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THE

LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

Volume I, 1938

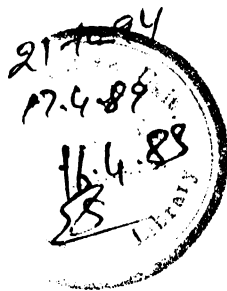
(31st January to 22nd February, 1938)

SEVENTH SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY,

1938



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1938

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A

Legislative Assembly.

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

Deputy President :

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

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

MR. M. GHIASUDDIN, M.L.A.

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

MR. L. C. BUSS, M.L.A.

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LEGISLATIVE ASSEMBLY.

Wednesday, 16th February, 1938.

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

STARRED QUESTIONS AND ANSWERS.

(a) ORAL ANSWERS.

RAIL-STEAMER COMPETITION.

294. ***Mr. Brojendra Narayan Chaudhury:** Will the Honourable Member for Communications please state:

- (a) if Government have made any survey of steamer routes and railways with a view to find out the extent and intensity of competition between railways and steamer services; and
- (b) if it is intended to deal with steamer and rail competition by legislation or otherwise or by specific means in particular cases?

The Honourable Sir Thomas Stewart: (a) I am not clear as to the nature of the survey which the Honourable Member has in view, but Government are fully cognizant of the competitive conditions that exist.

(b) No legislation is contemplated. The Railway Administrations concerned and the Steamer Companies endeavour to adjust their conflicting interests by discussions as, and when, occasions arise.

Mr. Brojendra Narayan Chaudhury: Is not the Railway losing freight from Sylhet to Chandpur thence to Calcutta since tea is being carried direct from Sylhet to Calcutta by Steamer Companies?

The Honourable Sir Thomas Stewart: I am perfectly aware that competition does exist, and that neither the Steamer Companies nor the Railways have a monopoly of the trade. It follows, therefore, that they must share it.

Mr. Brojendra Narayan Chaudhury: Is there any co-ordination?

The Honourable Sir Thomas Stewart: Yes, Sir. I have already said that the Railway Administrations and the Steamer Companies endeavour to adjust their conflicting interests by discussions as, and when, occasions arise.

Mr. Brojendra Narayan Chaudhury: May I know the exact nature of the adjustment?

The Honourable Sir Thomas Stewart: That is a question of which I shall require notice.

UPPER CLASS CARRIAGES ON THE ASSAM-BENGAL RAILWAY.

295. ***Mr. Brojendra Narayan Chaudhury:** Will the Honourable Member for Railways please state:

- (a) when first and second classes were combined as the upper class in Assam-Bengal Railway;
- (b) the financial result of this experiment, if the upper class passenger traffic earnings have decreased or increased;
- (c) if the number of upper class passengers has increased or decreased;
- (d) if it is proposed to add first class carriages and composites inclusive of first class; and
- (e) the cost of building these first class carriages and proportionate cost of the first class portion of composites?

The Honourable Sir Thomas Stewart: (a) From 1st December, 1936.

(b) and (c). Up to the 31st October, 1937, the latest date for which figures are available, the decrease in the number of passengers carried was 8,904 and in earnings Rs. 47,860.

(d) No.

(e) Does not arise.

Mr. Lalchand Navalrai: May I know if the decrease was in the case of first class passengers?

The Honourable Sir Thomas Stewart: I will give the Honourable Member the figures. In October, 1936, the number of first class passengers was 943 and of second class passengers 3,939. In October 1937, the number of passengers in the joint class was 3,904.

Mr. Lalchand Navalrai: May I know if the Honourable Member is collecting any figures from the other railways particularly the North Western Railway, to find out whether there should be only one class instead of two as at present?

The Honourable Sir Thomas Stewart: I fail to understand how the collection of figures would assist in coming to that decision.

Mr. N. M. Joshi: In view of the fact that the number of passengers is decreasing, will the Government of India consider the question of reducing the first class accommodation on the trains of this railway?

The Honourable Sir Thomas Stewart: There is no first class.

Mr. N. M. Joshi: What about the upper classes?

The Honourable Sir Thomas Stewart: That is a consideration that I hope will always be before the Railway Administration.

Mr. Lalchand Navalrai: What I meant to convey by the collection of figures was that the North Western Railway may be asked to collect

figures to show whether the number of first class passengers is decreasing every month. Will the Honourable Member make that investigation?

The Honourable Sir Thomas Stewart: To the best of my recollection, all Railway Administrations have been asked to examine the possibilities of that change.

Mr. Brojendra Narayan Chaudhury: Do Government propose to re-establish first and second classes?

The Honourable Sir Thomas Stewart: It is not a question for Government: it is a question to be decided by the Railway Administration. I have no information as to whether they have under contemplation the re-institution of first class accommodation.

Mr. Brojendra Narayan Chaudhury: Will the Railway Board so advise the Assam Bengal Railway?

The Honourable Sir Thomas Stewart: The Railway Board see no reason to interfere at the present moment.

Mr. Brojendra Narayan Chaudhury: In view of the loss incurred, will they not advise?

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

EXTENT OF RIGHT OF THE COCHIN STATE OVER THE COCHIN PORT.

296. ***Mr. M. Asaf Ali** (on behalf of Mr. T. S. Avinashilingam Chettiar): Will the Honourable Member for Communications state:

- (a) whether the port of Cochin is working at a loss or profit;
- (b) what is the extent of the right of the Cochin State in the profit or loss of the port; and
- (c) what is the extent of the right of the Cochin State in the management of the port?

The Honourable Sir Thomas Stewart: (a) The Port of Cochin is paying its way, but it cannot be regarded as making a profit.

(b) All the revenue collected by the Port Authority, whether in the British part of the Port, or in the area within the Cochin State, is credited to the Port Authority. The surplus, if any, is wholly retained by the Port Authority, and the deficits, if any, in working are met by the Port Authority.

(c) The management of the Port has been entrusted to an Administrative Officer and Harbour Engineer-in-Chief working under the administrative control of the Central Government. In all matters affecting the interests of the Port, the concurrence of the Cochin Government is obtained.

Lieut.-Colonel Sir Henry Gidney: Will the Honourable Member inform the House whether or not the Cochin Port is seriously handicapped by the absence of an extension of a railway from Chamarajnagar on the Mysore State Railway to Mettupalayam on the South Indian Railway?

The Honourable Sir Thomas Stewart: I am not aware that the Port is severely handicapped by the want of such a railway.

Lieut.-Colonel Sir Henry Gidney: Will the Honourable Member inform the House whether it is the intention of the Railway Board to make an early survey of this short route with a view to the Mysore Government constructing this line and for which they are prepared to do at their own cost?

The Honourable Sir Thomas Stewart: I must ask for notice of that question.

Mr. M. Asaf Ali: Do Government expect this proposition to be a remunerative one at any time?

The Honourable Sir Thomas Stewart: Certainly.

Mr. M. Asaf Ali: When?

The Honourable Sir Thomas Stewart: I think it is reasonably remunerative at the present time.

SALE OF A PROPERTY AT A LOSS BY THE BOMBAY PORT TRUST.

297. ***Mr. M. Asaf Ali** (on behalf of Mr. T. S. Avinashilingam Chettiar): Will the Honourable Member for Communications state:

- (a) whether it is true that a property built in 1920 by the Bombay Port Trust at a cost of Rs. 1,95,000 was sold by them for Rs. 3,500;
- (b) whether Government have enquired into the matter; and
- (c) what is the reason for this huge loss?

The Honourable Sir Thomas Stewart: (a) and (c). The attention of the Honourable Member is invited to parts (a) and (b) of the information laid on the table on the 29th September last with reference to starred question No. 373 asked by Mr. Mathuradas Vissanji on the 8th September, 1937.

(b) Yes.

Mr. Mann Subedar: Will the Honourable Member inform this House as to the nature of the control which the Government of India exercise over the accounts of the Bombay Trust and whether any action is taken when the audited accounts are made available to the Government of India?

The Honourable Sir Thomas Stewart: I fail entirely to see in what way this question arises out of the question under answer.

Mr. Abdul Qaiyum: With reference to part (b) of the question, may I know what is the result of the inquiry into this matter?

The Honourable Sir Thomas Stewart: If the Honourable Member will refer to my answer to parts (a) and (c) of the present question, he will get the information he requires.

Mr. President (The Honourable Sir Abdur Rahim): Perhaps the Honourable Member had better consider the answer first.

VIZAGAPATAM PORT.

298. ***Mr. M. Asaf Ali** (on behalf of Mr. T. S. Avinashilingam Chettiar): Will the Honourable Member for Communications state:

- (a) whether the Vizagapatam Port is still running at a loss,
- (b) what is the loss in the last and this financial year; and
- (c) when it is expected to be self-supporting?

The Honourable Sir Thomas Stewart: (a) Yes.

(b) Excluding interest charges on capital, the deficit amounted to approximately rupees four lakhs in 1936-37. The estimated deficit in the current year is Rs. 1,62,000.

(c) According to a review recently carried out by the Traffic Manager, Vizagapatam, the deficit should disappear by the year 1940-41.

SLUMP IN THE COTTON PRICES.

299. ***Mr. Govind V. Deshmukh** (on behalf of Seth Govind Das): Will the Honourable Member for Railways be pleased to state:

- (a) the extent to which Railway revenues have been affected as a result of the recent cotton crisis; and
- (b) what actions, if any, Government have taken to counteract the present state of slump in prices?

The Honourable Sir Thomas Stewart: (a) The approximate revenue from cotton, raw and pressed, for the two principal Railways affected, *viz.*, Great Indian Peninsula and North Western, for the period from 1st October, 1937, to 31st January, 1938, amounted to Rs. 88 lakhs, whereas, during the corresponding period of the previous twelve months, the revenue was Rs. 169 lakhs. Similar figures for the other principal Railway affected, *viz.*, the Bombay, Baroda and Central India, are not at present available.

(b) I would refer the Honourable Member to the reply given by Sir Girja Shankar Bajpai to Sardar Mangal Singh's question No. 61 on the 1st February, 1938.

Mr. Manu Subedar: Are Government aware that much cotton is moving by the roads on account of heavy freights on the railways?

The Honourable Sir Thomas Stewart: I am aware that there have been movements of cotton by roads.

Mr. Manu Subedar: Do Government propose to look into the movements of cotton by road and to adjust cotton freights on the railways on a competitive basis so as to keep this traffic for railways?

The Honourable Sir Thomas Stewart: The question of competition by roads is always engaging the attention of Government.

COMPENSATION FOR LOSS SUFFERED BY INDIANS OWING TO SINO-JAPANESE WAR.

