

THE  
COUNCIL OF STATE DEBATES

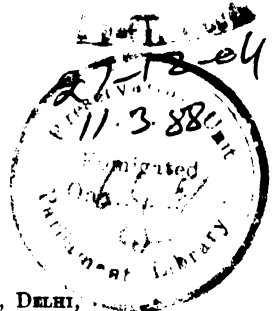
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(14th February to 8th April, 1938).

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THIRD SESSION  
OF THE  
FOURTH COUNCIL OF STATE, 1938

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# COUNCIL OF STATE.

*Wednesday, 23rd March, 1938.*

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 Mr. Hugh Dow (Commerce Secretary).

## QUESTIONS AND ANSWERS.

### APPOINTMENT OF AN AFGHAN TRADE AGENT IN CALCUTTA.

249. THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (on behalf of the Honourable Raja Yuveraj Datta Singh) : Are Government in possession of any information to show that an Afghan Trade Agent is likely to be appointed in Calcutta shortly ?

THE HONOURABLE KUNWAR SIB JAGDISH PRASAD : The answer is in the negative.

### SUBSTITUTION OF CHINESE LABOURERS BY INDIANS IN JAPANESE MINES IN MALAYA.

250. THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (on behalf of the Honourable Raja Yuveraj Datta Singh) : (a) Will Government state the approximate number of Indian labourers in Johore, Chinese Malaya ?

(b) Are Government aware that the Chinese labourers having boycotted working of Japanese iron mines in Johore, Indian labourers have been substituted for them ?

(c) Who is looking after the interests and welfare of the Indian labourers in that territory ?

THE HONOURABLE KUNWAR SIB JAGDISH PRASAD : (a) The approximate number of Indian labourers in Johore on 31st December, 1936, was 33,396.

(b) Government have seen a press report to that effect.

(c) The Agent of the Government of India in British Malaya.

### EMERGENCY LANDING GROUND AT JIUNRI, KALAT STATE.

251. THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (on behalf of the Honourable Raja Yuveraj Datta Singh) : (a) Did the Government prepare a civil aerodrome some years back at Jiunri in Kalat State as an emergency landing ground ? If so, what is the total capital and recurring expenditure involved, and is the expenditure borne on the civil or military estimates ?

(b) Is it intended to develop this aerodrome at the instance of the Air Ministry in England? If so, in what respects, and at what cost?

(c) Is this aerodrome in control of civil or military authorities and is any change contemplated in this respect?

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD (on behalf of the Honourable Mr. S. N. Roy): (a) An emergency landing ground at Jiunri was prepared in 1934 by the Government of India at a total cost, including subsequent improvements, of Rs. 3,527. A sum of Rs. 735 has been spent during the last three years for maintenance of this ground. This expenditure has been met from Civil Aviation funds.

(b) An investigation is being made at the cost of His Majesty's Government with a view to the possible development of Jiunri as a seaplane station as an alternative to Gwadar. The Government of India do not bear the cost of development of seaplane stations required in India in connection with the Empire Air Mail scheme.

(c) The Jiunri landing ground is purely for civil purposes and no change in this respect is contemplated.

### INDIAN TEA CONTROL BILL.

THE HONOURABLE SIR MUHAMMAD YAKUB (Commerce and Labour Member): Mr. President, I beg to move:

"That the Bill to provide for the control of the export of tea from, and for the control of the extension of cultivation of tea in, British India, as passed by the Legislative Assembly, be taken into consideration."

This Bill follows very closely the existing Indian Tea Control Act which is due to expire on the 31st March, 1938. I will ask Honourable Members to cast back their minds to the time five years ago when the existing Act was passed with very little opposition or even comment from any section of either House of the Legislature. The Indian tea trade was at that time in very depressed circumstances, and it was generally recognised that without enforcing some kind of restriction scheme there was no hope that the industry could be brought back quickly to a state of prosperity. How effective the control scheme has been in restoring prosperity to the industry is well known, but although the position is very much improved, there is no doubt that the time for removing control has not yet arrived and that to allow the present restrictions to lapse would be immediately to plunge the industry back into the state from which it was rescued five years ago.

The existing Act embodies three main principles:

- (1) That the tea industry itself should be responsible for providing the machinery and for paying for its administration;
- (2) That the scheme should work equitably to all the interests involved, whether European or Indian, and whether large or small; and
- (3) That the operation of the scheme should not press more hardly on India than on other countries who are parties to the scheme.

