

Thursday, 25th February, 1937

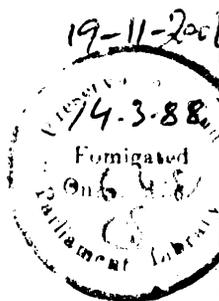
THE  
COUNCIL OF STATE DEBATES

VOLUME I, 1937

*(16th February to 8th April, 1937)*

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FIRST SESSION  
OF THE  
FOURTH COUNCIL OF STATE, 1937



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# COUNCIL OF STATE.

Thursday, 25th February, 1937.

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

## MEMBER SWORN. -

The Honourable Maulvi Ali Asgar Khan (Assam : Muhammadan).

## MOTION FOR ADJOURNMENT *RE*. ADJOURNMENT OF TRIAL OF AN HONOURABLE MEMBER BY A MAGISTRATE WHEN THE COUNCIL IS IN SESSION.

THE HONOURABLE THE PRESIDENT: Honourable Members, before we proceed with today's work, I have to inform you that I have received notice of an Adjournment Motion from the Honourable Mr. Ramadas Pantulu. Before I read the Motion, I want to know from the Honourable Member if he has given notice, before the commencement of the sitting, to the Honourable Member in charge of the Department and also to the Secretary.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muhammadan): Yes, Sir.

THE HONOURABLE THE PRESIDENT: The Motion is this :

"Sir, I intend to raise in the Council, at such time you may permit me to do so, the question of the privilege of a Member of this House, who has been summoned to attend a session, to be permitted to do so, notwithstanding the pendency of a prosecution against him, by adjourning the trial to such date or dates as to allow him to attend the Council while it is actually in session.

This is in connection with the refusal yesterday (24th February 1937) of an adjournment to the Honourable Mr. Brijlal N. Biyani, a Member of this House, by the City Magistrate of Akola and posting the case for trial for today and from day to day thereafter, notwithstanding the prayer of Mr. Biyani for an adjournment of the case till the present session of the Council concludes in April."

The Adjournment Motion . . .

THE HONOURABLE MR. V. RAMADAS PANTULU: I gave notice of another Motion of Adjournment itself.

THE HONOURABLE THE PRESIDENT: And you have also given notice of an Adjournment Motion, which reads :

"I beg to give notice of my intention to make a Motion for an adjournment of the business of the Council for the purpose of discussing a definite matter of urgent public importance, namely, preventing an Honourable Member of this House, Mr. Brijlal Nandlal Biyani, from discharging his duties here by refusing to give him an adjournment of trial by the City Magistrate of Akola even for a short time, in the case pending against him in connection with the prosecution for sedition launched against him for an Election speech."

[ The President.]

As regards the first Motion, it is a question involving the right of privilege of a Member of the House and I do not propose to go into that question at this stage. But I am bound to consider whether I should allow this Adjournment Motion, which has been properly framed and presented in right time before the commencement of our work today and of which notices have been under the new rules properly submitted.

THE HONOURABLE MR. R. M. MAXWELL (Home Secretary): Sir, I doubt very much whether this is a Motion for Adjournment which could properly be moved in this House. Any business which comes before this House of this character must, it seems to me, either be regarded as a Resolution or not.

THE HONOURABLE THE PRESIDENT: What rule are you referring to ?

THE HONOURABLE MR. R. M. MAXWELL: If this is a Resolution then its discussion in this House is prohibited by rule 23 (1) (iii) of the Indian Legislative Rules which prohibits discussion of any matter which is under adjudication by a Court of law. That rule, Sir, reads :

“ 23 (1).....

“ No resolution shall be moved in regard to any of the following subjects :—

.....

(iii) any matter which is under adjudication by a Court of Law having jurisdiction in any part of His Majesty's dominions.”

That rule, Sir, refers specifically to Resolutions but Rule 24-A (2) says :

“ It shall not be permissible to the President or to the Member of the Government concerned to give his consent to the moving of any motion in regard to any of the subjects in regard to which a resolution cannot be moved.”

Now, if a Resolution cannot be moved in regard to this subject, then the Adjournment Motion cannot also be moved in regard to it. That is my formal objection.

THE HONOURABLE THE PRESIDENT: I am afraid I cannot accept your argument and I cannot agree with what you have stated on this occasion. Sub-clause (iii) refers to any matter which is still under adjudication by a court of law having jurisdiction and what is generally contemplated by this sub-clause are matters pending for decision in civil suits rather than interlocutory orders already passed in criminal cases. That is my reading of the rule.

Again your objection as regards Resolutions, so far as adjournment motions are concerned we have to strictly confine ourselves within the limits of rules 11 and 12 and I really do not think that your contention is correct and that the Motion is not in order. I am firmly of opinion that the Motion is in order and I have got a precedent to that effect in the Legislative Assembly. A Motion to a similar effect was moved on the 22nd January, 1935, relating to the detention of Sarat Chandra Bose and preventing him from attending to his duties as a Member of the Legislative Assembly. That Motion was allowed and talked out in that House and having that precedent before me I cannot possibly say that the Motion is not in order. I hold therefore that the Motion is in order.

Now it will be necessary for me to obtain the sanction of the Council and if 15 Members rise as required by Standing Order 22, I will give my decision in this connection. Will those Members who are in favour of giving leave to discuss this Motion please rise in their seats?

(Eight Members rose.)

Fifteen Members have not risen—only eight Members, and I am sorry therefore I cannot give the required leave to make this Motion.