300. ***Mr. M. Asaf Ali** (on behalf of Mr. Mohan Lal Saksena): (a) Will the Foreign Secretary be pleased to state if any compensation has been paid by the Government of India on account of loss of life and property sustained or injuries received by Indians on account of the Sino-Japanese War? If so, how much and to whom?

(b) Has there been any loss of life and property amongst the non-Indian British subjects because of the Sino-Japanese conflict? If so, at what rate has compensation, if any, been paid to them?

Sir Aubrey Metcalfe: (a) No.

(b) As regards the first part of the question Government have no information beyond what has been published in the Press from time to time. So far as the Government of India are aware no compensation has yet been paid to any British subject for loss of life or loss of property.

Mr. M. Asaf Ali: What is the extent of loss of life and property in this connection so far?

Sir Aubrey Metcalfe: I have already answered that. Which particular class of British subjects is the Honourable Member referring to?

Mr. M. Asaf Ali: Indians.

Sir Aubrey Metcalfe: I have already answered a question on that subject. I cannot give the exact reference now, but I had answered one a few days ago.

Mr. M. Asaf Ali: Are Government in possession of any definite information on this subject at all? You may not be able to give it now but are you in possession of any information at all?

Sir Aubrey Metcalfe: I have obtained full information which I gave the House only three days ago, and that information was based on a telegram received from the Consul General at Shanghai as recently as 2nd February.

Mr. M. Asaf Ali: Why have the Government not made further enquiries into the matter?

Sir Aubrey Metcalfe: They cannot enquire every day. We enquired less than ten days ago, and we asked them to keep us fully informed of any further information available.

Mr. M. Asaf Ali: Has nothing happened during the last ten days?

Sir Aubrey Metcalfe: Not so far as I am aware.

FAKIR OF IPI'S LETTER TO PANDIT JAWAHARLAL NEHRU.

301. ***Mr. M. Asaf Ali** (on behalf of Mr. Mohan Lal Saksena): (a) Will the Foreign Secretary be pleased to state if the attention of Government has been drawn to the statement in the Fakir of Ipi's letter to Pandit Jawaharlal Nehru, Congress President, published in the *Hindustan Times* of the 31st January, 1938, that the raids and kidnapping of British subjects are manœuvred by the Government of India? If so, what steps do Government propose to refute it?

(b) Are Government prepared to appoint a judicial committee to enquire into the allegations?

(c) Do Government propose to consider the feasibility of adopting more conciliatory and straight forward methods in dealing with the Frontier situation?

Sir Aubrey Metcalfe: (a) Yes. Government do not think it necessary to take any steps.

(b) and (c). No.

Mr. Abdul Qaiyum: In view of the serious allegations made against certain officers of the Political Department, why is it that Government do not contemplate setting up a judicial committee for enquiring into the matter? What are the reasons for Government not proposing to set up a committee of enquiry?

Sir Aubrey Metcalfe: So far as I am aware, no allegations are made in this letter against the officers of the Political Department. The allegations, according to the question given here, are made against the Government of India. The allegation is so fantastic that there is no necessity to refute it for the benefit of anybody with an unprejudiced mind. That is the reason why Government do not propose to take any steps in the matter.

Mr. Abdul Qaiyum: Is it the policy of the Government that when allegations are made they are merely to be dismissed as fantastic, and that no committee of enquiry is to be appointed?

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

Mr. Abdul Qaiyum: This is a question of fact. The Honourable Member dismissed the allegation as fantastic.

Mr. President (The Honourable Sir Abdur Rahim): What you are asking is whether a certain inference is not to be deduced.

Mr. Abdul Qaiyum: There are a very large number of people who believe all that is alleged against the Political Department.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member is entitled to hold his own opinion. Next question.

Mr. Sri Prakasa: In view of the fact that definite allegation are contained in the letter which the Faqir of Ipi wrote to Pandit Jawaharlal Nehru, where is the point in Government dismissing the whole matter as fantastic without looking into them and giving a chance to the people at large to sift the truth between that letter and any statement that Government may make?

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

DISCONTINUANCE OF DELIVERIES FROM ALLAHABAD CITY AND KUTCHEHRY POST OFFICES.

302. ***Mr. M. Asaf Ali** (on behalf of Mr. Mohan Lal Saksena):

(a) Will the Honourable Member for Communications be pleased to state whether the attention of Government has been drawn to the great difficulty that is being experienced by the Allahabad public by the discontinuance of the deliveries from the Allahabad City and Kutcherry Post Offices?

(b) Were any representations submitted by the Hindustani Traders' Association in this connection to the Director General, Posts and Telegraphs, in March and June last, as published in the *Leader*, dated the 20th June, 1937 and 15th July, 1937? If so, why were they not even acknowledged?

(c) Was the attention of Government drawn to the large number of letters published in the *Leader* on this subject during the last twelve months? If so, did Government institute any enquiries into the grievance of the Allahabad public?

(d) What is the total amount of saving, if any, effected by the discontinuance of the deliveries from the aforesaid post offices?

(e) Is it not a fact that in Benares, Lucknow, Cawnpore and other important cities in the United Provinces there are more than one post office from which deliveries of money orders and insured articles are made?

(f) Has there been a fall in the number of money orders and insured articles transmitted because of the discontinuance of the deliveries from the two post offices?

(g) Do Government propose to consider the question of restoring the old system of deliveries in Allahabad City?

The Honourable Sir Thomas Stewart: (a) Government understand that certain criticisms have been made by a section of the public of Allahabad regarding the revised delivery arrangements introduced from the 1st February, 1937.

(b) Government also understand that no representations were received by the Director-General; but a representation and copies of certain resolutions were received by the Postmaster-General, United Provinces Circle, who duly replied to them.

(c) No. The matter was within the competence of the local authorities who enquired into the complaints.

(d) None. The changes were not made in the interests of economy but of public convenience.

- (e) Yes.
- (f) No.
- (g) No.

EXPENDITURE ON ADVERTISEMENTS BY STATE RAILWAYS.

303. ***Mr. M. Asaf Ali** (on behalf of Mr. Mohan Lal Saksena):

(a) Will the Honourable Member for Railways be pleased to state the total amount of money spent during the last twelve months by the State Railways over advertisements in newspapers?

(b) Will he please state the names of the papers, with the respective amounts paid to them on account of cost of advertisement?

(c) Have any instructions been issued by the Railway Board regarding advertisement in newspapers by the State Railways? If so, what? If not, is he prepared to consider the feasibility of issuing instructions on the subject?

(d) Do the various railways maintain any list of approved newspapers to which advertisements are sent? If so, on what basis are the lists prepared and are they revised every year?

The Honourable Sir Thomas Stewart: (a) Government have no information, but I will see if it is practicable to get the figures required for the twelve months ending 31st March, 1937, if they can be conveniently compiled.

(b) The information is not available, and its compilation would involve a considerable amount of clerical labour which, I fear, I could not justify.

(c) and (d). The State-managed Railways have been asked to follow the list of newspapers prepared by the Government of India which is based on commercial considerations so as to secure the maximum value for advertisements.

Dr. Sir Ziauddin Ahmad: Do the Department of Communication ever contemplate the utilisation of the services of the Information Bureau attached to the Home Department for doing publicity work?

The Honourable Sir Thomas Stewart: I am afraid I do not quite understand what the Honourable Member says. Is he referring to the Communications Department or is he including the Railway Department also?

Dr. Sir Ziauddin Ahmad: I am talking chiefly of the Railway Department. Instead of advertising directly, may I know whether they avail themselves of the services of the Information Bureau attached to the Home Department for doing publicity work?

The Honourable Sir Thomas Stewart: So far as I am aware, it is not the function of the Public Information Department to undertake commercial publicity.

Mr. Abdul Qayyum: With reference to part (c), will the Honourable Member assure the House that political considerations do not enter into this question of giving advertisements?

The Honourable Sir Thomas Stewart: That is my information.

Mr. M. Asaf Ali: Am I to understand that the Honourable Member is not aware of a certain expression of opinion made by the Wedgwood Committee in regard to this matter? They said that certain newspapers which from a commercial point of view would be far better for advertisements are on the black list, and they are not being utilised. There is a definite recommendation of the Wedgwood Committee to that effect. I want to know whether the Honourable Member is aware of that fact?

The Honourable Sir Thomas Stewart: I do not understand the purport of the Honourable Member's question.

Mr. M. Asaf Ali: I am drawing the attention of the Honourable Member to the fact that the Wedgwood Committee have gone into this question, and they have come to the conclusion that you have excluded certain newspapers which from a commercial point of view are definitely beneficial, but they have been excluded, because political considerations have entered into your decision on the question. Have you considered this remark of the Wedgwood Committee?

The Honourable Sir Thomas Stewart: I would draw the Honourable Member's attention to a series of questions which were addressed to the representative of the Home Department regarding the policy followed in giving advertisements to newspapers. A revision of the policy has occurred since the Wedgwood Committee reported. The report, therefore, in that respect is out of date.

Mr. Ram Narayan Singh: Is the Honourable Member aware of the fact that certain newspapers are regarded as friendly and certain others as unfriendly?

The Honourable Sir Thomas Stewart: If the Honourable Member would refer to the answer that I gave to parts (c) and (d) of this question, he would realise that there is no question of friendliness or unfriendliness when these advertisements are placed and that commercial considerations are the only ones that weigh with the Government.

STATIONS ON THE NORTH WESTERN RAILWAY WITH PUBLIC AND RAILWAY POWER HOUSES.

304. ***Mr. H. M. Abdullah:** (a) Will the Honourable Member for Railways please state the names of stations on the North Western Railway, where public electric supply is available and still the Railway is running its own power house, generating cost at each of these stations, and the approximate rate at which current from public supply company is available?

(b) Is it a fact that at some stations the Railway has got old and out-of-date machinery, and generating cost is generally high as compared with rates offered by public supply companies?

(c) If old sets are still serviceable, have Government considered whether they can be usefully utilized at out of the way places where public supply is not available?

(d) Do Government propose to consider the advisability of stopping all old power houses and buying electricity in bulk wherever available at cheap rates?

(e) Are Government prepared to expedite negotiations for purchase of electricity in bulk?

(f) Will Government please state the names of stations on the North Western Railway where electricity from companies is being purchased, the rates per unit, the maximum demand, load factor and the number of units consumed?

The Honourable Sir Thomas Stewart: Enquiries are being made from the Railway Administration, and a reply will be laid on the table in due course.

Dr. Sir Ziauddin Ahmad: Will Government also inquire about the cost of production per unit and the cost at which they can purchase from the town?