The Bill before you now maintains all these three principles. In the form in which it now comes before us, certain additional provision has been made for the separate representation of interests that are not represented on the existing committee and an additional safeguard for the grower has been

provided by giving him the option of an appeal to the High Court as an alternative to an appeal to Government.

It is proposed that the present Bill shall remain in force for a further period of five years.

That, perhaps, is all I need say in commending this measure to the support of this Honourable House.

Sir, I move.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammiadan) : I am glad, Sir, that the Government at the instance of the other House agreed to take one representative on the Tea Licensing Committee from the Punjab, the United Provinces, and other places which are not represented. I do not want to take much time of the Council and I hope that the quota of tea will be fixed so that it may be advantageous to India.

The Motion was adopted.

Clauses 2 to 10 were added to the Bill.

Clauses 11 to 25 were added to the Bill.

Clauses 26 to 32 were added to the Bill.

Clauses 33 to 38 were added to the Bill.

Clause 39 was added to the Bill.

The Schedule was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR MUHAMMAD YAKUB : Sir, I beg to move :

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

## WORKMEN'S COMPENSATION (AMENDMENT) BILL.

THE HONOURABLE SIR MUHAMMAD YAKUB (Commerce and Labour Member) : Sir, I beg to move :

"That the Bill further to amend the Workmen's Compensation Act, 1923, for certain purposes, as passed by the Legislative Assembly, be taken into consideration."

Mr. President, this is a Bill which proposes to make a number of detailed amendments in the Workmen's Compensation Act. Most of these are explained in the Notes on Clauses appended to my predecessor's Statement of Objects and Reasons but as the Bill has undergone certain changes in another place I propose to allude to its leading provisions. Of the eleven substantive clauses, Nos. 4, 7 and 8 relate to amendments which are more or less formal, and clause 2 makes minor amendments in the definition of dependants.

Clauses 3 and 12, which should be read together, amend the law relating to compensation for occupational disease. We are dividing the Schedule of such diseases into two parts, according as the diseases are normally contracted quickly and those which are contracted gradually. For the latter the condition the workman must have served the employer for at least six months remains, although a minor change has been made in the *Explanation* in favour of



[Sir Muhammad Yakub.]

the workman. For the former the condition of six months' service will not apply. We have at the same time added to the list of diseases.

The next clause of importance is clause 5 which makes a number of changes in the provisions relating to notice and limitation. We propose to make it clear that the limitation period refers to the time taken to apply to the Commissioner and not, as one High Court has held, to the time taken to apply to the employer. The most important change proposed is the extension of the period allowed from six months to a year. Other changes in favour of the workman are the elimination of one of the conditions relating to notice and an enlargement of the cases in which no notice is required.

Clause 6 is designed to remove defects in a sub-section which provides for the aggravation of injuries arising from neglect on the part of the workman. A case which arose in Calcutta indicated that the section as it stood was defective; and the change which we are proposing involves no amendment of principle.

Clauses 9 and 10 make minor changes in two sections relating to proceedings before Commissioners. They are adequately explained in the Statement of Objects and Reasons to which I would refer Honourable Members.

Clause 11 involves an enlargement and a modification of Schedule II of the Act which relates to the definition of "workman". As Honourable Members will see, a substantial number of workmen are now being included in the Act itself for the first time, but the majority of these have already been given the privilege of workmen's compensation by means of notifications issued by the Government of India. The most important groups which are not so covered are liftmen, men employed in tapping palm trees and men engaged in hunting wild animals.

The Bill has been very fully scrutinized by all parties at every stage of the procedure, and I can confidently recommend it for the approval of this House.

Sir, I move.

The Motion was adopted.

THE HONOURABLE THE PRESIDENT: Clause 2.

THE HONOURABLE MR. A. DEC. WILLIAMS (Government of India : Nominated Official) : Sir, with your permission, I will move the three amendments, which stand in my name, together. They effect purely verbal changes which require no explanation. The amendments are :

"That in sub-clause (a) of clause 2 the word 'and' be omitted at the end.

"That to sub-clause (b) of clause 2 the word 'and' be added.

"That in sub-clause (c) of clause 2 for the words 'be inserted' the words 'shall be inserted' be substituted."

