

Thursday, 22nd September, 1938

# THE COUNCIL OF STATE DEBATES

## VOLUME II, 1938

*(5th September to 22nd September, 1938)*

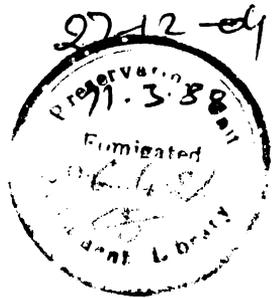
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### FOURTH SESSION

OF THE

### FOURTH COUNCIL OF STATE, 1938

Chamber Fumigated...*18/X/38*...



PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI.  
PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, SIMLA.  
1939.

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COUNCIL OF STATE.

*Thursday, 22nd September, 1938.*

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

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**BILLS PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.**

**SECRETARY OF THE COUNCIL:** Sir, in pursuance of rule 25 of the Indian Legislative Rules, I lay on the table copies of the following Bills which were passed by the Legislative Assembly at its meeting held on the 20th September, 1938, namely:—

A Bill to amend the law relating to the prevention of cruelty to animals.

A Bill to regulate the admission of children to certain industrial employments.

A Bill to declare that certain defences shall not be raised in suits for damages in British India in respect of injuries sustained by workmen.

A Bill further to amend the Indian Aircraft Act, 1934.

A Bill further to amend the Indian Tea Cess Act, 1903, for a certain purpose.

**THE HONOURABLE THE PRESIDENT:** I have already waived the Rules of Business; so we shall now proceed with the consideration of the Bills.

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**PREVENTION OF CRUELTY TO ANIMALS (AMENDMENT) BILL.**

**THE HONOURABLE MR. J. A. THORNE (Home Secretary):** Sir, I move:

“That the Bill to amend the law relating to the prevention of cruelty to animals, as passed by the Legislative Assembly, be taken into consideration”.

Sir, the Prevention of Cruelty to Animals Act was passed in 1890, nearly 50 years ago, and in the interval between then and now the only amendment made to it by the Central Legislature was in 1917 when various additions,

[Mr. J. A. Thorne.]

various additional provisions, were made, the object of which was to penalize a particular form of cruelty practised on goats. No one therefore can accuse the Legislature of undue haste in proceeding to a revision of the law. For the latter part of that period the power of legislation has been with the Provincial Legislatures, but the Central Legislature has recovered it lately through the inclusion of this subject in the Concurrent List of the Government of India Act, 1935. The only Provincial Legislatures which have amended the Act or which have passed legislation amplifying it for their own purposes have been Bengal and Bombay. Tribute is due to them for their action and our Bill owes a good deal to the provisions which they have introduced from time to time in their own provinces. I should like, Sir, also to pay a tribute to the organizations and associations which have been interested in the reform of the law, in particular to the All-India Society for the Prevention of Cruelty to Animals, a Society which has made a very close study of the subject and of conditions prevailing all over India and which has maintained in recent years a persistent advocacy of the need of legislation. I do not wish to omit other organizations which have maintained especially of recent years equal persistence and pressure on Government and on public opinion, but they for the most part cover only a part of the field, whereas the Society which I have mentioned covers the whole field and the whole of India.

Well, Sir, I will not detain the House with a long exposition of the terms of the Bill. The Home Member gave an undertaking in the other place in April last that, if circulation of the Bill was agreed to, every effort would be made to complete the enactment of the Bill in this session at Simla. Circulation was accordingly agreed to. We have behind us the almost unanimous support of the Provincial Governments, whose support is of very great importance since over the greater part of India the carrying out of the provisions of the Bill will depend on them. The Bill, if Honourable Members will compare it with the existing Act, is I think fairly clear in its terms. I will only mention the provisions and effects of the Bill which appear to me to be most important. First, in section 3 of the present Act we have the phrase :