The Honourable Sir Thomas Stewart: I think that that inquiry would be implicit in part (d) of the question.

Mr. Manu Subedar: With regard to part (d), will Government be pleased to state what action they have taken or propose to take with regard to the Kalyan Power House in the Bombay Presidency?

The Honourable Sir Thomas Stewart: That does not arise out of a question relating entirely to the North Western Railway.

Mr. Manu Subedar: May I point out that clause (d) of the question relates to "all old power houses" and is not confined to the North Western Railway only?

The Honourable Sir Thomas Stewart: The whole of the question refers to the conditions on the North Western Railway.

STATIONS NOT ELECTRIFIED ON THE NORTH WESTERN RAILWAY.

305. ***Mr. H. M. Abdullah:** Will the Honourable Member for Railways please state the names of stations on the North Western Railway that are junctions or district headquarters but are not electrified so far, and the budget at each of these stations for lights, fans and pumps?

The Honourable Sir Thomas Stewart: Government are not in possession of the necessary information and do not consider that the value of this information justifies the cost and labour entailed in obtaining it.

Mr. Lalchand Navalrai: Will the Honourable Member please inquire if the railway junction at Rukh is electrified?

The Honourable Sir Thomas Stewart: I think it is likely that the Honourable Member himself could give the House the information at once.

Mr. Lalchand Navalrai: In that case I would ask the Honourable Member why it is not electrified and how much the electrification would cost?

The Honourable Sir Thomas Stewart: In that case I should have asked for notice of his question.

Dr. Sir Ziauddin Ahmad: Is it not desirable that Government power houses should be established at places where no supply of electricity exists?

The Honourable Sir Thomas Stewart: I think the Honourable Member is asking me for an expression of opinion.

DUTIES OF AN ASSISTANT AERODROME OFFICER.

306. ***Mr. H. M. Abdullah:** Will the Honourable Member for Communications please state if it is an integral and essential part of the duties of an Assistant Aerodrome Officer in the Civil Aviation to deal with cash and accounts?

The Honourable Sir Thomas Stewart: Not in all cases.

TRANSFERS OF ASSISTANT AERODROME OFFICERS.

307. ***Mr. H. M. Abdullah:** (a) Will the Honourable Member for Communications please state whether Assistant Aerodrome Officers are liable to transfer from one station to another?

(b) Is it a fact that some Assistant Aerodrome Officers have been very frequently transferred while others have remained in the same station since their appointment to their present grade? If so, will Government please state the names of officers in the latter class?

The Honourable Sir Thomas Stewart: (a) Yes.

(b) Some officers have had more transfers than others. Four officers have not had any transfers since their first appointment early in 1936, *viz.* Messrs. Sequeira, Ghosh, Warriar and Rana D. S. Jung.

INDIANS IN PALESTINE.

308. ***Maulvi Abdur Rasheed Chaudhury:** Will the Foreign Secretary please state:

- (a) the number of Indians in Palestine;
- (b) whether, in the disturbed state of Palestine, the Indians are undergoing any hardship, and what measures have been taken for their protection; and
- (c) whether his attention has been drawn to the resolution of the All-India Muslim League passed at its Lucknow session in last October, vehemently protesting against the policy of Britain to partition Palestine and, if so, whether he has taken any steps to inform the Government of Britain that Mussalmans of India in a body oppose such partition?

Sir Aubrey Metcalfe: (a) and (b). The attention of the Honourable Member is invited to my answer to Mr. George Joseph's starred question No. 15 on January 31st, 1938.

(c) Government have only seen a report of the resolution in the Press.

Maulvi Abdur Rasheed Chaudhury: May I know whether Government have communicated the views of the Mussalmans to the Government of Great Britain with reference to this question?

Sir Aubrey Metcalfe: From time to time there have been, as already stated in this House, communications made by the Government of India to His Majesty's Government on the subject.

Mr. Abdul Qaiyum: When was the last communication addressed on this subject?

Sir Aubrey Metcalfe: I should like to have notice of this question.

Maulvi Abdur Rasheed Chaudhury: Did they get any reply from His Majesty's Government?

Sir Aubrey Metcalfe: I cannot say without notice.

Mr. Manu Subedar: How long does it generally take to get a reply from His Majesty's Government?

Sir Aubrey Metcalfe: That depends entirely on the subject.

CONSTRUCTION OF A CART ROAD FROM BHOWALI TO MUKTESWAR.

309. ***Mr. Badri Dutt Pande:** Will the Honourable Member for Railways and Communications be pleased to state if it is a fact that the Director of the Imperial Research Institute at Mukteswar (United Provinces) has asked for a cart road to be made from Bhowali to Mukteswar?

(b) Has a survey been made?

(c) What is the total amount of estimated cost of this road?

(d) Has any provision been made for the building of this road in the near future?

The Honourable Sir Thomas Stewart: I am afraid I have no information

Mr. Badri Dutt Pande: Am I to understand that there has been no correspondence about the road to the Mukteswar Institute?

The Honourable Sir Thomas Stewart: Not with any Department with which I am concerned.

ALLEGED MISAPPROPRIATION BY A SUB-POSTMASTER OF BATALA.

310. ***Sardar Sant Singh:** Will the Honourable Member for Communications please state:

(a) if it is a fact that a Sub-Postmaster of Batala misappropriated Government money amounting to Rs. 5,000;

(b) what immediate action, if any, was taken by the Superintendent of Post Offices of the Gurdaspur Division when the defalcation was brought to his notice by the Postmaster, Gurdaspur;

- (c) if it is a fact that the Sub-Postmaster concerned was allowed to continue in office for about a week after the misappropriation came to the knowledge of the Superintendent;
- (d) if it is a fact that in this interval of one week the Sub-Postmaster misappropriated a further sum of six or seven thousand rupees;
- (e) if it is a fact that the investigation of this important case was not taken up by the Superintendent himself but entrusted to a local Inspector of Post Offices; and
- (f) what action, if any, Government propose to take against the Superintendent of Post Offices?

The Honourable Sir Thomas Stewart: As the alleged embezzlement by the Sub-Postmaster, Batala City, is *sub-judice*, Government consider that it would not be in the public interest to answer the Honourable Member's question.

CONVERSION INTO BROAD GAUGE OF MADRAS-TRIVENDRUM SECTION OF THE SOUTH INDIAN RAILWAY.

311. ***Mr. Thirumala Rao** (on behalf of Mr. C. N. Muthuranga Mudaliar): (a) Will the Honourable Member for Communications be pleased to state if Government had under their consideration, at any time in the past, the desirability of converting the main metre gauge section of the South Indian Railway from Madras to Trivendrum, or any portion of it, into a broad gauge system?

(b) Are Government aware that the break in gauge causes a lot of inconvenience to passengers proceeding from the north to the south, as well as to the movement of goods and commodities?

(c) Is it a fact that representations have been made before to have the metre gauge on this section converted into broad gauge and if so, what has been the result so far?

The Honourable Sir Thomas Stewart: (a) The whole question of railway extension in Southern India, including the question of gauge, was examined by a State Railway Engineer in 1921-22. He recommended that the country which lies south of the Podanur Madras Railway and east of a line drawn southward from Podanur along the Travancore High Range as far as, say, Quilon, should be served by the metre gauge. His report was accepted by Government. Government have no information regarding any previous discussion on this matter.

(b) A break of gauge always causes some inconvenience.

(c) Government are not aware of any representations since the report mentioned in part (a) of this answer.

PROVISION OF A COVERED PLATFORM AT THE NEW DELHI RAILWAY STATION.

312. ***Mr. Thirumala Rao** (on behalf of Mr. C. N. Muthuranga Mudaliar): (a) Will the Honourable Member for Communications please state if any action has been taken, or is proposed to be taken, in regard to the provision of a covered platform at New Delhi railway station?

(b) Are Government aware that both during the cold and hot seasons and also during the rains, it is very inconvenient for passengers entraining and detraining, as well as for persons who go there to receive or see off passengers, to remain on the platform?

(c) Are Government prepared to issue early directions for fully covering the platforms at this station?

The Honourable Sir Thomas Stewart: (a) No.

(b) Government are prepared to agree that there is some inconvenience.

(c) This is within the competence of the Agent whose attention might suitably be drawn to it either direct or through the Local Advisory Committee for Railways. I will, however, send him a copy of this question.

RAILWAY FREIGHT RATES ON COCOANUTS FROM MADRAS TO PLACES IN NORTHERN INDIA.

313. ***Mr. Thirumala Rao** (on behalf of Mr. C. N. Muthuranga Mudaliar): (a) Will the Honourable Member for Communications state what the present rate of freight per maund is on cocoanuts from Madras to places in Northern India, like Delhi and Lahore, and whether full or half parcel rates are charged on such consignments?

(b) Are Government aware of the fall in the price of cocoanuts, and do Government propose to consider the desirability of charging quarter parcel rates on consignment of cocoanuts from South India in bags or in full wagon loads as is done in respect of certain other perishable articles?

(c) Are Government prepared to consider the desirability of charging quarter parcel rates on cocoanuts consigned directly from Bombay or Calcutta to Delhi and the Punjab? If not, why not?

The Honourable Sir Thomas Stewart: (a) The freight rates per maund from Madras are as follows:

By goods train:

	Rs.	a.	p.
to New Delhi	3	1	0
to Lahore	3	11	1

By passenger train, at full parcel rates (as half parcel rates do not apply):

	Rs.	a.	p.
to Delhi or New Delhi	11	8	0
to Lahore	12	6	0

(b) and (c) The quotation of rates for individual commodities is a matter within the discretion of the Railway Administrations concerned, subject to such rates not exceeding the prescribed maximum or infringing the prescribed minimum. I will, however, communicate the Honourable Member's suggestion to the Agents of the various Railways concerned for such action as they may consider desirable.

RECRUITS TO THE POLITICAL AND EXTERNAL AFFAIRS DEPARTMENTS.

314. ***Babu Kailash Behari Lal:** Will the Secretary for External Affairs be pleased to state:

(a) what percentage of the annual recruits to the Political and External Affairs Departments were expected to be Indians after the Lee Commission Report;

- (b) what is the total number of recruits to the Political and External Affairs Departments since 1924 and how many of them are Indians;
- (c) if it is a fact that a *communiqué* was issued in 1921 that Indians chosen for the Political Department would be selected from the Indian Civil Service, the Indian Army and the Provincial Service; and
- (d) if it is a fact that of the twelve Indians in the Department at present only one is a civilian?