## INDIAN ELECTRICITY (AMENDMENT) BILL.

THE HONOURABLE MR. A. G. CLOW (Industries and Labour Secretary) :  
Sir, I move :

“ That the Bill further to amend the Indian Electricity Act, 1910, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”

The object of this Bill is to set up a Central Electricity Board which will be charged with the duty of making rules under the Electricity Act, a power now vested in the Government of India. The need for the measure arises out of the constitutional changes which are impending. Under the Government of India Act of 1935, if the Indian Electricity Act remains in its present form, the power of making rules will be distributed between the Central and the Provincial Governments. I understand that the probable effect will be this, that the Government of India will have the power to make rules and the duty of making rules in respect of electrical matters on railways, in mines and in oilfields, and that the various provincial Governments will have the corresponding powers and duties in respect of factories and other establishments such as private and public places. Now, from two points of view this will be an extremely inconvenient arrangement. First from the point of the general public, I am sure that all those Members who have acquaintance with industry will recognise that, particularly with the increasing development of electricity in this country, the setting up of a whole series of codes, which would probably tend as time went on to diverge more and more substantially from province to province, would act as a check not merely on the production of electrical machinery but on its use throughout the country. From the administrative point of view those who have experience of the toil and difficulty involved in the amendment of these big technical codes will realise that for a dozen or more separate authorities to sit down and frame codes separately would involve a large amount of labour which is better avoided, and would result in the work being less satisfactorily done than if representatives of these authorities were able to meet and discuss the matter. The proposal in the Bill is for a representative Board in which all these authorities, who but for this Bill would have to exercise their powers separately, will consider matters in concert. The proposal was discussed at the Industries Conference at Lucknow in December and met with general support.

It will, of course, be possible under the new Government of India Act for the Central Legislature to continue to legislate in any matters relating to electricity as the subject is placed in the concurrent field. But those who are familiar with these very extensive rules will, I think, have no difficulty in reaching the conclusion that to embody rules of that kind in a substantive enactment and keep constantly amending them by legislation—for electrical practice needs constant revision—would be an almost impossible task.

The Motion was adopted.

Clauses 2 to 5 were added to the Bill.

Clause 1 and the Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. G. CLOW : Sir, I move :

“ That the Bill, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

### CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

THE HONOURABLE MR. A. DEC. WILLIAMS (Government of India : Nominated Official) : Sir, I move :

“ That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes (*insertion of new section 44 A*), as passed by the Legislative Assembly, be taken into consideration.”

This Bill, Sir, by inserting a new section 44A in the Code of Civil Procedure, provides for the execution in British India of the judgments of certain courts in the United Kingdom and in those parts of His Majesty's Dominions and the States in India which provide substantially the same facilities for the execution of decrees of British Indian courts. A similar Bill was introduced in the Assembly in 1924 and was referred to a Select Committee. The Committee discovered that owing to the then state of the law in the United Kingdom, it was impossible to secure execution in the United Kingdom of the decrees of any court in British India other than a High Court. The Committee reported that this did not provide a sufficient degree of reciprocity. Government agreed and withdrew the Bill. The position has now been altered by the enactment of the Foreign Judgments (Reciprocal Enforcement) Act, 1933, which gives power to His Majesty by Order in Council to declare that courts in British India shall be courts the decrees of which can be executed in the United Kingdom. Honourable Members will, I think, agree that that provides sufficient reciprocity in respect of the United Kingdom.

As regards the Colonies, the Dominions and the Indian States, the Bill provides for reciprocity only in the case of such of them as are notified, and the intention is only to notify where Government has previously assured itself that there will be adequate reciprocity. Sir, I move.

The Motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. DEC. WILLIAMS : Sir, I move :

“ That the Bill, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

### INDIAN BOILERS (AMENDMENT) BILL.

THE HONOURABLE MR. A. G. CLOW (Industries and Labour Secretary) : Sir, I move :

“ That the Bill further to amend the Indian Boilers Act, 1923, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”

Honourable Members will see that this Bill is very similar to the Bill to amend the Electricity Act which we have just considered, and I need add very little to what I said in connection with that Bill. The position in respect of the two subjects is almost exactly the same, and the Board which it is proposed to set up here will be constituted in very nearly the same manner. As a matter of fact, we have had some experience of what it means to have provincial variations, because prior to 1923 the Acts and Codes on the subject were provincial. The result was a great amount of inconvenience, and as a result of complaints from industrialists and others, the Indian Boiler Laws Committee of 1921-22, who examined the matter, recommended centralisation. It was in pursuance of their recommendations that the existing Boilers Act was passed.

There is one little amendment which is unconnected with the main purpose of the Bill, and that is in clause 5 (b). This amendment seeks to remedy a minor defect in the clauses relating to rule-making powers. The powers provide for laying down standards in respect of boilers but they do not provide for permitting necessary variations, and with the increasing complexity of boiler technique it is most desirable that variations in the standards laid down should be admissible when this is consistent with safety.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, I consider this measure a useful one, because, for the reasons given by the Honourable Mr. Clow, creation of a Central Board seems necessary. But, Sir, I should like to know whether the Board under section 27A (2) will consist of technical people nominated by the various Provincial Governments and Bodies or whether it will consist of officials and non-officials or purely of officials. That is the point on which I request the Honourable Mr. Clow to throw some light—whether these nominations will consist purely of technical people or otherwise, and whether those technical and other people will be officials or non-officials or both.