" If any person in any street or in any other place, whether open or closed, to which the public have access, or within sight of any person in any street or in any such other place "

does certain acts of cruelty. Well, that was an unduly restrictive provision and the effect of the Bill is to delete that. Again, in section 3 of the Act you will find that clause (c) penalizes anyone who offers, exposes, or has in his possession for sale any live animal. The effect of our Bill is to omit that restriction for sale and thereby considerably to widen the basis of the enactment. Then, Sir, clauses 4 and 5 of our Bill penalize not only persons who do themselves actively practise cruelty on animals but also persons who permit such cruelty to be practised. That, the House will agree, is a very important provision. Then again, Sir, as regards the form of cruelty known as *phooka* the penalty has been considerably increased. That is a reform which has been pressed upon us as essential to obtain an early cessation of this shocking practice. Then, Sir, I invite attention to the new section 6C which is contained in clause 7. The effect of that is to penalize baiting or inciting animals to fight—

a very important provision of law. Then, Sir, in clause 9 it will be seen that we have provided machinery which should greatly facilitate the prevention of the offence of *phooka*. The next clause to which I would invite the attention of the House is clause 12 which amends section 12. The effect of the mention of section 4 in clause 12 is that the offence of *phooka* is brought into force throughout India without a specific notification by a Provincial Government under section 1 of the Act. There is another effect of this clause 12 which needs to be explained. Section 11 of the Act says that

“ Nothing in this Act shall render it an offence to kill any animal in a manner required by the religion or religious rites and usages of any race, sect, tribe or class ”

and the combined effect of section 12 and section 1 of the Act is this: since section 11 is mentioned in section 12, section 11 applies wherever any part of the Act applies. Coming from Madras, I take a particular interest in this clause because for years the Madras Society for the Prevention of Cruelty to Animals has described cruelties practised by ignorant people in the name of religion and has agitated for the reform of the law on this matter: and the effect of the omission from section 12 of mention of section 11, although it does not immediately leap to the eye, is this --that any province which wishes to keep in force section 11 will hereafter have to make a specific notification to that effect. It does not prevent a Provincial Government from retaining section 11 of the Act in force if it so wishes, but that exemption of offences committed under the cloak of religion will not apply unless a Provincial Government specifically notifies that section of the Act under section 1.

The only other provision that I need mention, Sir, is clause 15 which fills a gap in the present Act by giving power to Provincial Governments to make rules, specifically mentioning those matters on which experience has shown that rules are particularly necessary.

Sir, I move.

THE HONOURABLE THE PRESIDENT: Mr. Thorne, you said that the Honourable the Home Member gave an undertaking last session in the other House to see that this Bill was passed through this session but, in view of the two amendments which Government have, that undertaking cannot now be accomplished?

THE HONOURABLE MR. J. A. THORNE: I stand corrected, Sir. If we do all that is without our power, I think that undertaking will be sufficiently honoured.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated: Non-Official): Sir, I heartily support this Bill. I have only two observations to make. One is, I am told that in Bombay there is a practice by which milch cows are rendered sterile in order to prolong the period of lactation and when they become dry they are sold to the butcher. This leads to the destruction of valuable milch cows and thereby the country will suffer. I would ask the Government, Sir, to inquire into the matter and see whether the provisions of this Bill cannot be extended to cover that practice.

[Sir David Devadoss.]

The second point that I wish to urge is that in Madras there are pack ponies, hill ponies and draught bulls. When the S. P. C. A. man goes and gets hold of one of these animals and takes it to the veterinary hospital, what is done is that the animal is taken in and kept there for a long time and the charges of feeding and other charges sometimes amount to more than the value of the animal. The pack horses, for instance, or the hill horses do not cost more than Rs. 40 or Rs. 50. Well, the owner has no voice in the matter of stopping the so-called treatment, because he cannot take away the animal if the doctor thinks that it has got some disease and he has no voice in the matter of stopping the accumulation of charges, and the result is that whenever an animal is caught like that he leaves the animal and goes away. I am talking of the majority of cases: in a few cases it may be all right, but what I say is that when the rules are framed there should be some protection against the veterinary officer keeping the animal there for a long time and saying you will have to pay Rs. 100 or any large amount. Therefore, what I request is that the Government may be pleased to frame the rules in such a way as to allow the owner a voice in the matter of keeping the animals and if the charges are very heavy the Government ought to bear them and not that the man should be made to lose the animal as well as pay the extra charge.