Sir Aubrey Metcalfe: (a) 25 per cent. subject to suitable candidates being obtainable.

- (b) Total recruits—137;
Indians—23.
- (c) Yes.
- (d) No.

PUTTING ON SALE OF ALPHABETICAL LISTS OF POST OFFICES.

315. ***Mr. Sri Prakasa:** Will the Honourable Member for Communications state:

- (a) if it is a fact that the Department publishes periodically a pamphlet giving the lists of post offices alphabetically arranged in each district;
- (b) if this document is treated as confidential and not sold to the public; and
- (c) if Government are prepared to consider the desirability of putting this on sale, or, in the alternative, of adding the list arranged district-wise to the Postal Guide itself?

The Honourable Sir Thomas Stewart: (a) No.

(b) Does not arise.

(c) The first part of the question does not arise. The reply to the second part is in the negative.

Mr. Sri Prakasa: With reference to the reply to part (a), will he kindly make sure that such a pamphlet is not published, because I have seen one myself?

The Honourable Sir Thomas Stewart: I am quite certain that no such pamphlet is published.

Mr. Sri Prakasa: Is it not a fact that there is a publication which gives the names of post offices in each district along with information which is used by the postal authorities, and that is regarded as confidential, in other words, not sold to the public?

The Honourable Sir Thomas Stewart: No, Sir; there is no compilation by districts. There is a departmental compilation by circles and not by districts.

Mr. Sri Prakasa: I am not learned in the technical language of the department: by districts I mean "circles". Will the Honourable Member consider the desirability of putting this publication on sale in order that the public may conveniently be able to know the names of the various post offices in each circle?

The Honourable Sir Thomas Stewart: There is already in existence an alphabetical list of post offices which is published in the Post and Telegraph Guide. I am not aware, except from the Honourable Member's request, that any public desire for anything further exists.

Mr. Lalchand Navalrai: May I know if that list of all post offices will be found in the Library of the Assembly?

The Honourable Sir Thomas Stewart: Yes, Sir, there is in the Library a copy of the Post and Telegraph Guide. At the end of that, the Honourable Member will find the list of all post offices in India.

Mr. Sri Prakasa: In view of the fact that there are similar names of post offices in different circles, do not Government think that it would be convenient for the public to know the name of the circle of each post office also, so that it can be mentioned along with the name of the post office when they are addressing letters?

The Honourable Sir Thomas Stewart: If the Honourable Member will refer to the list at the end of the Post and Telegraph Guide, he will find there is no reason why there should be any ambiguity.

NON-CARRIAGE OF MAILS BY THE DOWN DELHI MAIL FROM DELHI TO MOGHUL SARAI.

316. ***Mr. Sri Prakasa:** Will the Honourable Member for Railways and Communications state:

- (a) if it is a fact that while postal articles are brought by the 1 Up Delhi Mail from Moghal Sarai to Delhi, they are not taken by the corresponding 2 Down Mail from Delhi to Moghal Sarai;
- (b) if it is not a fact that letters from Delhi to Benares take a longer time to reach their destination than from Benares to Delhi; and if so, whether this is not due to the fact that postal articles are not sent from Delhi to Moghal Sarai by the 2 Down Delhi Mail;
- (c) if Government are aware that the Mail-van that is attached to 1 Up Delhi Mail from Moghal Sarai carries a large intermediate class compartment for passengers, and that its not going by the 2 Down Mail diminishes the carrying capacity of the corresponding Down Mail; and
- (d) if Government propose to consider the desirability of arranging to take the mails by the 2 Down as well?

The Honourable Sir Thomas Stewart: (a) Yes.

(b) The Honourable Member is correct so far as the actual transit time from Delhi station to Benares station is concerned, but the time

taken between posting and delivery both ways of mails carried by the trains referred to is the same.

(c) Yes; but although the intermediate class accommodation on 2-Down Mail is less than on the corresponding 1-Up Mail it is adequate to meet public requirements.

(d) No.

Dr. Ziauddin Ahmad: Is it convenient from the administrative point of view not to send mails by 2-Down Mail?

The Honourable Sir Thomas Stewart: It is.

Dr. Ziauddin Ahmad: What is the convenience?

The Honourable Sir Thomas Stewart: The convenience, Sir, is that the train No. 118, which takes the mail, leaves in the evening and thus is enabled to take the whole day's postings. But No. 2-Down Mail leaves at about 8 or 8-30 in the morning and would only be able to take the postings between six and eight in the morning, which, I think, you will agree, are not large. The rest of the day's postings would have to wait over until next morning.

Dr. Ziauddin Ahmad: The Honourable Member is considering the convenience of Delhi Station only. What about letters from the Punjab and Simla: they are detained and lie over for a whole day at Delhi?

The Honourable Sir Thomas Stewart: No, Sir, if I consider the convenience of towns other than Delhi and Benares, then the case for using 118 is overwhelming, e.g., if one takes the position of intermediate towns such as Cawnpore.

Mr. Sri Prakasa: Is it a fact that the mail van that comes from Kalka is detached at Delhi? Why does not the Honourable Member allow it to run along carrying mails further down the line?

The Honourable Sir Thomas Stewart: I must ask for notice of that.

Mr. Sri Prakasa: With reference to the Honourable Member's reply to part (c) of the question, may I know how he is sure that there is adequate intermediate class accommodation in the down mail even after the intermediate class compartment is taken off?

The Honourable Sir Thomas Stewart: I have given the information which was acquired from the officials responsible for seeing that adequate accommodation is provided.

Mr. Sri Prakasa: In view of the fact that I am a passenger, will he take my statement that the accommodation is not adequate.

The Honourable Sir Thomas Stewart: No, Sir, I am afraid I cannot take his statement as generally true.

Mr. Sri Prakasa: How many times has the official referred to travelled by the intermediate class in these trains?

POSTAL INSURANCE.

†317. ***Mr. Amarendra Nath Chattopadhyaya:** (a) Will the Honourable Member for Communications be pleased to state if originally the Postal Insurance was meant for employees of the Postal Department only?

(b) Will the Honourable Member be pleased to state if subsequently it was opened to all Government employees and, if so, will the Honourable Member be pleased to state the date and the year when this was opened to all Government employees?

(c) Will the Honourable Member be pleased to state if originally it was decided that Post Office Insurance Policies were to be confined within the maximum value of Rs. 4,000, and subsequently this maximum was raised to Rs. 20,000 at which the maximum value of Post Office Policy stands at present? If so, when was this raising of policy value sanctioned by Government?

(d) Will the Honourable Member be pleased to state if the Post Office Insurance affair was passed through a Bill into an Act in the Central Legislature? If so, when?

(e) Will the Honourable Member be pleased to state if Post Office Insurance fixes lower rate of premium than other insurers?

(f) Will the Honourable Member be pleased to state why there should be two different categories of insurers under one Government controlled by two separate Insurance Acts?

The Honourable Sir Thomas Stewart: (a) Yes.

(b) Yes. With effect from 1st February, 1898.

(c) Yes. The limit was raised to Rs. 10,000 with effect from the 5th November, 1920, and again to 20,000 from the 26th April, 1932.

(d) There is no act regulating postal insurance. The latter part does not arise.

(e) The insurance premiums in force were fixed with reference to the mortality experienced by Government servants insured with the Fund. So far as the whole life policies are concerned, the rates of the Fund are generally intermediate between the with-profit and non-profit rates of insurance companies while in the case of endowment assurances those rates are slightly lower than the non-profit rates of companies.

(f) Postal insurance is a class of insurance business carried on by the Central Government, and both Chambers of the Legislature have now agreed to the inclusion in the Insurance Bill of a clause providing that nothing therein shall apply to any insurance business carried on by the Central or by a Provincial Government. It is not the case therefore, as the Honourable Member appears to suppose, that postal insurance as such has been treated differentially from other classes of insurance. Nor is it the case that there are two Acts. There is no Act regulating postal insurance or any other form of insurance carried on by Government.

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

POSTAL INSURANCE FUND.

†318. ***Mr. Amarendra Nath Chattopadhyaya:** Will the Honourable Member for Communications be pleased to state the present Post Office Insurance Fund accumulated and how it is invested? What is the expense ratio incurred by Post Office Insurance Department?

The Honourable Sir Thomas Stewart: Seven crores forty-five lakhs at the end of the year 1936-37. This amount is treated as part of the unfunded debt of the Government of India. It bears interest at $3\frac{1}{2}$ per cent. The expense ratio for the year ending 31st March, 1937, was 4.69 per cent.

DIFFERENTIATION RESPECTING GRADES OF CERTAIN RAILWAY EMPLOYEES IN JHANSI DIVISION.

319. ***Mr. N. M. Joshi:** (a) Will the Honourable Member for Railways be pleased to state whether it is not a fact that there is a difference in the grades of certain categories of employees, such as Number-Takers, Booking Clerks, Goods Clerks, Assistant Goods Clerks etc., in the Jhansi Division and those of similar workers in other divisions, such as Jubbulpore, Bhusawal, Sholapur etc. on the Great Indian Peninsula Railway?

(b) Is it not a fact that such difference does not exist with regard to other categories of employees?

(c) If the answers to parts (a) and (b) be in the affirmative, will the Honourable Member be pleased to state the reasons for this differentiation?

(d) Will the Honourable Member be pleased to state whether he proposes to take early steps to remove this differentiation? If not, why not?

The Honourable Sir Thomas Stewart: These are matters of detailed administration entirely within the competence of the Agent, Great Indian Peninsula Railway, to deal with. I am, however, sending a copy of the question to the Agent for such action as he may consider necessary.

Mr. N. M. Joshi: May I ask if the Government of India have considered the question of standardising conditions on Indian railways or at least standardising conditions on one Railway throughout?

The Honourable Sir Thomas Stewart: I ask for notice of that question.

PROVISION OF BOARDING AND LODGING FACILITIES TO RELIEVING STAFF OF THE GREAT INDIAN PENINSULA RAILWAY.

320. ***Mr. N. M. Joshi:** (a) Will the Honourable Member for Railways be pleased to state if it is not a fact that at many road-side and other small stations on the Great Indian Peninsula Railway there is neither provision for decent sheltering of the relieving staff in the event of their necessity to stay there nor facilities of independent lodging and boarding?

(b) Is it not a fact that in view of the above state of things the relieving staff were given card passes to enable them to return to their headquarters after the close of the day's work?

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

(c) Is it not a fact that this practice was in vogue for a number of years?

(d) Is it a fact that duty card passes that were being issued to the relieving staff on the Great Indian Peninsula Railway have lately been withdrawn?