THE HONOURABLE MR. A. G. CLOW : As regards these questions, the authorities mentioned here will of course have liberty to nominate whomsoever they choose. My impression is that they will almost invariably—perhaps invariably—nominate officials who will be guided by the instructions that they receive from their respective Governments. The intention is that they should be representatives of those Governments and put forward their views. As regards the question of whether they will be technical men or otherwise, we had some discussion on that point at the Industries Conference in Lucknow and the views expressed there differed, some Government representatives taking the view that it would be desirable to have a technical official, and others taking the view that it would be advantageous to have an official of administrative experience who might be assisted, if necessary, by a technical officer. My anticipation is that probably the Board will not be composed exclusively of either type of official but that both will be combined in it.

THE HONOURABLE THE PRESIDENT : Motion made :

“ That the Bill further to amend the Indian Boilers Act, 1923, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”

The Question is :

“ That that Motion be adopted.”

The Motion was adopted.

Clauses 2 to 5 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. G. CLOW: Sir, I move:

“That the Bill, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

**RESOLUTION RE NON-RATIFICATION OF THE DRAFT CONVENTION AND THE RECOMMENDATION CONCERNING ANNUAL HOLIDAYS WITH PAY.**

THE HONOURABLE MR. A. G. CLOW (Industries and Labour Secretary): Sir, I move:

“That this Council having considered the Draft Convention and the Recommendation concerning annual holidays with pay adopted at the Twentieth Session of the International Labour Conference recommends to the Governor General in Council that he do not ratify the Convention or give effect to the Recommendation.”

Honourable Members have already received copies of the Convention and the Recommendation mentioned in this Resolution and I do not therefore propose to refer to the provisions in detail. Generally speaking, the object of both is to secure to wide classes of workers an annual holiday with pay of a certain minimum duration. Now, I should like to make it clear that the form in which my Resolution is cast does not imply in any way that holidays with pay, which most of us find so necessary for ourselves, are unnecessary for any other class of His Majesty's subjects. I am myself profoundly convinced of the need that all men have for holidays, of the benefit that one receives, not merely in health and efficiency, but in well-being in the wider sense of the word.

What I have expressed is merely an opinion; but Government have done a good deal more than express an opinion, because, in so far as their own servants generally are concerned, they have embodied this view in their own rules. Most Government servants, whether employed in factories or railways or in other spheres of life, get holidays with pay, leave in other words, on a more generous scale than that embodied as the minimum in Article 2 of this Convention. The Article asks only for an annual holiday with pay of at least 6 working days, which is to be extended to 12 days in the case of persons under 16 years of age, and which is to increase, it does not say in what proportion, with length of service. Well, I think if we were to frame rules for Government servants which would fully satisfy that Article both in the letter and in the spirit, it would be received with feelings of profound dismay if it were proposed to enforce them in various Government establishments. Government therefore have no criticism to make of the general underlying principle and in fact in reporting to the International Labour Office itself before the Convention was framed they said that the principle was sound.

But there is a very big difference—and it is a difference unfortunately not always appreciated by some of the more ardent advocates of labour legislation—between agreeing that a broad proposal is sound and commendable

and translating that into laws which are enforced. In all legislation of a type that is protective and is designed to protect the individual against danger or sometimes against himself, you reach a point where the administrative difficulties and expenses out-balance any advantages that are likely to be derived, and in some forms of legislation you reach that point a great deal quicker than you do in others. And I venture to suggest that in legislation of the wholesale type contemplated by this Convention you would reach it almost immediately. The main difficulty which the Convention creates will be evident by a glance at the very formidable list of undertakings to which it has to be applied; and I would remind the House that in respect of these Conventions no reservations can be attached to ratification. You have either got to ratify the whole of it and implement it fully or you cannot ratify at all.

Now the list of undertakings begins with a very formidable list of public works, in fact practically every one engaged on almost any conceivable form of public work, great or small, and private works too, such as buildings of all kinds, I take it, from the smallest village house to a building of the type in which we sit, roads, drains, wells, irrigation or drainage works and so on. Then it goes on to transport, to mines, to commercial training establishments, ranging I suppose from the smallest grain merchant's shop employing one or two servants up to a great emporium. Then it goes on to various services, newspaper undertakings, various kinds of hospitals, hotels, restaurants, boarding houses, clubs, refreshment houses, theatres and places of public amusement. Those Members who know what it costs to administer various laws will I think at once recognize that the attempt to enforce a Convention of this kind throughout India would involve an immense amount of administration, and consequently of taxation. I would remind Honourable Members that the cost of this would not fall on the Government of India, because the administration of the subject is provincial and will be more emphatically provincial after the 1st April than it is now. And it is most important in dealing with legislation of all kinds, and particularly legislation of this type, that you should not impose a nominal burden, in other words a burden represented by mere statutes which you are not prepared to undertake in action. Nothing could be more unfortunate than to place on the statute-book a series of admirable measures which you do not enforce. How far Local Governments can undertake the proposals in the Convention I am very doubtful, but we are perfectly ready to make a reference to them on the subject. The indications are, as Honourable Members are aware, that the Governments after the 1st April, will be of a somewhat different character from those that are now in the provinces, but I feel sure that some Honourable Members at least will have complete confidence in their views. Sir, I move.

\*THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern: Non-Muhammadan): Sir, there is no difference between the Honourable Mr. Clow and ourselves in regard to the principle of the Draft Convention. The object of that Draft Convention, as the Honourable Mr. Clow has rightly pointed out, is to secure to a wide class of workers annual holidays with pay. The Honourable Mr. Clow thinks that annual holidays with pay are necessary; he thinks that they are desirable in the wider interests of the community itself. He has pointed out—and I think very rightly—that Government have embodied this view in the case of their own public servants. Some

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\* Speech not corrected by the Honourable Member.