With these observations, Sir, I support the Bill.

\*THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA (Bihar: Non-Muhammadian): Mr. President, I rise to support the Bill that has just been moved. I should like to take this opportunity of congratulating Government on having brought forward this very humane measure. Apart from its being in consonance with Indian religions and culture, I am quite prepared to call it a highly Christian Bill. To the famous Christian injunction "Treat thy neighbour as thyself" this Bill seems to add "and every living being is thy neighbour" and, Sir, I feel that, if the cow has been given special attention in this Bill, it is perhaps because she is so motherly and because she is the giver of plenty. I do not wish to go into the details of the Bill.

Sir, I support the Bill.

THE HONOURABLE MR G. S. MOTILAL (Bombay: Non-Muhammadian): Sir, I have much pleasure in supporting this Bill. Public opinion has for some time asked for a measure of this type. I am glad that Government has brought this measure in response to public opinion. Sir, in order to make this measure effective it will now be necessary for the public and leaders of public opinion to take steps to bring the offenders to book so that this law may fulfil its purpose. I am sure the public which has agitated and the Societies for the Prevention of Cruelty to Animals will be more active and see that the evils which this Bill is intended to penalize disappear.

Sir, there is one provision in this Bill to which I must refer. I think it is section 7(2) which provides that, if a magistrate is satisfied on the report of the

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\*Not corrected by the Honourable Member.

veterinary surgeon that an animal cannot be removed without cruelty, it should be destroyed. I am referring to section 7 (2), the first few lines, on top of page 3, wherein it occurs—

“ or such other Veterinary Officer as may be authorized in this behalf by rules made under section 15 certifies that it is incurable or cannot be removed without cruelty, that it shall be destroyed ”.

Something like this was contemplated to be provided in a measure which was introduced some years ago in Bombay. I remember I was the spokesman of a deputation which waited upon the then Governor of the province and the question was discussed at some length. On this matter I know Europeans and Indians do not take the same view. I do not say that Europeans are unkind, they are also very kind to animals. I know this from my own experience. But then their view differs. They would like to kill an animal whenever they think that it is suffering from an incurable disease, whereas Indians would not like to do so. It is just a matter of looking at things in different ways.

THE HONOURABLE THE PRESIDENT: Indians would like to see the animal suffering pain continuously ?

THE HONOURABLE MR. G. S. MOTILAL: It may be suffering pain, but to kill the animal is more unkind not to say cruel. If this line of argument is carried further, you may as well say that if any relative of ours is suffering from pain, he may be killed. That is an argument which does not appeal to us. It may be right, it may be wrong. It is a matter of opinion. But there is a very large section of the public which genuinely holds this view. The provision is too wide and if it is applied literally, I am afraid the beneficial effect of this measure will be diminished, and instead of carrying the public with them and getting their appreciation and gratitude, the Government will incur odium and censure. I am sure Government do not desire to be unnecessarily harsh upon the people or their sentiments and I hope Government will bear this in mind and in framing the rules or when the Bill goes to the other House if they can in some way, improve it, they will do so.

With these remarks, Sir, I support this Bill.

\*THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muham-  
madan): Mr President, the Bill which the Honourable Mr. Thorne has moved is one of those rare measures which it is the privilege of Government to bring forward without any political motive but for a purely humanitarian purpose, and as such there can be no opposition to the general principles of the Bill. An objection has been taken to the provisions of section 7 (2). I think the greatest justification for this provision is the action of Mahatma Gandhi himself who on a very memorable occasion ordered the destruction of a calf in his Ashram. If any further justification is required, we find it in the action of the British Parliament. The British Parliament has very recently passed a Bill whereby under certain conditions human beings, if they are suffering pain, can be subjected to a painless death. (*An Honourable Member*: “ Is it so ? ” *Another Honourable Member*: “ When was it ? ”) It has been

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\*Not corrected by the Honourable Member.