THE HONOURABLE THE PRESIDENT: The three amendments are moved collectively and I presume no Honourable Member has any objection?

HONOURABLE MEMBERS: No.

Question put and amendments adopted.

\*THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY (East Bengal: Non-Muhammadan): Sir, I beg to move:

"That after sub-clause (c) in clause 2, the following sub-clause be inserted, namely:

'(d) in sub-clause (ii) after the word 'minor' wherever it occurs the words 'or decrepit' be inserted'."

This clause defines who are the dependants and sub-clause (ii) of clause (d) of section 2, sub-section (1), runs as follows:

"Dependant" means any of the following relatives of the deceased workman, namely,"

I need not deal with clause (i). I will come to clause (ii) with which only I am concerned. It runs thus:

A dependant is one who

"is wholly or in part dependent on the earnings of the workman at the time of his death, a husband, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed daughter-in-law, a minor child of a deceased son, or, where no parent of the workman is alive, a paternal grandparent:"

So a minor illegitimate son and a minor daughter, legitimate or illegitimate and a minor child of a deceased son come within the definition of dependants. The object of my amendment is that if such persons are not only minors but are decrepit and are dependent on the earnings of a workman they should be included within the term "dependant" so as to be able to get a share in the compensation allowed to the dependants.

THE HONOURABLE SIR MUHAMMAD YAKUB: Mr. President, I must oppose this amendment. It seeks to introduce an entirely new principle in regulating dependency, and one which, so far as I am aware, has never been even advocated in the course of the many discussions that have taken place on our workmen's compensation law. The provisions of this Bill in particular were the subject of a reference to Provincial Governments but none of them put forward any such proposal.

Apart from this the amendment seems to me to be quite unsound. The primary meaning of "decrepit" as given in reliable dictionaries is "worn out with old age". Now, if Honourable Members will refer to the clause to which this amendment relates, they will find that the word "minor" is used with reference to certain sons and daughters of the deceased, to the brothers of the deceased and to certain grandchildren. It is impossible that any of the children of the workman would be worn out with old age at the time when the workman was killed because if they were as old as that their parent could not possibly be working and it is most unlikely that a brother of the workman would be worn out with old age. A further point worth noting is that the amendment would have the result that we would have in one place "a minor or decrepit child". In other words, "a child worn out with old age", which would be a ridiculous expression.

I hope that after hearing my explanation the Honourable Member will withdraw his amendment.

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\*Not corrected by the Honourable Member.

**THE HONOURABLE MR. HOSSAIN IMAM** (Bihar and Orissa : Muhammadan) : Will the Honourable Member be prepared to consider the inclusion of the maimed and crippled ?

**THE HONOURABLE SIR MUHAMMAD YAKUB** : That question is not before the House.

**THE HONOURABLE THE PRESIDENT** : And I am not going to allow any further amendment.

Amendment moved :

"That after sub-clause (c) in clause 2 the following sub-clause be inserted, namely :

"(d) in sub-clause (ii) after the word 'minor' wherever it occurs the words 'or decrepit' be inserted."

Question put and amendment negatived.

Clause 2, as amended, was added to the Bill.

**THE HONOURABLE THE PRESIDENT** : New clause 2A. The Honourable Mr. Kumarsankar Ray Chaudhury.

**THE HONOURABLE MR. A. DE C. WILLIAMS** : I wish to submit that this amendment cannot be moved. I would ask for your ruling as to whether this amendment is at all admissible under the Rules and Standing Orders. It seeks to amend the definition of "workman" in the parent Act. It can readily be understood that in an Act which deals with compensation for workmen the definition of "workman" must be of the very greatest importance. Now the Bill before this House at no point touches that definition and I submit that an amendment which seeks to effect a very important provision of the parent Act in no way germane to the subject of the Motion, that is to say the Bill, before the House is inconsistent with Standing Order 32 (1), which says that "An amendment must be relevant to and within the scope of the Motion to which it is proposed". That is in paragraph 56 of the Manual on page 17. I submit, Sir, that this amendment is inadmissible and cannot be moved.