[Mr. P. N. Sapru.]

of us think that the higher grades of public servants are treated far too generously. For example, the High Court Judges get 10 weeks' holidays, in addition to very liberal leave rules. Government therefore are not disposed to criticise the general principle, but as the Honourable Mr. Clow says there is a difference between agreeing that a proposal is sound in principle and translating it into practice. He says that there are practical difficulties in the way of translating the proposal into practice. I have not been able to understand those practical difficulties. After all, our workers have to work longer hours; in fact they have to work about 9 or 10 hours. They have to do this 9 or 10 hours' work in a very hot country and they are not an overpaid lot. They must also have some holidays. Therefore, Sir, I do not understand these practical difficulties. He says the number of undertakings to which this Convention will apply is very large, but all these undertakings can be grouped. They come under one class or other, railway employees or municipal employees. I think a classification can be made under which all these undertakings which are to be found in this list at page 30 can be grouped. Then, Sir, it is said that administration of law of this character would be very difficult. The administration of all laws is very difficult. We placed on the Statute-Book the Sarda Act. Have we been able to enforce it strictly? There are laws which are not being enforced strictly, but they will be enforced to the extent that it may be possible for us to enforce. Therefore I am not impressed with those arguments and I should have been happier if Government had taken the decision of ratifying the Convention. Sir, we ought to approach these questions from the point of view of what is best in the interests of the working classes of this country. I think, Sir, the Convention is in the interests of the working classes in this country.

Now, Sir, with your permission, I should also like to refer to the procedure which is proposed to be adopted in regard to the ratification of International Conventions in future. Sir, we know that we are original members of the League of Nations and we are also members of the International Labour Organisation. I have always attached value to our membership of the League of Nations as also the International Labour Organisation. It is laid down in Article 405 of the Treaty of Versailles that every member-State of the International Labour Organisation should, within the period of 18 months from the closing of the session of the International Labour Conference, bring the Recommendations or Draft Conventions adopted at that Conference "before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action." Part 7 of the same Article says that:

"In the case of a Draft Convention, the member-State will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the Convention to the Secretary-General of the League of Nations and will take such action as may be necessary to make effective provisions of such Convention."

Now, Sir, the first occasion on which the Conventions of the International Labour Conference were brought before the Central Legislature was in 1921. The first International Labour Conference was held at Washington in 1919 and on the 19th of February 1921 Sir Thomas Holland moved a Resolution in the Indian Legislative Assembly about the ratification of the Draft Convention regarding hours of work. Now, Sir, in the course of his speech he said:

"Now for the authority of the agent who acts, the 'competent authority' recognised by the Washington Conference. This Assembly is one constituent...."

—he was speaking in the Assembly and I would say that this Council is also a constituent—

“ . . . of the competent authority, and I congratulate the Assembly on having the privilege, in the first Session of its existence, of having to deal with the earliest of the measures adopted by the League of Nations in the cause of humanity.”

Further on he said :

“ According to Article 405 of the Peace Treaty, if a Recommendation or a Convention fails to obtain the approval of the competent legislative authority, no further obligation will rest on the Member, that is, the Government of the country represented. It is, therefore, for this Assembly to say whether the measures proposed for the protection of labour shall or shall not form the guiding principles of our legislation. If these Resolutions and the legislation proposed are thrown out by this Assembly, no further responsibility rests on the Government of India as representing this country in the League of Nations.”

Introducing the same Resolution in the Council of State, the Honourable Sir Atul Chatterjee said :

“ The action that is obligatory on all members of the League is embodied in Article 405 of the Peace Treaty. Each State, on receipt of these proposals is bound to place them before the authority or authorities in whose competence the matter lies for legislation or otherwise. . . . The Government of India considered that it was desirable that these proposals—at least those proposals which required legislative action—should be laid before the new Legislature, because it will be for the new Legislature to give effect to these Conventions and Recommendations if they found acceptance with them.”

Sir, I may also draw attention to page 120 of Volume No. 4—“ The International Labour Organisation ” of Indian Industries and Labour, published by the Government of India, where it is definitely stated :

“ In the case of Draft Conventions involving fresh legislation, the Legislature is the ‘ competent authority ’ referred to, and it is incumbent on the executive Government to submit the Draft Conventions to it. If a Draft Convention has been approved by the competent authority that State is bound to carry it into effect.”

Now, Sir, my point is that the two branches of the Legislature have acquired by precedent and by convention the right to be considered “ the competent authority ” to decide whether the Conventions of the International Labour Conference should be ratified or not. We have got this right now by the uninterrupted practice of the last 15 years. . . . .

**THE HONOURABLE THE PRESIDENT :** At the moment this is all of academic interest only. We are considering a definite Resolution which is placed before the House. If I had known that you wanted to go into various matters, I would have asked you to move this matter by way of a special Resolution.

**THE HONOURABLE MR. P. N. SAPRU :** I was raising this question at this particular moment because I did not feel quite sure that we would have any other opportunity of discussing this wider question of procedure.

**THE HONOURABLE THE PRESIDENT :** Certainly you could have brought it by way of a Resolution.

**THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern : Non-Muhammadan) :** Sir, Government the other day laid a statement on the table indicating the course which they would pursue in connection with the Conventions and Recommendations of the labour organisation in future. I see no reason why Members should be debarred from speaking on the subject.

