration of full sincerity. I have also no desire to break up the home. Islam permits one to marry a Christian woman. I have no objection, as I too do not want to break up the home." But the law, as it stands to-day, says. " No, you shall separate, you shall cease to be husband and wife." Now the clause says that the mere fact of change of faith shall *not* bring about a dissolution of the home and all the misery that follows in its wake. And I say that those who insist that the present law shall continue in force insist that in such a case the woman shall conceal her change of faith and continue to pretend that she is a Muslim lest she should lose the society and the support of her husband, the society of her children and all the comfort and happiness of her home. I say, this is the genuine normal case. The other cases of devices, tricks and colourable conversions are exceptions. Some people have said even if the present law continues in force what is there to prevent those who want to continue the home from re-marrying the next day ? That I am afraid is founded upon a lack of knowledge of the provisions of Muslim Law on the subject.

I have, Sir, to make another digression here. Though, on the surface, in Islam, divorce appears to be such an easy matter, according to the Shariat it is a long process. Three declarations have to be made at intervals of one month each to afford opportunities of reconciliation. It has been said by the Holy Prophet :

" Abghas-u-halal-i-indallah-i-talaq."

" Of all things that are permitted to you, the most obnoxious in the eyes of God is divorce."

Another restraint upon divorce is that except in very rare cases the divorced parties cannot remarry each other. Persons whose marriage has been dissolved cannot remarry each other except in one case, namely, when the woman subsequently genuinely, not as a device or as trick, marries somebody else and that marriage is in due course genuinely dissolved, that is to say, either the husband dies or there is a genuine divorce. In that very rare case the parties may remarry again but normally they cannot : and therefore the present law operates in this manner to the prejudice of domestic and social relationships ; and I would ask my friend, Mr. Deshmukh, particularly to note this, in view of what he said that no instance had been given as to how the law operated harshly. The marriage is dissolved automatically, however anxious the parties may be to continue in the married state. It may be that other factors may arise which may make it impossible for the couple to continue to live together. In such cases, there is the right of divorce or of *Khula*, as the case may be. The point that has not been fully appreciated is that what the clause seeks to do is merely to do away with the alleged automatic effect of apostasy. Then, objection has been taken that the clause is opposed to the opinions of the jurists. In the first place, all the jurists are not agreed. It has been very clearly demonstrated by the Honourable the Deputy Leader of the Muslim League Party that the jurists of Samarkand and Balkh have throughout held that apostasy of the wife does not result in dissolution of marriage. That is clearly stated in *Shami* which is a standard work on Hanafi

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jurisprudence and Fathul-Qadeer. Besides the jurists of Samarkand, Ad-Dabboosi and As-Saffar have held that there is no dissolution of marriage as the result of apostasy of the wife. Secondly, the majority of the Hanafi Doctors have laid down that marriage in the case of apostasy of the wife is suspended and not dissolved. I challenge anybody to prove to the contrary from the writings of the great Hanafi Imam. I shall explain what the difference is. The suspension of the marriage means that so long as the woman continues to be an apostate and does not revert to Islam, the marital relationship between her and her husband is by law prohibited but she is not at liberty to marry anybody else.

Mr. M. Asaf Ali : There is only one school of thought which supports that view.

The Honourable Sir Muhammad Zafrullah Khan : It was the great Hanafi Imam himself who said that. The penalty is that the woman should be imprisoned till she reverts to Islam, but she is not permitted to marry anybody else. Then it was said that complicated questions of inheritance and of the guardianship of the children will arise. As I have tried to explain, these questions can only arise where the marriage is broken, they cannot arise where the marriage and the home continue. Then, it has been said that cases occur in this country where women are abducted. Supposing a non-Muslim unmarried woman is abducted by a Muslim and is forcibly converted to Islam and is married either by the abductor himself or by somebody else, then, according to the present law, if at any time she reverts to her original faith, she automatically obtains freedom from this bond which was imposed upon her. But if you change the law as you propose to do by means of clause 5, then this means of relief which is open in such cases will cease to exist. I should like to make two sets of observations on that. First, I will deal with the matter as it stands and, secondly, whether any remedy is necessary and, if so, whether it should be provided. Again, for purpose of illustration and better appreciation, let me put the contrary case. Cases unfortunately do occur—and I have no sympathy whatsoever with either class of case and they occur on a large scale in the Punjab where a Muslim unmarried woman is abducted by a non-Muslim who converts her to a non-Muslim faith and marries her. That is a parallel case. Sometimes the woman reverts to Islam later on but she obtains no relief. She continues to be tied to the non-Muslim husband. Therefore, this class of case really does not constitute an objection to this clause. Wherever there is a marriage imposed upon a woman by force or fraud, she ought to get relief. It does not matter who she is. So far as Muslim marriages are concerned, that can be provided in this Bill. There is, however, one aspect of the matter which I must make clear. When such a case was mentioned, the Honourable the Mover of the Bill said that if there was any apprehension that clause 5 would operate harshly in such cases, he was willing to make an exception which would cover cases of that kind. Government's view on the matter is that whatever the position may be logically, the Mover having made that offer, Government shall insist that a provision dealing with the class of cases mentioned by the Honourable the Mover himself shall be inserted in the Bill.