[Mr. Hossain Imam.]

introduced in Parliament. I do not know whether it has been passed or not. (*Another Honourable Member*: "Is it a Statute? Was it passed?") I do not say any thing about its being passed. It has was introduced in Parliament.

**THE HONOURABLE THE PRESIDENT**: You are quite correct in a way. Some years ago there was an agitation in England among doctors that in case of incurable disease or suffering, the person so suffering may be quietly put to death, but there was no Act passed.

**THE HONOURABLE MR. HOSSAIN IMAM**: A Bill was introduced on these lines. (*Another Honourable Member*: "I do not think so".) I shall look it up (*Another Honourable Member*: "In Germany they may have done so".) People are moving towards this position. It does not matter whether it has been done in England or in Germany. The idea of pain and suffering is more obnoxious to the present world than it was to the past because the thought was that we were expiating for our sins by suffering in this world. That idea is being replaced now. Secondly, Sir, as the Honourable Sir David Devadoss pointed out a certain practice, I have also heard of another practice whereby live animals are operated upon for taking out their young in order that their skin may be used. It fetches a very high price. I have heard that on goats they perform an operation whereby immense suffering is inflicted on the animal. If Government find that there exists such a practice, I hope that they will bring forward a measure to eradicate that evil as well.

With these words, Sir, I support the Motion.

**THE HONOURABLE MR. J. A. THORNE**: Sir, I have nothing of substance to put before the House at this stage. So far as the remarks made here relate to the application of the measure which is before the House, they are addressed of course to the Governments which will be concerned with the working of the Act, that is to say, the Governors' provinces and the Chief Commissioners' provinces, and I have no doubt at all that due weight will be given by those Administrations to the views expressed here. As regards what was said about the provisions, obnoxious to some sections of the community, about putting an animal to death if that appeared to be the only way of putting it out of its misery, I might mention that it will be, as I read the Bill, entirely within the competence of a Provincial Government to apply or not that part of the Bill—except perhaps in the case of an animal which might have been reduced to that condition by the practice of *phooka*.

Sir, I move.

**THE HONOURABLE THE PRESIDENT**: Motion moved:

"That the Bill to amend the law relating to the prevention of cruelty to animals, as passed by the Legislative Assembly, be taken into consideration."

Question put and Motion adopted.

Clauses 2 to 12 were added to the Bill.

**THE HONOURABLE THE PRESIDENT**: Clause 13.

THE HONOURABLE MR. SHAVAX A. LAL (Nominated Official): Sir, I move :

“ That in clause 13 of the Bill for item (h) of sub-section (2) of the proposed section 15 the following be substituted, namely :—

‘ (h) prescribing the manner in which cattle may be impounded in any place appointed for the purposes, so as to secure the provision of adequate space, food and water ’.”

Sir, this is a purely drafting amendment. This amendment was inserted in section 15 at the instance of a non-official Member in the other House and although Government accepted the substance of this amendment, they did so on the clear understanding that the drafting stood in need of some improvement, and this improvement is sought to be attained by my amendment.

Sir, I move.

Question put and Motion adopted.

Clause 13, as amended, was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. J. A. THORNE : Sir, I move :

“ That the Bill, as passed by the Legislative Assembly, and as amended by the Council of State, be passed.”

The Motion was adopted.

### EMPLOYMENT OF CHILDREN BILL.

THE HONOURABLE MR. M. S. A. HYDARI (Labour Secretary): Sir, I beg to move :

“ That the Bill to regulate the admission of children to certain industrial employments, as passed by the Legislative Assembly, be taken into consideration.”

I need not take up the time of the House by saying very much on this Bill. The Statement of Objects and Reasons carries its own conviction and a simple procedure has been laid down to give effect to the provisions of the Bill.