(e) Are Government aware that by reason of the sudden withdrawal of the duty card passes the relieving staff have been greatly inconvenienced and put to pecuniary loss?

(f) Is it not a fact that many representations by the staff concerned demanding the restoration of the passes have been made?

(g) Will the Honourable Member be pleased to state the reasons that led to the withdrawal of the passes?

(h) Will the Honourable Member be pleased to state whether he proposes to take steps to restore the passes? If not, why not?

The Honourable Sir Thomas Stewart: I understand the Honourable Member's question refers to conditions on the Great Indian Peninsula Railway. I am calling for particulars from the Agent of that line and will place a reply on the table of the House when these have been received.

HOURS OF DUTY OF SORTERS ON THE DELHI-MOGHUL SARAI FAST PASSENGER.

321. ***Mr. Sri Prakasa:** Will the Honourable Member for Railways and Communications state—

(a) if it is a fact that mails are carried from Delhi to Moghul Sarai by the 118 down fast passenger and that the men working in the mail-van have a continuous duty of over 14 hours upto Allahabad; and

(b) if Government are prepared to consider the desirability of giving the men concerned relief by providing fresh relays from Etawah onwards?

The Honourable Sir Thomas Stewart: (a) Yes.

(b) No.

Mr. Sri Prakasa: Is the Honourable Member satisfied that men can be continuously on duty for 14 hours and keep their efficiency the whole time?

The Honourable Sir Thomas Stewart: Yes, Sir.

Mr. Sri Prakasa: Will the Honourable Member seriously consider this point because I know, Sir, that men are over-worked?

The Honourable Sir Thomas Stewart: The question has already received consideration.

Mr. Lalchand Navalrai: Does the Honourable Member say that they get any tonic from the Railways to keep up their energy for so long?

CO-ORDINATION BETWEEN THE RAILWAY AND POSTAL DEPARTMENTS FOR CONVENIENT TIMINGS OF TRAINS.

322. ***Mr. Sri Prakasa:** Will the Honourable Member for Railways and Communications state if Government are considering the desirability of co-ordination between the Railway and Postal Departments so that the trains may be more conveniently timed?

The Honourable Sir Thomas Stewart: The instructions already issued provide for the requisite degree of co-ordination between the two Departments.

Mr. Sri Prakasa: Is it a fact that the Post Office has to adjust its arrangements because of sudden changes in railway timings causing inconvenience to all those it serves?

The Honourable Sir Thomas Stewart: My information, Sir, is that when Railways propose any alterations in the timings of railway trains, they do not carry into effect any such alterations without consultation and discussion with the postal authorities.

Mr. Sri Prakasa: In view of the fact that not only mail trains but also passenger trains carry mails, will the Honourable Member consider this point a little more closely?

The Honourable Sir Thomas Stewart: My reply, Sir, was in respect of all trains carrying mails, not technically mail trains.

DESIRABILITY OF CHANGES IN THE INSIDE ARRANGEMENT OF MAIL-VANS.

323. ***Mr. Sri Prakasa:** Will the Honourable Member for Railways and Communications state—

- (a) if Government are considering the desirability of making any changes in the inside arrangement of mail-vans on railways;
- (b) if they are aware that the mail-vans are almost in the nature of sealed carriages and that even the electric fans cannot be used as postal articles, while being sorted, are likely to get mixed up;
- (c) if Government propose to consider the desirability of so arranging the pigeon-holes that postal articles may be put in cases set down from the side tables and not in the cases arranged like a chest of drawers above these tables; and
- (d) if Government propose to consider the desirability of having cement floors to these vans?

The Honourable Sir Thomas Stewart: (a) No.

(b) If the suggestion is that the electric fans provided cannot be utilised freely during the process of sorting mails, this is not correct.

(c) and (d). No.

Mr. Sri Prakasa: In view of the fact that the process of sorting goes on all the time, and, therefore, the electric fans cannot be used at all, will the Honourable Member consider the point a little more closely?

The Honourable Sir Thomas Stewart: I have never suggested that the fans cannot be used.

Mr. Sri Prakasa: The Honourable Member, I think, Sir, said that they could not be used while sorting was going on and that at other times they could be used.

The Honourable Sir Thomas Stewart: No, Sir.

APPOINTMENT OF AN INDIAN AS THE DEPUTY AGENT, SOUTH INDIAN RAILWAY.

324. ***Mr. Thirumala Rao** (on behalf of Mr. C. N. Muthuranga Mudaliar):

(a) Will the Honourable Member for Communications please state whether it is a fact that the present Deputy Agent, South Indian Railway, is proceeding on furlough in March next or thereabout?

(b) Is it a fact that the last four Deputy Agents on the South Indian Railway have been recruited from the ranks of officers in the Engineering Department?

(c) With reference to the answer to part (a) of starred question No. 304, dated the 11th September, 1936, do Government propose to consider the advisability of drawing the attention of the South Indian Railway administration to the condition under which the post of Deputy Agent was sanctioned and asking them to appoint an Indian officer from the Engineering Department as Deputy Agent?

The Honourable Sir Thomas Stewart: (a) and (b). These are matters of detailed administration within the competence of the Agent, South Indian Railway, which is a Company-managed Railway.

(c) I am sending a copy of the question to the Agent, South Indian Railway, for such action as he may consider necessary.

CURTAILMENT OF FREE PASS CONCESSION OF WORKMEN ON THE EAST INDIAN RAILWAY.

325. ***Babu Kailash Behari Lal:** Will the Honourable the Railway Member be pleased to state:

(a) if it is a fact that before 1st January, 1937, a workman who completed 25 years' service in the East Indian Railway Company was allowed one set of railway free pass in a year;

(b) if it is a fact that from 1st January, 1937, the authorities have so changed the rule that the period of 25 years has been extended to 30 years to entitle a workman to claim a free railway pass; and

(c) if it is a fact that those workmen who completed their 25 years of service and earned the privilege of getting free railway pass before coming into effect of the changed rule have also been brought within the purview of the changed rule and were refused free pass on that score?

The Honourable Sir Thomas Stewart: (a), (b) and (c). I assume that the Honourable Member's question has reference to employees of the East Indian Railway, who have retired from railway service. Under the orders issued by the Railway Board in September, 1935, retired subordinates of over 25 years' but less than 35 years' service were allowed four

single journey passes each year. These orders were revised with effect from 1st January, 1937, limiting the issue of passes to retired subordinates with not less than 30 years' service to two single journey passes each year and with not less than 35 years' service to four single journey passes each year.

Lieut.-Colonel Sir Henry Gidney: Will the Honourable Member inform this House whether or not it is a fact that the privilege of railway passes formed part of the conditions of transfer of the employees when the East Indian and other Company Railways were taken over in 1925 from the Company by the State? If the answer is in the affirmative, will the Honourable Member please state why this privilege has been restricted, indeed violated?

The Honourable Sir Thomas Stewart: The Honourable Member has the advantage over me of knowing the history of the Railway. I say I must ask for notice of that question.

Lieut.-Colonel Sir Henry Gidney: Will the Honourable Member please inform the House whether the same restriction has been exercised in the granting of passes to serving and retired officials as has been done in the case of subordinates in 1937?

The Honourable Sir Thomas Stewart: I should require notice of that question too.

Babu Kailash Behari Lal: May I know whether employees who had completed at least 25 years' long before this rule came into effect are affected by that circular?

The Honourable Sir Thomas Stewart: I am unable to say whether the rule had retrospective effect. I shall obtain the information for the Honourable Member.

Lieut.-Colonel Sir Henry Gidney: Will the Honourable Member inform this House whether it is under contemplation to grant, if not in entirety at least in part, the former pass privileges to serving and retired railway servants, *i.e.*, as obtained in 1933?

The Honourable Sir Thomas Stewart: I think it appears from the answer I have given to this question that retired railway servants do enjoy in part at least the privileges they previously enjoyed.

Lieut.-Colonel Sir Henry Gidney: I am sorry I did not quite catch what the Honourable Member implied by that reply. I quite understood the first part, but what I want to ascertain is this: whether the Railway Board are contemplating a return, if not in entirety, at least in part, to the original 1933 of pass rules—not one as it is now, but a little more as before?

The Honourable Sir Thomas Stewart: I can inform the Honourable Member that the question of the issue of passes is under the consideration of the Railway Board at the present time.

Lieut.-Colonel Sir Henry Gidney: I thank you, Sir, for that comforting assurance.

RESTORATION OF THE OLD PASS RULES ON RAILWAYS.

326. ***Mr. Lalchand Navarai:** (a) Will the Honourable Member for Railways be pleased to refer to the assurance given by his predecessor Sir Saiyid Sultan Ahmad, in response to supplementary questions to starred question No. 672, dated the 21st September, 1937, that he would go into the question of the restoration of the old pass rules to the railway men after 27th September, 1937, and to state what action has been taken in the matter since then?

(b) Is it a fact that the revised rules for passes were issued in November 1936, and are Government aware that there has been grave discontent on the promulgation of these rules?

(c) Is it a fact that several telegrams and memorials have been sent by the railway employees to the Railway Board, His Excellency the Viceroy and the Members of the Executive Council requesting restoration of the old pass rules?

(d) Do Government propose to restore the old pass rules? If not, why not? If so, to what extent?

(e) Is it a fact that the All-India Railwaymen's Federation has been raising this point at every meeting with the Railway Board and each time it is said that the matter is under consideration? If so, when do Government propose to issue final orders in the matter?

The Honourable Sir Thomas Stewart: (a) The matter was discussed with the Agents of principal railways in October, 1937, and they were asked to submit their views after further examination.

(b) and (c). The Pass Rules now in force had effect from the 1st January, 1937. Several representations have been received asking for a reconsideration of these rules.

(d) The extent, if any, to which the rules now in force should be modified is under consideration.

(e) The reply to the first part is in the affirmative: and as regards the second, I regret it is not practicable to say when a decision will be reached.

Lieut.-Colonel Sir Henry Gidney: Will the Honourable Member inform this House what actually he means by the words "if any" in his reply to part (d)?

The Honourable Sir Thomas Stewart: I think the English is perfectly clear.

Lieut.-Colonel Sir Henry Gidney: Does the Honourable Member imply by that "perfect clarity" that it is under contemplation to improve the situation as regards passes or does it supply him that loophole of escape usually provided and exercised by the railway authorities when they see those convenient words "ordinarily" and "if any" while in practice means that there will be no change?

The Honourable Sir Thomas Stewart: I regret I cannot anticipate the decision of the Railway Board and the Government of India in this matter.