Sir, these are the views that I hold on this matter and briefly I shall recapitulate them.

In the first place, this is a matter which should be regulated by the Muslim Law. If that is so, then on this matter, the wishes of the overwhelming number of the representatives of the Muslim community ought to prevail, provided that the principle that the House is being asked to accept does not run counter to general principles of equity, justice and good conscience. I may say that the principle of this clause not only does not run counter to these principles but seeks to bring the law into conformity with the true principles of the Muslim Law, it also seeks to bring it into accord with the principles of other legal systems which also say that mere change of faith shall not by itself automatically result in the dissolution of marriage. For these reasons, Sir, I support the motion for reference to Select Committee.

The Honourable Sir Manmatha Nath Mukerji (Law Member) : Sir, the Honourable the Leader of the House has placed before the House the attitude of the Government in connection with this Bill. I do not propose to go very much into the details as regards that attitude. It is sufficient for me to say that they resolve themselves into four points which must be satisfied before the Government can accept the proposal for reference of this Bill to the Select Committee. They are these :

Firstly, the Shia Muslims are to be excluded from the operation of clauses 3 and 4 of the Bill. Secondly, the law with regard to the different sub-clauses contained in clause 3 of the Bill should be specified in detail or in sufficient particulars in order that there may be no dispute or doubt as regards the exact law on the different points. Thirdly, there should be a proviso excluding cases of reconversion by a Muslim girl to her original faith, the proviso being attached to clause 5 of the Bill. And, fourthly, clause 6 should be deleted from the Bill altogether.

That being the attitude of the Government, I, as a Member of the Government, am bound to and shall vote for the reference of the Bill to the Select Committee, if these conditions are satisfied. But I just want to make further submissions ; and, in so far as I shall, in the course of my speech, transgress the limits of the conditions that have been laid down by the Government, the observations that I shall make will be entirely my own and the Government will have absolutely nothing to do with them. I shall make those observations as a Member of this House, as a citizen of this great Empire and also as a Member of the great Indian community.

My objections to the Bill are definite, specific and categorical ; and those I shall place before the House for its consideration and specially for the consideration of the Honourable the Mover of the Bill and of other Honourable Members of the House who support it. My object in placing those considerations before the House will be simply this that having regard to the defects that have already been pointed out as existing in the Bill, and having regard to those considerations that I shall place before the House now, it will be for the Mover of the Bill to consider whether it would be right on his part to send the Bill to the Select Committee with such an onerous task as to determine the various points that arise and to rectify those defects. I submit that it will be impossible for the Select Committee, having regard to the nature of the task that the Select Committee will have

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to perform, to perform that task to the satisfaction of all concerned. But that is a matter entirely for the Mover of the Bill and for those Honourable Members who are thinking of supporting the measure.

Now, Sir, in rising to speak on the Bill, I do rise with a certain amount of diffidence, for I shall not conceal the fact that my knowledge of this branch of the law with which the Bill is concerned is very poor; or rather it would be more correct for me to say that it is even poorer than my knowledge with regard to other branches of law. It is confined strictly to a study—and not a very intensive study—of such books on Muhammadan law as Ameer Ali's, Wilson's, and also, if I may be permitted to say so, Sir, of your book on Muslim jurisprudence. Therefore, I feel that I can have no hesitation whatsoever in sitting at the feet of my Honourable friend, Mr. Ghulam Bhik Nairang, to learn the Muslim law and to revise my notions of it any day and for any length of time. But even with the poor knowledge that I have got, I find that there are certain difficulties in this Bill which, to my mind, seem to be insuperable.