The Motion was adopted.

Clauses 2, 3 and 4 were added to the Bill.

THE HONOURABLE THE PRESIDENT : Clause 5.

THE HONOURABLE MR. SHAVAX A. LAL (Nominated Official): Sir, I move :

“ That in sub-clause (2) of clause 5 of the Bill the words ‘ or fourteenth ’ and the words ‘ as the case may be ’ be deleted.”

This amendment is consequential upon the amendment made in the other House in sub-clause (2) of clause 3 where the age limit was increased from 14

[Mr. Shavax A. Lall.]

to 15 but the consequential amendment in sub-clause (2) of clause 5 was not made in that House. This amendment is designed to do that.

Question put and Motion adopted.

Clause 5, as amended, was added to the Bill.

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

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. M. S. A. HYDARI : Sir, I move :

" That the Bill, as passed by the Legislative Assembly, and as amended by the Council of State, be passed."

The Motion was adopted.

#### EMPLOYERS' LIABILITY BILL.

THE HONOURABLE MR. M. S. A. HYDARI (Labour Secretary) : Sir, I move :

" That the Bill to declare that certain defences shall not be raised in suits for damages in British India in respect of injuries sustained by workmen, as passed by the Legislative Assembly be taken into consideration."

Sir, the object of this Bill is to avoid the application of a doctrine derived from the Common Law of England. This doctrine was evolved by Judges. It is said that one learned Judge planted it, another learned Judge watered it and the devil gave it increase ! Sir, we are on the side of the angels and we want to do away with the application of this doctrine in India. I would like to explain that the Bill does not give the workman any privileges because he is a workman. It merely restores to him the same rights as are enjoyed by the ordinary citizen which under the doctrine of common employment are denied him.

Sir, I move :

The Motion was adopted.

Clause 2 was added to the Bill.

Clauses 3, 4 and 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. M. S. A. HYDARI : Sir, I move :

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

The Motion was adopted.

#### INDIAN AIRCRAFT (AMENDMENT) BILL.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD (Education, Health and Lands Member) : Sir, I move :

" That the Bill further to amend the Indian Aircraft Act, 1934, as passed by the Legislative Assembly, be taken into consideration."

I think that my Honourable friend Mr. Hossain Imam will agree that this is also a humanitarian measure without any political motive behind it. The

reason for bringing in this Bill is that under the Indian Aircraft Act we have got the power to make regulations and of adopting measures, but they are of a permanent nature and for a permanent condition of affairs and those regulations require three months previous publication before they can be enforced. The present Bill is to deal with an emergency. A situation may arise where measures have to be taken immediately, in regard to aircraft. And what we propose in this Bill is that the requirement of previous publication should be done away with. On the other hand there is a safeguard. The measures taken will only have effect in the first instance for three months and they cannot be extended beyond six months. The real object therefore is to empower the Government to take emergent measures whenever such measures are necessary. I hope that the Bill will receive the unanimous support of the House.

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 KUNWAR SIR JAGDISH PRASAD : Sir, I move :

“ That the Bill further to amend the Indian Aircraft Act, 1934, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

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### INDIAN TEA CESS (AMENDMENT) BILL.

THE HONOURABLE MR. M. SLADE (Commerce Secretary) : Sir, I move :

“ That the Bill further to amend the Indian Tea Cess Act, 1902, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration.”

Sir, the purpose of this Bill simply is to add one member to the Indian Tea Market Expansion Board to represent the tea planters of Travancore. The industry in Travancore is paying cess to the Board at the same rate as in British India and it is therefore in the fitness of things that it should be represented.

The Motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. M. SLADE : Sir, I move :

“ That the Bill further to amend the Indian Tea Cess Act, 1903, for a certain purpose, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

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THE HONOURABLE THE PRESIDENT : I understand that there is no further work for the Council.

THE HONOURABLE KUNWAR SIR JADGISH PRASAD (Leader of the House) : No, Sir.

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The Council then adjourned *sine die*.

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