**THE HONOURABLE THE PRESIDENT :** I have not stopped the Honourable Member. I have only told him that this is a very inopportune time for going into these matters. If you wish to proceed with your remarks you can do so, Mr. Sapru. As you have spoken all this time, you might as well finish what you have to say.

**THE HONOURABLE MR. P. N. SAPRU :** Very well, Sir. I will not weary the House but will try to be as brief as I can. The point that I wanted to make, Sir, was that, so far, all Conventions, whether they are proposed to be ratified or not, have been brought before the Legislature. (*The Honourable Mr. A. G. Clow* : "Oh, no.") Whether they are going to be ratified or not they have all been brought before the Legislature. Now it is proposed hereafter to bring only those Conventions before the House which Government propose to ratify. Therefore, Sir, there is a change of procedure contemplated so far as the future is concerned.

Now, Sir, the position in this country is different from the position in other countries. Sir, we in this country have an irremovable Executive, we have an Executive which is not responsible to the Legislature. Therefore, this right which we the Legislature possess is a very valued right. When a Resolution comes before us here, when a Convention comes before us, we can apply our minds to that Convention and we get an opportunity of discussing that Convention and contributing something to the welfare of the working class in this land. Sir, these discussions, particularly in the other place, in regard to these Conventions have had a good effect so far as working class legislation is concerned, and I think, Sir, it is a right about which we ought to be jealous. It is a right which we have now enjoyed for the last 15 years. I know, Sir, that hereafter statements will be laid on the table. But it is not the same thing. If you lay a statement on the table people sometimes do not care to read the statement. If you bring a Resolution you attract the attention of Members in a pointed manner to the questions raised by the Resolution and therefore, Sir, the future procedure will not be as helpful as the present procedure is. There is a curtailment of our privileges, privileges which we have acquired by the established practice and convention of the last 15 years. I could say more about this, Sir, but I do not wish to take up more of the time of the House, and will therefore conclude, Sir, by requesting the Honourable Mr. Clow to give the observations which I have placed before the House some consideration and to revise in the light of my observations the procedure which he and the Labour Department propose to follow in future. Sir, these are all the observations that I have to make in regard to this Resolution of the Honourable Mr. Clow.

**THE HONOURABLE PANDIT HIRDAY NATH KUNZRU :** Mr. President, we had yesterday a Member of the Government here who enunciated the proposition that sympathy given to a measure which was not supported by us was wholly insincere. Today we have another official who, while expressing profound sympathy with the principle underlying the Draft Convention and Recommendations now placed before the House, finds himself compelled to ask the House to reject them. Well, I am sure, Sir, that my Honourable friend, Mr. Clow, was the unhappiest Member of the House yesterday. Perhaps when the Honourable the Finance Member was speaking he was saying to himself, "God save us from our friends. Members of Government might well be required to possess in addition to technical ability some political sense also if they are expected to deal with large questions of policy in a vast country like India". I do not therefore wish to add to his difficulties by visiting on his head the sins which do not properly belong to him, but, so far

as the proposition that he has laid before the House is concerned, while I am free to confess that the Convention passed by the International Labour Organisation is of so wide a character as to make it very difficult to apply it in its entirety, I feel that nothing has been said by him to assure us that it could not be given effect to in any of the numerous private undertakings or departments of public activity mentioned in the Convention. Now let me take first those departments of Government which might have come under the Convention if it had been ratified. I know that there are a good many departments where the workers are treated better than is contemplated by this Convention but we do not know whether the rights which a Convention like this if ratified will accord to the subordinates in various departments are applied in all cases. I have certainly no assurance that the employees of local bodies universally enjoy the rights which the Convention now before us would like to confer on subordinate public servants. I think, therefore, Sir, that my Honourable friend, Mr. Clow, should have taken the trouble to inform the House what are those departments of Government or local bodies to which this Convention if ratified would have been applicable and to show in what cases the Convention was already being given effect to in practice or action in excess of that required by the Convention was being taken. Not having done that, he cannot blame us if we do not feel convinced by the arguments that he has used.

Then, Sir, take the private commercial and industrial establishments to which this Convention would have been applicable if ratified. Now it may not be possible for Government without having a large establishment to see that the rules made to carry out the Convention are observed. Is there anything however to prevent it from choosing one or two kinds of activities and seeing whether the ratification cannot be enforced in respect of them. It was not enough for my Honourable friend, Mr. Clow, while expressing profuse sympathy with the principles underlying the Convention, to say that it is of so vast or so vague a character that it is impossible to give effect to it. It was incumbent on him when he points out the objections to such a Convention if generally applied also to convince the House of the sincerity of Government by stating that action would be attempted to be taken in respect of those undertakings in which the Convention can be fairly easily enforced. But he

12 Noon.

has done nothing of the kind. I am therefore disposed to doubt whether the Convention is as impracticable as he has tried to make out. On these grounds, Sir, I am not prepared to support the Resolution of the Honourable Mr. Clow as laid before the House. Had he followed the course that I have indicated earlier, he would certainly have been entitled to ask us to support him. But, having done nothing of the kind, having come forward with a mere negative, I do not think he deserves the support of Members on this side of the House.