**THE HONOURABLE THE PRESIDENT** : I think the objection raised by Government is a valid one. As I understand the objection it is this, that this amending Bill is limited to certain provisions of the parent Act which the Government propose to amend, and among the amendments proposed there is none regarding the definition of the term "workman". The Honourable Mr. Chaudhury wishes to make an amendment in the parent Act regarding the definition of "workman". As far as I am aware, amendments to a Bill before the House are allowed only in respect of the subject-matter of the Bill and not any further. That is what is meant by the words, "An amendment must be relevant to and within the scope of the Motion to which it is proposed". To my knowledge in this House there have been no precedents, but in the Assembly the proceedings will show that there are many rulings on the point which uphold the view which the Honourable Mr. Williams has expressed. This principle has been recognised in several rulings, to which I need not refer at this stage, where it is said that in respect of anything outside the scope of a Bill before the House amendments cannot be permitted. And that principle has been well recognised and I therefore hold that the Honourable Mr. Chaudhury's amendment is not in accordance with the rules and cannot be proceeded with. I disallow the amendment on these grounds.

Clause 3.

**THE HONOURABLE MR. A. DEC. WILLIAMS:** Sir, I have to propose three further verbal amendments to clause 3 ; and again, with your permission, I will move them together :

" That in sub-clause (a) of clause 3 the word ' and ' be omitted at the end.

" That to sub-clause (b) of clause 3 the word ' and ' be added.

" That in sub-clause (c) of clause 3 for the words ' be added ' the words ' shall be added ' be substituted. "

Question put and amendments adopted.

Clause 3, as amended, was added to the Bill.

Clauses 4, 5, 6, 7 and 8 were added to the Bill.

**THE HONOURABLE THE PRESIDENT:** Honourable Mr. Kumar-sankar Ray Chaudhury, as regards your amendment, new clause 8A, the ruling which I gave a few minutes ago equally applies and I therefore disallow it.

Clauses 9, 10 and 11 were added to the Bill.

Clause 12, including Parts A and B, were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

**THE HONOURABLE SIR MUHAMMAD YAKUB:** Sir, I beg to move :

" [That the Bill further to amend the Workmen's Compensation Act, 1923, for certain purposes, as passed by the Legislative Assembly and as amended by the Council of State, be passed. "

The Motion was adopted.

#### STANDING COMMITTEE FOR ROADS, 1938-39.

**THE HONOURABLE THE PRESIDENT:** The Council will now proceed to elect three Members to serve on the Standing Committee for Roads. The election will be according to the principle of proportional representation by means of the single transferable vote and the ballot papers will now be placed in Members' hands.

(Voting papers were then distributed to Honourable Members and the ballot taken.)

**THE HONOURABLE THE PRESIDENT:** As the Council will not probably meet next week, I shall have the result of the election communicated to the Honourable Members by circular as soon as conveniently possible.

#### CENTRAL ADVISORY COUNCIL FOR RAILWAYS.

**THE HONOURABLE THE PRESIDENT:** With reference to the announcement by me yesterday regarding nomination to the Central Advisory Council for Railways, I have to announce that the following Honourable Members have been nominated for election to that Committee :

- (1) The Honourable Sardar Nihal Singh.
- (2) The Honourable Lt.-Col. Sir Hissamuddin Bahadur.

[Mr. President.]

- (3) The Honourable Nawabzada Khurshid Ali Khan.
- (4) The Honourable Mr. Ramadas Pantulu.
- (5) The Honourable Sir David Devadas.
- (6) The Honourable Sardar Buta Singh.
- (7) The Honourable Haji Syed Muhammad Hussain.
- (8) The Honourable Rai Bahadur Lala Ram Saran Das.
- (9) The Honourable Raja Yuveraj Datta Singh.
- (10) The Honourable Mr. Sitakanta Mahapatra.

There are 10 candidates for six seats and an election will be necessary. The date of election will be announced later.

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### STATEMENT OF BUSINESS.

THE HONOURABLE KUNWAR SIB JAGDISH PRASAD (Leader of the House): Sir, with your permission, I propose that the outstanding official business, namely, the Motions for the consideration and passing of (1) the Hindu Women's Rights to Property (Amendment) Bill and (2) the Trade Disputes (Amendment) Bill may be taken up on Friday, the 1st April. The election of Members to the Central Advisory Council for Railways may also be held on that day. I therefore request that you may be pleased to direct that a meeting be held on that day for the purpose.

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The Council then adjourned till Eleven of the Clock on Friday, the 1st April, 1938.

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