Sir, before I proceed to make my submission on the Bill itself, I desire to refer to another matter, and it is this. Ever since I assumed my present office, I have received communications from individuals as well as bodies, sometimes also anonymous or pseudonymous communications, telling me that the Bill has been brought forward with an unworthy motive, that it is a mischievous one, that it is designed to benefit one section of the community at the expense of another, and things of that sort. I want to make it perfectly clear on the floor of this House that having heard the speeches which have been delivered by my esteemed friend, the Mover of the Bill, and by my Honourable friend, Mr. Ghulam Bhik Nairang, that the suspicion as regards motive has no foundation whatsoever, and that if there is still anybody outside the House who entertains the idea that the Bill has not been put forward *bona fide*, he must give up that idea for that has absolutely no basis for it. In all humility, I shall ask the House to consider the various points that I shall now place before them.

Sir, so far as clauses 2 and 3 of the Bill are concerned, I have looked into such books on Muhammadan law as I have been able to get. I find that the conditions specified in clause 3 of the Bill are, generally speaking, conditions which, according to Muslim law, would suffice for dissolution of marriage. But I also find that there is a great deal of divergence of opinion, as to the circumstances under which these conditions should operate, amongst Muslim jurists. Last year, a Bill was passed into law by this Legislature, I mean the Shariat Act of 1937. Sections 2 and 5 of the Shariat Act laid down that cases of dissolution of marriage should be governed by Muslim personal law, that is the Shariat. A departure is being made under clauses 2 and 4 of the present Bill laying down that, when the dissolution is being asked for on some of the grounds contained in clause 3, the case will be governed by Hanafi law, and when the case refers to a dissolution upon other grounds, the case would be governed by Maliki law. That, I understand, is the effect of clauses 2, 3 and 4 of the Bill. Is it the intention of the Honourable the Mover of the Bill to depart from the law such as was enacted in 1937? It may be one of two things, either to declare the law such as it is, or to make a departure from it. If it is to declare the law such as it is, my submission, before the House is that the

clauses are altogether unnecessary. If it is the law of the Shariat which, under the Act of 1937, is to be applied in all cases of dissolution of marriage then the present Bill, so far as this particular matter is concerned, is unnecessary. If it is the intention to depart from that law, then surely the House has a right to expect that it should be made clear to the House as to why it has become necessary to change that law, because it is only very recently that that law was passed, namely, last year. I have listened with rapt attention to the speeches delivered in support of this Bill, but I have not been able to find any reason given anywhere as to why the law so enacted is now going to be changed. May be there are reasons, but before making up one's mind, one would like to know how it has become necessary to alter the law in this respect. Now, Sir, it may just as well be that necessity for alteration of the law is being felt at the present moment, and I am prepared to accept from the speeches that have been delivered in connection with this Bill that it has so become necessary. Now, are we sure, having regard to the conflict that exists in the opinion of Muslims themselves as regards the necessity or propriety of this measure, that the Bill which has been brought before the House is one which should be accepted and passed? I am free to concede that a good deal of attention has been bestowed, a good deal of care has been taken, to ascertain what the real Muslim law is and that the Bill perhaps does represent the true Muslim law. I am not disputing that for a moment. It is quite possible that that is so, but at the same time I desire to ask the Honourable the Mover through you, Sir, whether they are satisfied that they will be able to command the confidence of the entire Muslim community by bringing forward a measure of this description.

Several Honourable Members : Yes, certainly.

The Honourable Sir Manmatha Nath Mukerji : I doubt very much, for I have got before me the opinions which we have received from different quarters, and the opinions do show that a good 30 per cent. of the Muslim individuals and bodies have signified their unwillingness to accept some of the provisions of the Bill. That, however, is a matter with which I am not really concerned, and it is for my learned friend who has brought forward this measure and wants to have it passed to be satisfied about it. But as regards the conditions that have been prescribed in clause 3 of the Bill and the provision that has been made in clause 4, I submit, there is a good deal of difficulty. There will be a good deal of difficulty in the administration of this Act if it is passed into law, unless with regard to these conditions it is specifically stated what the law is. Sir, the Shariat Act has said that cases of dissolution of marriage will be governed by the Shariat. We are now saying that some of these cases will be governed by the Hanafi law and some by the Maliki law.