Now, Sir, I will take advantage of your indulgence to deal with the procedure which Government propose to adopt in future in dealing with the Conventions and Recommendations of International Labour Conferences. The present procedure is one that Government have been following for the last 15 or 16 years. If they wish to change it, it is necessary for them to lay cogent reasons before this House for an alteration in the procedure. My Honourable friend Mr. Clow has not tried to enlighten us at all with regard to the grounds on which a change of procedure is necessary. His Chief, however, gave a few instances in another place to show that the present procedure had proved cumbrous and inconvenient. The substance of what he said was that in some cases there had been unnecessary discussion. The Assembly had discussed more than once the same principle in connection with different

[Pandit Hirday Nath Kunzru.]

Conventions and thus the time of the House had been to a certain extent wasted. It is not clear in the first place that when we are unable to accept a recommendation of a general kind, it should not be applicable even to a particular case. It may have been that when the Assembly rejected a particular Convention of a general kind, it still thought that something would be gained by discussing its applicability to a particular trade or industry. Apart from that, Government themselves have admitted that the discussion even of those Conventions which have not been accepted and which were not applicable to Indian conditions has proved beneficial and has led in certain cases to the initiation of very useful measures. This admission was made by the Honourable Sir Frank Noyce the other day in the Legislative Assembly. My Honourable friend Mr. Clow too has made a similar admission in a book entitled "The State and Industry" which he wrote or edited in 1928. There is a proverb, Sir, which says, "Would that mine enemy would write a book". My Honourable friend Mr. Clow, who though not an enemy of ours is for the time being opposed to us, has, happily for us, written us a book which provides us with very cogent arguments against himself. On page 141 of this book he says :

"The International Labour Conference cannot compel countries to accept its conclusions and its procedure, and the fact. . . ." (I draw the particular attention of the House to the following words) ". . . and the fact that its Conventions and Recommendations have ordinarily to be submitted to the Legislature in each country ensures regular examination both by the Executive Government and by popular representatives of numerous schemes for the amelioration of labour conditions. Ten sessions of the International Labour Conference were held between 1919 and 1927 and the submission at intervals of conclusions reached by the Conference to the Legislative Assembly and the Council of State has been instrumental in stimulating public interest in labour questions and at times in initiating measures which might not otherwise have been adopted."

Can there by a stronger justification of the procedure that the Government have followed during the last 15 or 16 years? If the time of the House has been wasted on one or two occasions, can it be weighed for a moment in the balances against the good that the discussion of the proposals of the International Labour Conference has led to? If the question were to be decided merely on a consideration of the balance of advantage, if it were to be decided merely in accordance with experience, I have no doubt whatsoever that every impartial Member of this House will admit that the present procedure has amply justified itself.

But, Sir, the arguments that I have urged up to the present time are not the only ones that lead me to protest against the change of procedure adopted by Government without any warning to this House and without giving it an opportunity of pronouncing its opinion on their proposal. There are even more solid grounds for resenting the change of method that is now proposed by Government. The Federal Constitution unfortunately takes away much from us that we enjoy even under the present dependent political conditions. Happily for us, we can at present deal with labour questions relating to the whole of India in the Central Legislature. But I do not know what the situation hereafter will be—who will deal in future with questions that come within the purview of the International Labour Conference. We do not know whether it will be a popular Minister or whether it will be the Governor General or some other authority. We are therefore nervous lest the change of procedure now proposed by Government should lead to a substantial curtailment of the power of this House and should result in consequences detrimental to the best interests of labour. So long as we feel certain that every Convention or Recommendation, whether applicable or inapplicable to India, will be

brought before the Indian Legislature, we have a guarantee that all questions relating to labour will receive adequate consideration at the hands both of members of Government and the popular representatives. But if this procedure is altered, if it depends entirely on Government whether in any particular case a Resolution relating to the proceedings of the International Labour Conference is to be placed before us or not, there can be no certainty that even important questions will receive due public consideration.

**THE HONOURABLE THE PRESIDENT :** May I draw your attention to the fact that your 15 minutes have already expired ?

**THE HONOURABLE PANDIT HIRDAY NATH KUNZRU :** Sir, I did not know there was any time limit in regard to speeches on a measure of this kind.

**THE HONOURABLE THE PRESIDENT :** It applies to all Resolutions.

**THE HONOURABLE PANDIT HIRDAY NATH KUNZRU :** I have something more to say but I will not trespass any further on your indulgence. I hope what I have said will be sufficient to convince the House that the change of procedure adopted by Government is not merely one of form. It is one of substance, and if adopted it might lead to serious injustice in the case of those whom it ought to be our business to protect most. It is true that in the past too Government have not felt themselves compelled to bring before us every Recommendation or Convention of the International Labour Conference. But, so far as I am aware, this was done only in those cases where Government felt that they already had the power to carry out the objects underlying the Convention or Recommendation. I am not aware that in any other case Government failed to place the matter before the Legislative Assembly or the Council of State.

Well, I shall not weary the House any further, Sir, but I shall express once more the hope that the House will not easily allow the present procedure to be changed. Is it too much to hope that Government after considering the matter fully will themselves come to the conclusion that it is not fair to this House, that it is not fair to those with whom they express profound sympathy time after time, to change the procedure in the manner indicated by them ?

**THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muhammadan) :** I rise merely to make a suggestion to the Members opposite, especially to the Honourable Mr. Clow, to give an opportunity to this House to express itself more fully on this question, through a Resolution moved by Government in regard to the change of procedure. It is much easier for the Government to do this because they have many more days allotted for official business than we non-officials have for our Bills and Resolutions. I think the matter is of sufficient importance for the Government to ascertain the views of this House by a Resolution tabled on this subject. I think that would be fair and courteous to this House before embarking upon this change. It is certainly useful, even in cases where Government do not propose to give effect to the Recommendations and Conventions of the International Labour Conference, to tell this House and the public through this House why they propose not to give effect to them. The reasons would always be worth knowing.