Lieut.-Colonel Sir Henry Gidney: Will the Honourable Member state whether his Department is sympathetic towards this concession and whether it is the Finance Department that is the bug-bear?

The Honourable Sir Thomas Stewart: I am reluctant to give expression to my sentiments here.

Mr. Lalchand Navalrai: May I know, as regards clause (d), whether Government are considering the question of restoration of the old passes or modifying them?

The Honourable Sir Thomas Stewart: I think it follows from my reply to part (d) that a restoration of the old rules may be regarded as a modification of the existing system.

Dr. Sir Ziauddin Ahmad: Is it not a fact that the Railway Board and the Government were requested to restore the passes as they existed in 1933. Are they considering that matter?

The Honourable Sir Thomas Stewart: I must refer the Honourable Member again to my answer to part (d), which seems to me to cover all possible contingencies.

Dr. Sir Ziauddin Ahmad: Charges may be positive or negative: I want to know whether they are considering a return to the conditions that existed in 1933?

The Honourable Sir Thomas Stewart: I have already said that I am unable to anticipate the decision that may be taken in the matter.

DENIAL OF RENT-FREE QUARTERS TO CERTAIN TEMPORARY EMPLOYEES ON THE NORTH WESTERN RAILWAY.

327. ***Mr. Lalchand Navalrai:** (a) Will the Honourable Member for Railways be pleased to state whether it is a fact that prior to 1st April 1928, certain classes of employees on the North Western Railway drawing above Rs. 30 per mensem were entitled to rent-free quarters or house allowance in lieu thereof?

(b) Is it a fact that employees who were temporary in posts carrying the concession of rent-free quarters before 1st August, 1928, are entitled to rent-free quarters when continued in service and confirmed?

(c) Is it a fact that they were denied the concession of rent-free quarters on the ground that during their temporary service they had proceeded on privilege leave?

(d) Does privilege leave constitute a break in service? If not, why are the employees referred to in part (c) above denied the concession of rent-free quarters?

(e) Do Government propose to mitigate their hardship?

The Honourable Sir Thomas Stewart: (a) Yes.

(b) Yes.

(c) The concession is denied only when the leave exceeds a month and is granted otherwise than on medical certificate.

(d) Privilege leave does not constitute a break in service, but this has no relevancy in determining the justification for the grant of the concession in question. Concessions of this nature are not granted or continued merely because service has been continuous.

(e) Government do not see any hardship in the existing rule. They have considered the matter fully and come to the conclusion that no further liberalisation of the rule is called for.

Mr. Lalchand Navalrai: Has the Honourable Member received representations to the effect that it is a hardship?

The Honourable Sir Thomas Stewart: I am not aware of any representations but I cannot give a definite answer in the matter.

Mr. Lalchand Navalrai: Will the Honourable Member then make inquiries from the Agents that it is really a hardship?

The Honourable Sir Thomas Stewart: I have told the Honourable Member that the Government have considered the matter fully and come to the conclusion that there is no hardship.

TRIBAL, EXCLUDED AND PARTIALLY EXCLUDED AREAS.

328. ***Mr. Badri Dutt Pande:** (a) Will the Foreign Secretary be pleased to state what is the total population of:

- (i) tribal areas,
- (ii) excluded areas, and
- (iii) partially excluded areas?

(b) What is the amount of expenditure incurred on them?

Sir Aubrey Metcalfe: (a) (i). The population of all the tribal areas included in India is approximately two millions.

(a) (ii) and (iii). These do not concern the Governor General in Council and the Government of India have no information.

(b) Expenditure incurred from Civil Estimates on tribal areas amounts to approximately two crores per annum. Separate figures for Defence Services are not available.

Mr. Badri Dutt Pande: Are these areas under the rule of the Governors or directly administered by the Government of India?

Sir Aubrey Metcalfe: In one case there is direct administration by the Government of India. The remainder are administered by the Governor as the agent of the Government of India.

Mr. Kuladhar Chaliha: May I know which province has the largest excluded areas?

Sir Aubrey Metcalfe: I have no information about excluded areas: as I have already explained they are not the concern of the Governor General in Council.

UNSTARRED QUESTIONS AND ANSWERS.

LOSS SUFFERED IN STATUS AND SENIORITY BY STAFF ON KATNI-BINA SECTION OF THE GREAT INDIAN PENINSULA RAILWAY ON TRANSFER TO THE JUBBULPORE DIVISION.

27. **Mr. N. M. Joshi:** (a) Will the Honourable Member for Railways be pleased to state if it is a fact that the Katni-Bina Section of the Great Indian Peninsula Railway was transferred from the 1st May, 1933, from the control of the Jhansi Division to that of the Jubbulpore Division?

(b) Is it not a fact that there is a difference of Rs. 5 or Rs. 10 in the grades of certain categories of the employees, such as, Assistant Goods Clerks, Number-Takers, Booking Clerks, etc., between the Jhansi Division and other similar Divisions of the same Railway?

(c) Is it not a fact that due to this difference the men working on the Katni-Bina Section and transferred to the Jubbulpore Division in May, 1933, have been suffering loss in respect of their status and seniority?

(d) Is it not a fact that an Assistant Goods Clerk in the grade of Rs. 50 from this section has to work as a Foreman—the next lower grade if and when he happens to be transferred to any other section of the Jubbulpore Division where the grades for the Assistant Goods Clerk and Foreman are Rs. 60 and Rs. 50, respectively?

(e) Is it not a fact that when the Generalganj Goods Depot was handed over by the Great Indian Peninsula Railway to the charge of the East Indian Railway, the Goods Foreman working at that Depot in the grade of Rs. 45 were at once absorbed in the Jubbulpore Division in the grade of Rs. 50 in accordance with the grade prevalent on that Division?

(f) Will the Honourable Member be pleased to state why the above procedure could not be adopted also in the case of staff working on the Katni-Bina Section?

(g) Will the Honourable Member be pleased to state whether he proposes to take the necessary action with a view to right the wrong done to the staff concerned? If not, why not?

The Honourable Sir Thomas Stewart: These are matters of detailed administration entirely within the competence of the Agent, Great Indian Peninsula Railway, to deal with. I am, however, sending a copy of the question to the Agent for such action as he may consider necessary.

DRIVERS ON THE GREAT INDIAN PENINSULA RAILWAY.

28. **Mr. N. M. Joshi:** Will the Honourable Member for Railways be pleased to lay on the table of this House a statement giving particulars on

the following lines with regard to the number of drivers on the Great Indian Peninsula Railway?

Division.	Number of Drivers.								
	"A" Grade.			"B" Grade.			"C" Grade.		
	1929.	1933.	1937.	1929.	1933.	1937.	1929.	1933.	1937.
Bombay .									
Sholapur .									
Bhusawal .									
Jubbulpore .									
Jhansi . . .									

The Honourable Sir Thomas Stewart: I lay on the table of the House a statement giving the particulars required by the Honourable Member.

Statement giving particulars with regard to the Number of Drivers on the Great Indian Peninsula Railway.

Division.	Number of Drivers (Sanctioned).								
	'A' grade.			'B' grade.			'C' grade.		
	1929	1933	1937	1929	1933	1937	1929	1933	1937
Bombay .	102	71	63	82	56	45	44	78	77
Sholapur .	30	20	28	51	43	35	27	37	18
Bhusawal .	121	147	153	80	90	91	63	65	66
Jubbulpore .	46	46	46	23	19	18	57	50	32
Jhansi . . .	106	106	101	51	51	35	32	44	43

MOTIONS FOR ADJOURNMENT.

FAILURE OF THE HOME MEMBER TO MEET A DEPUTATION FOR PROTESTING
... AGAINST GOVERNMENT'S SUPPORT TO THE CHILD MARRIAGE RESTRAINT
(AMENDMENT) BILL.

Mr. President (The Honourable Sir Abdur Rahim): I have received notice of a motion of adjournment from Babu Baijnath Bajoria for discussing a specific matter of urgent public importance, namely, "failure of the Home Member to meet the deputation of leading citizens of Delhi for protesting against the Government support to the Child Marriage Restraint (Amendment) Bill by Mr. B. Das". Is there any objection?

The Honourable Sir Henry Craik (Home Member): Sir, I do not think this really can be called a matter of urgency, and I doubt very much whether it is correct to say that I failed to meet a deputation of leading citizens of Delhi. I received a telegram signed by the Secretary of the Varnashram Swarajya Sangh, "care of Swarajya", Delhi. I made inquiries of the local administration and found that the local administration knew nothing about this body. I therefore simply replied to the effect that the attitude of the Government on the matter in question had already been announced, viz., that it accepted the motion for reference to a Select Committee, and that all objections to the Bill would no doubt be carefully considered by the Select Committee. I cannot see why my action, which appears to me to be strictly proper and in accordance with the position which Government have taken up on this private Member's Bill, should be the occasion for a motion for adjournment.

Mr. President (The Honourable Sir Abdur Rahim): I think the Honourable Member said that he ascertained who were the leading citizens.

The Honourable Sir Henry Craik: No names were given at all. It was sent by the Secretary of the Society, and I could not find out anything about the Society.

Babu Baijnath Bajoria (Marwari Association: Indian Commerce): Sir, may I say a word about the telegram in question? Some leading citizens of the city came to me and informed me that they had sent a telegram to the Honourable the Home Member in the name of the Secretary of Varnashram Sangh. It is a well-known All-India organisation. (Some Honourable Members: "Where is it?"). It is in Delhi. You cannot deny it.

Mr. Badri Dutt Pande (Rohilkund and Kumaon Divisions: Non-Muhamadan Rural): Financed by you?

An Honourable Member: When was this Sangha started?

Babu Baijnath Bajoria: Even in the opinions you will find the opinion of this Sangh.

Mr. President (The Honourable Sir Abdur Rahim): Even the name of the Sangha is not given here in the notice.

Babu Baijnath Bajoria: The telegram was sent in the name of the Secretary of that institution, but the leading citizens were anxious to meet the Honourable the Home Member and to discuss the matter with him. The telegram was sent in one man's name. The matter was urgent, because if the Honourable the Home Member had seen the deputationists his view might have changed.

Mr. President (The Honourable Sir Abdur Rahim): This motion must be disallowed. I am doubtful whether a subject like this should be discussed on a motion for adjournment. Further, the Honourable the Home Member says that he had not been able to find out who the men were referred to in the telegram, and the motion itself does not mention the names of any of the leading citizens who wanted to wait on the Honourable the Home Member.

CONSTITUTIONAL CRISIS OCCASIONED BY EXERCISE OF POWERS CONFERRED BY SECTION 126 OF THE GOVERNMENT OF INDIA ACT.