Syed Ghulam Bhik Nairang : Sir, may I interrupt the Honourable speaker? I can assure the Honourable speaker that Maliki law and Hanafi law are both part and parcel of the Shariat.

The Honourable Sir Manmatha Nath Mukerji : Quite so. There must, therefore, have been some necessity to make distinctions with regard to the different conditions laid down in clause 3; some of them to be governed by Maliki law and some of them to be governed by Hanafi law. That, I understand, is the position. With regard to Maliki law, my difficulty is this. I have not been able to find out any authoritative book

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with regard to Maliki law in this country. I am told, at least I hear a voice,—somebody saying that there are some ; but from inquiries that we have made we have come to know that there are no English translations of any such book. And I am clearly of opinion that it will be very difficult for courts to administer the Maliki law and find out exactly what that law is, when the judges themselves, the advocates appearing before them and other persons connected with the administration of justice will not be in a position exactly to ascertain the exact nature of that law. Sir, you will be asking the courts to unearth the Miliki law, and I am using that word "unearth" for the simple reason that, in the ordinary text-books that we read in connection with Muhammadan law, we find very little reference to Maliki law, and I submit it will be an impossible task for the courts to find out what exactly that law is. The courts will be at the mercy of the litigants ; they will also be at the mercy of the learned advocates who appear before them ; and they will also be at the mercy of all those who will try to enlighten them as to the nature of that law. I submit, therefore, Sir, that if, in point of fact, it be at all necessary to send this Bill to the Select Committee, then the sub-clauses to clause 3 should be amplified, and it should be stated definitely and distinctly what the law is with regard to each of these sub-clauses. Sir, I may be permitted to say that unless that is done, it will be an impossible task for the courts to perform. I can clearly visualize the picture. And I may also be permitted to give an instance of such inconvenience which occurred in the course of my own experience at a time when I had to appear before a learned Judge. The case was a criminal case, and I was appearing on behalf of one side, and on the other side was appearing a very eminent criminal lawyer. The Judge was a very patient Judge, courteous and willing to do justice, and anxious to know what the law was. Questions arose with regard to the admissibility of evidence. What the learned Judge used to do was this. Not being well acquainted with the Indian Evidence Act, he gave each of the parties a long rope. The learned Judge was a member of the Indian Civil Service, and, at the same time, I must say that he was an ornament to that service. He is still in service and in this country. What he used to do was this. Like a truly conscientious officer, after hearing all our arguments, he used to say : " Now that one side says this piece of evidence is admissible and the other side says this piece of evidence is not admissible, I want to know from you both whether it is admissible or inadmissible." Then, we would give him our own opinion. This sort of difficulty will arise unless and until you specify in the Act itself what the law is.

I will give you another instance that occurred in the Calcutta High Court. Sir, it was within a few years of the date on which you left the Calcutta High Court,—good old days, Sir, to get back which I should be prepared to give up my all. I was appearing for the accused in a case, and I was being led by a very very eminent Counsel whom I will not name. The case was like this. The accused person had lived in Burma for a pretty long number of years. He had come over to Bengal and had abducted a girl who had no near relations ; and the offence of which he had been convicted was that he had abducted the girl, given her in marriage and bagged some money. The case was being heard by a Division Bench. The learned Counsel was a very