And as regards the Consideration of the time of the House occupied in discussing Conventions which the Government do not wish to ratify, I may say that this House is not burdened with too much work. Non-official Members

[Mr. Ramadas Pantulu.]

on this side of the House enjoy too many holidays with pay on which they would be glad to do some work. We will therefore not complain if any additional work is thrown upon us by discussing Conventions which Government do not propose to ratify and going into the reasons for that non-ratification. Even if the other House is over-worked, there is no reason why these questions should not be brought before this House. At least it will afford an opportunity for Government to take the public into their confidence in regard to non-ratification of any particular Recommendation or Convention. And as I have said, there is plenty of time hanging heavy on our hands and we would welcome having something more to do. Therefore I request Mr. Clow to consider my suggestion for tabling a Resolution on the change of procedure proposed to ascertain the opinion of this House.

**THE HONOURABLE MR. A. G. CLOW :** Sir, on the immediate subject of the Resolution before us I do not think I need say very much. My Honourable friend Pandit Kunzru suggested that I had no right to suggest non-ratification until I had discussed where the principle could be applied. I tried to point out in my original speech that you cannot ratify a Convention unless you are prepared to apply it everywhere within all the establishments covered by the Convention. Therefore, so far as mere ratification is concerned, if my Honourable friends opposite agree with me that there is any single class of establishment to which it cannot be applied, that should be sufficient to determine their conclusion on the question of ratification. As regards the action to be taken on the principle, I indicated that we were prepared to refer that matter to Local Governments within whose competence the matter very largely lies. In fact they will have almost entirely the executive authority and they will also have the power of legislation.

**THE HONOURABLE PANDIT HIRDAY NATH KUNZRU :** Then why do you bring up this question now? You may have waited for their reply.

**THE HONOURABLE MR. A. G. CLOW :** Because under the Treaty of Versailles we are obliged to bring forward Conventions within a fixed period, normally a year, from the close of the Conference. (*An Honourable Member* : "18 months.") 18 months in exceptional circumstances. And as I say, if the House, as I am sure it is, is convinced that there is any single class of establishment mentioned in the Convention to which it cannot be applied, then it is impossible for us to ratify it. I might say in passing that I am sorry that I do not feel convicted of any insincerity, because I recognize no parallel between the present position and the position in which we were yesterday. Yesterday we were confronted with a Bill which, whatever Honourable Members think about it, they all recognized as being perfectly practical. In fact their complaint was that it was only too practical. Today we are dealing with a Convention which I maintain, so far as India is concerned, is impractical; and I cannot see any exact parallel between the two situations.

Now, coming to the more important question which my Honourable friends raised, I think I can say at once in regard to the Resolution which it was proposed Government should bring in, that I do not see the need of it. We have had the position from one point of view very admirably expressed by my Honourable friends Mr. Sapru and Mr. Kunzru, and if after what I have said Honourable Members still feel that there is a great deal more to be said on it, nothing I can do can prevent Honourable Members opposite from tabling a Resolution on the subject. But I think there is a great deal of misapprehen-

sion regarding the position. I was not in the least embarrassed by anything which was quoted from Sir Thomas Holland or from that distinguished leader in labour matters Sir Atul Chatterjee, or even from what in my humbler capacity I wrote myself in 1928. I entirely agree with what the Honourable Mr. Kunzru said that the submission of these matters to the Legislature has had useful results, even when a Convention is not ratified. And I believe it will have those results in the future. We are still submitting these Conventions and Recommendations to this House. It has not been an invariable practice in the past. There are certain circumstances in which we have not submitted them. For example, some Recommendations which lay in the provincial sphere have been referred to Provincial Governments for consideration. But we are now submitting the Recommendations and Conventions entire with a statement indicating what Government propose to do and I am at a complete loss to understand what right is being taken away—not the right, surely, of discussing anything.

**THE HONOURABLE MR. P. N. SAPRU :** May I just explain ? Supposing we move a Resolution ; we have to have the Resolution balloted. The Resolution may not come in the ballot. Therefore we never get any opportunity of discussing the question.

**THE HONOURABLE MR. A. G. CLOW :** There are very few Resolutions in my experience—certainly not under your presidency, Sir—of importance which do not find a place in the ballot, and, circumstanced as we are in this House, it is extraordinarily unlikely that if a number of Honourable Members were to table a Resolution on a particular matter of sufficient interest it would fail to find a place in the ballot.

**THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY (Eas Bengal : Non-Muhammadan) :** I had to cut down one of my Resolutions to get a Bill admitted for discussion.

**THE HONOURABLE MR. V. RAMADAS PANTULU :** What objection have you to table one ?

**THE HONOURABLE MR. A. G. CLOW :** The objection that I have is this. If an Honourable Member wants action, it should ordinarily be for that Member to take the initiative. Why should I come forward when I am content with the position and table a Resolution that no action should be taken ?

**THE HONOURABLE PANDIT HIRDAY NATH KUNZRU :** You are changing the procedure without giving the slightest reason for it. It is up to you to come and justify your action here.