Mr. President (The Honourable Sir Abdur Rahim): I have also received another notice of motion for adjournment from Mr. Asaf Ali to this effect,—he wants to discuss a definite and specific matter of urgent public importance of recent occurrence, namely, “the dangers of the constitutional crisis occasioned by the exercise of the powers conferred by section 126 of the Government of India Act”. I would like to know whether this section 126 of the Government of India Act refers partly to the action of the Governors of the Provinces or to the action of the Governor General in Council. One portion refers to the action of the Governor General in Council. The Honourable Member does not refer to sub-section (5).

Mr. M. Asaf Ali (Delhi: General): No, I don't refer to it.

Mr. President (The Honourable Sir Abdur Rahim): Then as regards the action of the Governors, this House has nothing to do with it.

Mr. M. Asaf Ali: I have not mentioned the action of the Governors there.

Mr. President (The Honourable Sir Abdur Rahim): You mention section 126 generally, and not any specific portion of it?

Mr. M. Asaf Ali: Exactly.

Mr. President (The Honourable Sir Abdur Rahim): What are these actions, and taken by whom?

Mr. M. Asaf Ali: Sir, according to news that has appeared in the press today, it appears that a situation of an unprecedented character has arisen in the country by the resignation of Ministries in two major provinces, and the action, it appears, has been taken by the Governor General in his discretion under section 126, sub-section (5). It is a matter of recent occurrence, and it has certainly given rise to a serious political crisis in the country. It is a wholly unprecedented situation, because nothing of this nature has happened before. This is the very first occasion that under the Government of India Act the Governor General has taken action

Mr. President (The Honourable Sir Abdur Rahim): I have seen all that in the papers. I want to know how you justify this motion for adjournment.

Mr. M. Asaf Ali: It would be a very serious dereliction of duty if we did not place before the Government of India and the Governor General, who is the head of the Government of India, the views of the elected Members

Mr. President (The Honourable Sir Abdur Rahim): Does it arise out of the action of the Government of India? You know that adjournment motions can be moved with reference only to the action of the Governor General in Council, and not of the Governor General.

Mr. M. Asaf Ali: Exactly. I am now proposing to discuss this question as an action which relates to the Government of India really, because section 126 reads as follows:

"The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for the purpose."

Now, the executive authority of the Federation may be looked for in section 17 of the Government of India Act

Mr. President (The Honourable Sir Abdur Rahim): There is no Federation now.

Mr. M. Asaf Ali: I really do not know whether it is a sort of an anomaly

Mr. President (The Honourable Sir Abdur Rahim): There is no Federation or anything of the kind referred to in the Act

Mr. M. Asaf Ali: Then where are we? It is some sort of central authority, and, Sir, even if you refer back to the Government of India Act of 1919, you will find that this particular section is equivalent to section 41 of the Government of India Act, if I am not mistaken. The language is more or less the same

Mr. President (The Honourable Sir Abdur Rahim): I am trying to find out whether this is an act of the Governor General acting in his discretion.

Mr. M. Asaf Ali: Sir, it is certainly an act of the Governor General in his discretion; he is the head of the Government of India, and as such

Mr. President (The Honourable Sir Abdur Rahim): We know that the Act makes a very clear distinction between the Governor General and Governor General in Council.

Mr. M. Asaf Ali: My point is slightly different, Sir. It is not the act of the Governor General that I want to discuss. I want to discuss the dangers which are likely to flow from that act, which is a different subject altogether.

Mr. President (The Honourable Sir Abdur Rahim): You mean the action itself?

Mr. M. Asaf Ali: The action itself is separate, but there are certain other consequences which are likely to follow.

Mr. President (The Honourable Sir Abdur Rahim): What the House is concerned with is about the action itself, whether the action is justified or not,—and the action is the resignation of the Ministers following upon certain alleged instruction given by the Governor General to the Governors.

Mr. M. Asaf Ali: This is only just the immediate result, but there are other results which are likely to follow, and I think it is our duty to discuss here and place them before the Government of India and the Governor General also. We are not questioning his discretion. We must place before him all the material

Mr. President (The Honourable Sir Abdur Rahim): Then you will have to go to another place, and not here.

Mr. M. Asaf Ali: Personally, I think, Sir, if we are debarred

Mr. President (The Honourable Sir Abdur Rahim): I do not know if the Honourable Member is aware of the rulings on the point.

Mr. M. Asaf Ali: I should like to know which particular ruling you are referring to.

Mr. President (The Honourable Sir Abdur Rahim): The Act also is clear.

Mr. M. Asaf Ali: I think the only limitations on the debate in the House are mentioned in paragraph 57 of the Manual, which says that:—

“The matter of every speech shall be strictly relevant to the matter before the Assembly, and (2) a Member while speaking shall not (i) refer to any matter of fact on which a judicial decision is pending.”—*that is not the question before us now,—*(ii) shall not make a personal charge against a member”—*we are not doing it,—*(iii) make use of offensive expressions regarding the conduct of the Indian or any local Legislature,”—*we are not doing it either,—but the only relevant sub-rule is this—*“reflect upon the conduct of His Majesty the King or the Governor General or any Governor (as distinct from the Governments of which they are respectively the heads) or any Court of Law in the exercise of its judicial functions” . . .

Now, according to this limitation, I am certainly within my rights to discuss even the actions of the Governor General,
 12 Noon. because I am not referring to him as distinct from the Government of which he happens to be the head. He is the head of the Government of India and he has taken that action.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member is confusing the two—the Governor General and the Governor General in Council. These are two distinct constitutional entities.

Mr. M. Asaf Ali: I am not confusing the two. There is no reference to the Governor General in Council. The only limitation upon discussion of this nature is that I should not reflect upon the conduct of the Governor General as distinct from the Government of which he happens to be the head.

Mr. President (The Honourable Sir Abdur Rahim): The Governor General in Council, so far as I can see, has nothing to do with it.

Mr. M. Asaf Ali: I am not aware of any other limitation which is imposed upon the subject which I propose to raise.

Mr. President (The Honourable Sir Abdur Rahim): Do you suggest that the action of the Governor General in his discretion can be discussed in this House?

Mr. M. Asaf Ali: I see absolutely no bar to it. If it is pointed out by the Government or anybody else I shall certainly be grateful for that reference. I see no bar anywhere, either in the Act or in the Rules. The only bar is the one which I have pointed out and it certainly does not cover the kind of discussion which I propose to raise here today.

The Honourable Sir Nripendra Sircar (Law Member): The point is very simple. My Honourable friend by his motion raises questions about an act done under section 126 (5) of the Government of India Act. A reference to section 126 will show that the action was taken under section 126 (5) and the action was taken by the Governor General acting in his discretion. Therefore, this cannot be the subject matter of an adjournment motion. Again, as you pointed out, a Member shall not reflect upon the conduct of His Majesty the King or the Governor General or any Governor or any Court of Law in the exercise of its judicial functions. You will find this on page 20 of the Manual of Business and Procedure. Now, Sir, I would like to point out to you that the whole object of this adjournment motion is to complain of the act of the Governor General acting in his discretion. The position is too clear and too well-established by precedents to require a long speech.

Mr. President (The Honourable Sir Abdur Rahim): There is no doubt at all that this motion is entirely misconceived. The action taken in this case is purported to have been taken by the Governor General acting in his discretion under sub-section (5) of section 126 of the Government of India Act and there cannot be the least doubt that any such action cannot be discussed or criticised on the floor of the House. A matter like this cannot be discussed here without calling in question the action which has been taken by the Governor General acting in his discretion, and the very intention of the Government of India Act in permitting the Governor General in certain matters to act in his discretion is that such action cannot be called in question by the Legislature or by the Government.

There is also a ruling by Sir Frederick Whyte with reference to the old Act, where the words "Governor General acting in his discretion", so far as I remember, did not occur. His ruling is to be found in 'Decisions from the Chair', 1921-1930, pages 18 and 19, Ruling No. 20:

"Dewan Bahadur M. Ramachandra Rao sought to move the adjournment of the House to discuss the action of the Government of India in according sanction to the Burma Governments proposals to impose a tax on sea passengers. Then the President ruled:

The Honourable Member is not entitled to raise it in order to discuss the action of the Governor General. Any action taken by the Governor General apart from the Government of which he is the head—these are the words that appear in the rule—is outside the scope of debate in this House. Where the Government of India have any responsibility in the matter then immediately it is brought within the scope of this

House. The Governor General, in the discharge of any of his functions or in the exercise of any of his powers as Governor General and not as Governor General in Council, cannot be brought into debate in this House."

I had also recently to consider a similar question in connection with Standing Order 29, and there I pointed out that you cannot discuss, for instance, any act of the Governor of a Province by means of an adjournment motion, without criticising and reflecting upon the conduct of the Governor, which is prohibited by Standing Order 29. That ruling is to be found on page 379 of the Legislative Assembly Debates of 1936, Volume VI.

There can be no doubt that the resignation as reported in the papers of the Ministries of the United Provinces and of Bihar is a matter of considerable public significance. It might lead to a constitutional crisis as suggested by Mr. Asaf Ali, but the question whether the Ministers were justified or not in tendering their resignations because of the action alleged to have been taken by the Governor General acting in his discretion under sub-section (5) of section 126, however important, cannot certainly be discussed in this House on a motion for adjournment. The motion is, therefore, disallowed.

THE CHILD MARRIAGE RESTRAINT (AMENDMENT) BILL.