brilliant Counsel, ready-witted, and one of the leaders of the Bar in those days. Failing to get any sympathy from the Judges in any of the arguments that he raised, he said : " My Lords, I want to put forward my plea that my client acted in good faith ". The learned Judges said : " Where is the question of good faith in this case ? Your client was no relation, at least no near relation to the girl abducted ". The Counsel said : " Oh, Yes, my Lord : the case was very badly conducted in the court below on behalf of the defence, and inadequately tried ; and the real plea has not been put forward, and the plea is this : he acted in good faith because he knew he was the *de facto* guardian under the Buddhist law. When he did this, the parties had settled in Burma and they had acquired the law of the domicile, and if Your Lordships will look at Chau Tun's Buddhist law, you will find the whole of the law discussed there ". The learned Judges looked at each other, each trying to draw some inspiration or some kind of confirmation as regards this statement of the law from the face of the other, and within two minutes the senior Judge said : " Well, Mr. so and so. We give your client the benefit of the doubt ". When he came out, I asked my learned leader as to where that law was and he said : " Do not try to find it out : there is perhaps no such law ". I said, " we would have had a very bad time if the learned judges had known that there was no such law ". Then, he said : " My dear man, would I have made that statement unless I was sure that there was no copy of that book available in the Judges' Library " ? That will be the sort of thing, and I say this in all humility to those who want to support this Bill—that unless the law is specifically inserted in clause 3, there will be very great difficulties in administering it.

Now, as regards clause 5, my learned predecessor, Sir Nripendra Sircar, at a previous stage of this Bill, put forward before the House certain instances in which this clause would operate harshly with regard to certain classes of cases. They are cases either of one conversion or of two conversions undergone for the purpose of getting rid of a husband. I have no sympathy for that class of cases. But I have in mind another class of cases. My learned friend, Mr. Bajoria, was wrong in saying that there were thousands of such cases or hundreds : but such cases do occur and at least a dozen cases or more do occur every year in some parts of the province from which I come. With regard to those cases, it is absolutely necessary that there should be some proviso, and that is why the Government have adopted this attitude that, as the Honourable the Mover himself, in the course of his address, said that that would be a way out of the difficulty—we can accept that clause if it is assured to us that, as a matter of fact, such a proviso would be inserted. My personal objections, however, go much deeper. There is not sufficient time left for me to deal with this matter in detail,

Honourable Members : Go on.

The Honourable Sir Manmatha Nath Mukerji : but I shall briefly state the points before the House. I have seen the opinions that we have received from different quarters with regard to clause 5. I am not going to read the opinions out to the House, but, with regard to

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this clause, the position is this : Of the Provincial Governments, six are in favour, five against, and one, namely, the Punjab Government has only given its qualified support to it. Of the High Courts, five have sent in no opinion whatever, one is against it, and four are in its favour. As regards officials connected with the administration of the law, 29 are in its favour, 15 against it. As regards other officials and non-official bodies, there is a wide divergence of opinion. So, although it is true that as a matter of fact the majority are in favour of clause 5, still it is equally true that a good and substantial minority are against this clause. One of the Governments, the Punjab Government, has said that clause 5 is defective and suggest that it should be amended to make it clear whether conversion to a faith other than Judaism or Christianity will operate to dissolve the marriage. The Bombay Government have said : " No change should be made in the existing law, according to which apostasy on the part of either party to the marriage operates as an annulment of the marriage ". The Bengal Government has said there should be some statutory clarification of the legal position of a Muslim wife in claiming a divorce, but the provisions of the Bill are quite unsatisfactory for the purpose. This is the nature of the opinions that we have received ; and my objection turns on a very crucial point. I am not going to discuss the details of the Muslim law such as I know it with regard to this matter ; but the difficulty that I find in this clause is this. I am perfectly sure that while no community should stand against another community which is trying to ameliorate its condition or its law, it is equally desirable—and I think this proposition will not be disputed—that unless there is real necessity, the other community should not also try to alter its law if it affects any sister community in any way. That being the position, my Honourable friends will seriously consider as to whether such a change in this law is necessary having regard to the fact that it will produce this result.

I am going to tell you what the result would be. A Muslim woman changes her faith and becomes an idolatress. The result of your law will be this, that the marriage tie will remain and will not be dissolved.