**THE HONOURABLE MR. A. G. CLOW :** That is exactly what I am attempting to do if the Honourable Member will have patience with me. We are now placing a statement before the House. Thereafter we are in certain circumstances moving Resolutions. I would draw the Honourable Member's attention to this very Resolution. This very Resolution is one illustrating what I said. I am moving a Resolution although we do not propose action and giving an opportunity to the House to discuss the matter. In certain cases such discussion would be entirely infructuous, and I would like to give the House an example or two of that. We had last session—I think it was the last Delhi session—a Resolution on the subject of the 40 hours' week. That was discussed in this House and the House pronounced against ratification

[Mr. A. G. Clow.]

of the Convention embodying the principle. Almost immediately afterwards I brought forward a Resolution dealing with the application of the 40 hours' week to glass bottle works. Quite honestly I do not see that any possible advantage was or could have been gained by the discussion on that subject.

When we looked into this matter we found that the procedure adopted here, so far as we could discover, was not adopted in any other country in the world. Although other countries along with India fulfil the requirements of Article 405 of the Treaty, they do not do so by bringing every matter, great and small, before their Legislatures in the form of Resolutions. What we propose to do is first to bring forward Resolutions whenever Government want to ratify and desire legislation for the purpose. We will either bring forward Resolutions or will bring forward the legislation, which is probably a more convenient method, to enable the House to discuss and pronounce upon it. Secondly, if we consider that any Resolution, although Government are not prepared to ratify, brings in a new principle of sufficient practical importance like this one to justify discussion, it is proposed to move a Resolution on it. The Conventions on which it is not proposed to move Resolutions will be those that in our opinion are not of practical importance to India. I recognise that our judgment in that matter is open to question and is not infallible. But surely if Honourable Members opposite take the view that we are wrong in considering that there should not be a discussion on a particular matter, and that a discussion would serve a useful purpose, it is not unreasonable to ask them to table Resolutions on the subject. As I said before, if a sufficient number of Members table a Resolution, it has in this House at least almost a certainty of finding a place on one of our non-official days. But if a number of Members table a Resolution and it has failed after a reasonable time to find a place, I am sure Government will be prepared to consider the matter if it is one of practical importance and if Honourable Members show that they attach value to it.

I hope I have said enough to reassure the House that there is no attempt in any way to infringe or curtail any right that they possess and that any Convention or Recommendation which is of practical importance will be brought up in this House. And I must, with due respect, emphatically dissent from the view suggested by my Honourable friend Mr. Sapru that the importance of the change lies in the fact that if we bring forward Resolutions Honourable Members wake up to the importance of the subject, whereas if we lay papers on the table, if we lay a statement on the table, it is suggested that Honourable Members do not read the papers. That is an unwarranted reflection on the interest that Honourable Members, and particularly my Honourable friend himself always take in these matters.

**THE HONOURABLE THE PRESIDENT:** Resolution moved:

"This Council having considered the Draft Convention and the Recommendation concerning annual holidays with pay adopted at the Twentieth Session of the International Labour Conference recommends to the Governor General in Council that he do not ratify the Convention or give effect to the Recommendation."

The Question is :

„That this Resolution be adopted."

The Motion was adopted.

## RESOLUTION *RE* APPROVAL OF DRAFT NOTIFICATION DECLARING EMIGRATION TO BURMA FOR UNSKILLED LABOUR LAWFUL.

**THE HONOURABLE KUNWAR SIR JAGDISH PRASAD** (Education, Health and Lands Member): Sir, I beg to move the following Resolution:

“The Council of State approves the draft notification which has been laid in draft before the Chamber specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Burma and recommends to the Governor General in Council that the notification be published in the Gazette of India.”

The draft notification is already in the hands of Honourable Members and all that I need explain to the House is the reason for bringing forward this Resolution. Honourable Members are aware that Burma is soon to be separated from India. The separation is to take place from the 1st of April next. At present Burma being within India emigration is treated as between one province and another. As soon as Burma is separated, its position as regards the question of emigration will be the same as that of, say, Ceylon or of any other outside country and under section 10 of the Indian Emigration Act, before emigration of unskilled labour can take place from India the terms and conditions on which such emigration can take place have to be notified in the Government of India Gazette and before the notification can be issued it has to be approved by both Houses of the Indian Legislature. It is for that reason that this Resolution has been placed before the House. As Honourable Members will see from the terms of the draft notification, we are making no changes whatever. There are at present no restrictions as regards emigration to Burma. The only restriction is with reference to the liability of immigrants into Burma, from whatever country they may come, to being vaccinated and our Notification therefore says that only those restrictions which were in force before the commencement of the Government of Burma Act, 1935, will remain. As I said, this is the only restriction and we are therefore making no changes of procedure. All that we are doing is to comply with the provisions of section 10 of the Indian Emigration Act. The draft notification has already been approved in another place and I trust that after the explanation that I have given the Notification will also be approved by Honourable Members in this House.

The Motion was adopted.

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**THE HONOURABLE KUNWAR SIR JAGDISH PRASAD** (Leader of the House): Sir, I think some Honourable Members desire to know as to when the Council is likely to meet after Saturday. It looks to me at present, subject to any modification that I may have to make on Saturday, that it is unlikely that we shall meet before the 4th of March for the discussion of the General Budget. We shall meet on Saturday for the Budget and then I think after that on the 4th March, as far as I can see.

**THE HONOURABLE THE PRESIDENT:** I may also remind Honourable Members that before the Council begins on that day (the 4th of March) a group photograph of the Council will be taken.

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The Council then adjourned till Half Past Five of the Clock on Saturday, the 27th February, 1937.