Now, are you not creating an artificial tie by making a new law in this respect ? I should very much like to see if there is really any authority in the Holy Book which definitely and distinctly says that, merely by reason of conversion or apostasy, the marriage tie is not dissolved. I have not been able to find any such authority. If such authority exists,—I shall certainly come to know of that in the course of this debate if at all I am present here. On the other hand, the practical result of the law would be this, that a woman who becomes an idolatrous, will be a Hindu, but she will have to tolerate her Muslim husband, with the result that she will not be allowed to remain or to come within the pale of Hinduism at all, a thing which you must seriously consider in view of the fact that the Government of this country is pledged to the freedom of faith of all classes of the people of this country. The practical result of this would be that a Muslim girl will not be allowed at all to change her faith to one of those non-scriptural religions. I submit, therefore, that Honourable Members

should seriously consider the consequences that will follow. My poor knowledge of Muslim law tells me that it is not permissible to a Muslim to marry a girl who does not belong to one of the scriptural faiths. If that be the position, it follows that marital relations also cannot exist between parties of that character, and what I apprehend is that while your law will say that she will remain as the Hindu wife of a Muslim husband, the religion,—and here I speak with the greatest diffidence,—will say that she will be only a concubine. I submit, Sir, these matters will have to be seriously considered by my esteemed friends before they make up their minds as to whether in this state of the Bill it should be sent to the Select Committee.

With regard to clause 6, I do not propose to take up your time, because that clause has been condemned by all parties, and my learned friend, the Mover of the Bill, has said that it might be suitably amended either to provide for trial with assessors or to provide for a trial according to the opinion of *Fatwas*. I submit, Sir, there will be serious objection to the decision of cases on the basis of *Fatwas*, because we all know what happened in connection with the Pandits and the Ulemas whose opinions used to be taken, and the only result of that would be that the price of *Fatwas* will go up.

As regards the trial with the aid of assessors, I think my esteemed friend, Mr. Deshmukh, has pointed out clearly that on questions of fact only the assessors can help the Judge, but on questions of law, it is really the opinion of the Judge which really ought to form the basis for decision ; because, if it is left to outsiders to decide on points of law, various difficulties will arise which you can easily imagine.

There is also another difficulty with regard to clause 6 from the point of view of the constitution, for it seems to me that the matter falls within Entry No. I in List No. 2 of the Government of India Act, and, therefore, you cannot here in the Central Legislature determine the constitution of the Court. These are the submissions, Sir, I wished to make. I have kept myself within time, and I would ask the House to seriously consider the submissions I have made before deciding to send the Bill to a Select Committee.

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

Dr. Sir Ziauddin Ahmad : May we request you, Sir, to sit a few minutes longer today ?

Several Honourable Members : No, no.

Mr. M. S. Aney : Sir, this is a Bill on which we have been listening to speeches for two days on the motion for referring it to Select Committee. The principles of the Bill are stated to be to enable Muslim women to dissolve marriages under certain conditions. That is the simple principle which is alleged to be underlying this Bill, but when we go over the Bill minutely, we find that it is not merely a Bill that is going to enable Muslim women

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

The Honourable Sir Muhammad Zafrullah Khan (Leader of the House) : Sir, I have to request you that you may be pleased to fix Saturday
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day, the 17th September, as a working day for official business, as it is apprehended that the Motor Vehicles Bill may possibly not be concluded by Friday, the 16th. I would, therefore, request you that Saturday, the 17th, may be fixed as a working day.

Mr. President (The Honourable Sir Abdur Rahim) : The Assembly will sit on Saturday, the 17th September, for the purpose of official business.

Qazi Muhammad Ahmad Kazmi : I have to make one request to you, Sir. So far as the speeches on this Bill are concerned, it appears to be the general opinion of the House that it may be allowed to go to the Select Committee. I think my friend, Mr. Aney, the Leader of the Nationalist Party, will not take more than 10 or 15 minutes, because this is the last non-official day, and if the discussion on this Bill is not finished today and if it is not sent to the Select Committee, then it will have to be taken over to the Delhi Session.....

Mr. President (The Honourable Sir Abdur Rahim) : If that is the general desire of the House, I have no objection.

Several Honourable Members : Yes, yes.

Mr. President (The Honourable Sir Abdur Rahim) : Are you prepared to finish your speech today ?

Mr. M. S. Aney : I am entirely in the hands of the House in this matter.

Mr. President (The Honourable Sir Abdur Rahim) : Is that the general desire of the House ?

Several Muslim Honourable Members : Yes, yes.

Honourable Members from Congress Benches : No, no.

Mr. President (The Honourable Sir Abdur Rahim) : As there is no such unanimous desire, the Assembly stands adjourned till Eleven of the Clock on Monday, the 12th September.

The Assembly then adjourned till Eleven of the Clock on Monday, the 12th September, 1938.