Mr. President (The Honourable Sir Abdur Rahim): Legislative Business. Further consideration of the motion* moved by Mr. B. Das on the 10th February:

Syed Ghulam Bhik Nairang (East Punjab: Muhammadan): I was in the midst of my speech when the discussion of this motion was adjourned last time in this House. I was pointing out that the attitude of the Muslim community towards the Sarda Act and any Bills or enactments intended to further strengthen and consolidate the provisions of that Act was sufficiently indicated by several facts, one of which was that at the present moment there is notice of a Bill by Mr. Muhammad Ahmad Kazmi seeking to enact an amendment to the Sarda Act to the effect that it shall not apply to Mussalmans. Sir, when the original Sarda Act was passed in 1929, there was a lot of agitation carried on by Muslims in all parts of India and a very representative and influential deputation of Muslims, the members of which belonged to all parts of India, waited on His Excellency Lord Irwin, the then Governor General, and it was led by a leader of very great popularity and a gentleman who is still credited with having been one of the soundest of Muslim leaders in India, the late Maulana Mahomed Ali. Well, that deputation prayed that Lord Irwin should withhold his assent to the Bill which had been by that time passed by both the Chambers, the Legislative Assembly and the Council of State. Of course through a combination of circumstances the deputation was not successful in its object and the assent of the Governor General was given all the same. but it was very clearly indicated that the Muslim community did not

*"That the Bill to amend the Child Marriage Restraint Act, 1929, be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable Sir Henry Craik, Mr. J. A. Thorne, Mr. E. Conran-Smith, Mr. N. M. Joshi, Mr. F. E. James, Mr. Lalchand Navalrai, Sardar Sant Singh, Sir Abdul Halim Ghuznavi, Mr. M. Ghiasuddin, Mr. Abdul Qaiyum, Mr. Sri Prakasa, Mr. N. V. Gadgil, Mr. M. Asaf Ali, Mr. Govind V. Deshmukh, Seth Govind Das, and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

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approve of this Act. In fact after this assent had been given and the Act had become law, men of the position of the late Maulana Abdul Majid of Badaun, a very eminent divine and other gentlemen undertook to court imprisonment by violating the provisions of the Sarda Act. (*An Honourable Member*: "How, by marrying"?),—by publicly performing in the Juma Masjid of Delhi the *nikha* of girls under age according to the Sarda Act. Now, it was owing to occurrences of this kind and not without reason that that remarkable event took place that in the Punjab, on the very first conviction of a man under the Sarda Act who was sentenced to imprisonment for one month, a telegram from the Government of the Punjab went forth releasing the offender and deciding not to take any action. Whatever the objections of the Hindu community to the Sarda Act may be, with which of course I am not sufficiently well acquainted and with which I cannot deal—the attitude of Muslims all over India is also responsible for the fact that today we have an open admission in speeches and opinions received on this Bill that the Act remains practically a dead letter.

Sir, when a piece of legislation goes against the deeply cherished sentiments of the vast multitude of the population of a country, it is sure to remain a dead letter. In fact it is not uncommon for statutory enactments to remain dead letters; we have the most outstanding instance of the Rowlatt Act which was passed in the teeth of universal opposition on the part of Indians, and yet the consequences which would have ensued from its being enforced were so grave that for the six months of life which were then allotted to it, it remained a dead letter on the Statute-book and then passed away unwept unhonoured, and unsung. The same fate has so far overtaken the Sarda Act, and we have a very significant, long, written opinion by the author of that Act in the "opinions" which have been received on the present Bill in which he deplores and bewails the fate of his pet child, this Act. Anyhow, I have already made it clear that I am speaking purely from the Muslim point of view. If my Honourable friends, the Hindu Members of this House and other non-Muslim Members, think that this piece of legislation, considering the interests of the community whom they represent, is necessary, and would be useful, certainly I have no right to object so far as their community is concerned; but I cannot afford to remain silent, being a Muslim Member representing a purely Muslim constituency; knowing full well the sentiments of the Muslims on the subject, and having been myself a member of the deputation which waited on Lord Irwin. I know the whole thing and cannot afford to remain silent at a moment when the Sarda Act is now being further strengthened and more links of the chain are being forged with a view to making it more drastic and more successful. In fact in spite of certain figures that have been quoted in this House by some speakers I find it almost impossible to believe that this Act is at all needed for the Muslims as far as its alleged necessity for preventing child widowhood is concerned, and as far as its alleged necessity for preventing the distress which child widows incur on account of their inability to remarry is concerned. Sir, in my community, in the first place, it is very very rare indeed that any ridiculously early marriages are at all celebrated.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Why not remove that rarity?

Syed Ghulam Bhik Nairang: There can be no such thing as perfection in this world. You cannot have Utopia. In the second place, suppose the parties to a marriage are not of the age prescribed in the Sarda Act and the marriage takes place and after a time the husband dies and the wife becomes a widow, well, under Muslim law, there is a clear injunction—we have not only got the permission but a clear injunction—to marry our widows. So, for us the best course is not to come to this House and to ask this House to legislate; but to go to our own people, carry on propaganda amongst them, remind them of the injunctions of the Holy Koran, remind them of the duties of Muslims, and persuade them to relieve the distress of child widows in that way, especially when we find that the course of legislation is full of dangers, and that it arouses so much public opposition and creates such a situation.

While on this subject, I may also refer to certain remarks of my Honourable friend, Sir Henry Craik, as to the opinions of the Muslims in the Papers containing opinions on this Bill. He said he had carefully analysed all the opinions received and he found that the majority of the Muslims were in favour of this Bill. I am afraid the matter has not been properly understood. I have myself seen those opinions and I find that taking them province by province the largest number of Muslim names in support of this Bill occurs in the Frontier Province where the opinions of seven Muslims are referred to, but it will be noticed that out of those seven six are judicial officers in active service. Sir, I do not think a man in Government service can afford to make any adverse remarks about an Act which was passed long ago and to which only an amendment is sought at the present time. He will say, "well, as a Government servant, especially as a member of the judicial service, my function is to administer the law as it stands; I am not here to legislate or to object to legislation or to denounce a statutory enactment which is already on the Statute-book and which I am charged with the duty of carrying out as a judicial officer." So if those six out of seven gentlemen do not offer any remarks whatsoever about the Sarda Act and simply say, "well, this Bill is useful", one can easily understand that. Even in the case of the seventh gentleman, Khan Bahadur Saaduddin Khan, who is a retired Judicial Commissioner, I think his official mentality still remains and, the popular point of view never occurs to him. Similarly, if you examine the opinions further you will find that in Coorg no Muslim opinion was obtained at all and also in Ajmer-Merwara no Muslim opinion was obtained at all. Similarly, in Sind, in the Central Provinces and in Bombay.

No special question was addressed to any of those who gave the opinions to the effect whether the Sarda Act was a desirable piece of legislation and whether that being a desirable piece of legislation it was now desirable to supplement the deficiencies of that legislation. As that was not the question put to the people, it is not at all strange that they did not on this occasion express their opinion against the Sarda Act. All the same, I find from page 25 of Paper I that there is the Soorti Muhammadan Association of Burma which has clearly referred to the objection of the Muslim community to the Sarda Act and has, therefore, objected to this Bill as a whole. Then, there is the Burma Muslim Association which has said: "Let the Sarda Act remain as it is; do not further strengthen it". Then, there is the Chulia Muslim Association of Burma. They have refused to give any opinion at all. On page 39 of the same Paper you

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will find the opinion of Khan Sahib Haji Rashid Ahmad of Delhi. He has very clearly referred to the objection of the Muslim community to this Bill. In Madras, a very important gentleman, Sir Muhammad Usman, K.C.I.E., *ex-Governor* of Madras, has objected to this Bill. So, the attitude of the Muslim community is as clear as anything can be. I know that in this Honourable House one or two Muslim gentlemen may stand up

An Honourable Member: There are more than one or two Muslim Members.

Syed Ghulam Bhik Nairang: I know the impatient one. In spite of all that, I am perfectly positive that the Muslim community as a community from one end of the country to the other has all along objected to the Sarda Act and will continue to object till it is actually repealed. As I said in the beginning, my Honourable friend, Mr. B. Das, will have my blessings and, subject to the remarks I have made just now, of course, I have no objection to the Bill being referred to the Select Committee.

Mr. Thirumala Rao (East Godavari and West Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, I rise to support this measure which is comprehensive in its range and drastic in its effects and which has been necessitated on account of the widespread, consistent and wilful evasion on the part of the people at large and on the part of the Government servants particularly. When the House listened with great patience to the speech of my Honourable friend, Mr. Bajoria, who seems to be absent just at this moment, for two hours about the Hindu Shastras and the sanctions of the Hindu Shastras, one gasped in despair because the Hindu religion has fallen upon such evil days as to take shelter under the championship of friends like Mr. Bajoria. My friend has come out as the champion of Sanatan Dharma. Sanatan Dharma was no doubt a system of castes which was conceived several centuries ago in India to keep the Hindu society intact, but the onslaught of several civilizations from abroad has brought about a change in it. The Varnashram Dharma as he calls it, has divided the society into four divisions—the Brahman, the Kshatriya, the Vaishya and the Shudra. The Brahman has given up his duties; the Kshatriya has also given up his duties because he is rendered unfit by foreign occupation and the Vaishya, I think, is the only Ashram that has remained in this country and they pursue their business with relentless vigour in making money. Therefore, all that has remained of the Varnashram Dharma is the Dharma of the Vaishya which is being followed by the other castes as well. To say that the Vaishya Dharma is in danger and that it is only embedded in child marriage is a travesty of truth because the advance in science has opened our eyes to many of the things that have been practised in the name of religion. One may tell lies, one may cheat the people, one may swear with Ramayana on his head and yet may say all sorts of lies in the Court, one can do all that but what he must do to call himself a true Hindu is that he must marry his girl at the age of 8 and keep child widows in his house. A man of 60, whose daughter is a widow and who is rotting in the house being consigned to the kitchen and to the dusty mushrooms, can marry for the third time and enjoy his young wife without having any thought of his child widow in his house. Such is the

state of the Hindu society these days and it is no wonder that the women of India have realised their duty. They have realised how the Hindu man has tyrannised over woman and has done an incalculable harm to her progress. When the Hindu religion is divided into so many compartments and when all that remains of it is to marry young girls, is it not better that we should get rid of this religion or reform it on proper lines? When the whole race is being emaciated and emasculated and when we feel that the Hindu community is disintegrated, this measure is brought forward to save us from further disintegration and therefore deserves the support of all well-meaning friends.

The demonstrations that are staged here today outside the Assembly Chamber are, I think, the result of some mischievous propaganda that is being carried by designing persons that the police will have a sort of unrestricted power in harassing the people by this Act. The clause that is wrongly interpreted and wrongly propagated is this:

"The Court may, if it is satisfied on information laid before it through a complaint or otherwise . . ."

If you read the clause properly, it means this:

"The Court, if it is satisfied on information laid before it through a complaint or on information laid otherwise . . ."

That is the construction of the sentence. That means that a proper complaint may be preferred or some other people may bring to the notice of the Court or some respectable people may bring to the notice of the Court as to what is happening outside. No power is given to the police in this clause and it is not made cognizable at all. Even if the police may come to know of it, they must approach the Court and appraise the Court of the proper facts, and if the Court is satisfied that such a thing is happening, then it may take the initiative and move in the matter. It is only preventive. If the Court is satisfied that a breach of the Act is being committed or is being attempted to be committed, then it can step in and prevent such a breach.

Then, with regard to the last clause. There may be certain portions which may appear to be drastic, but there is the Select Committee which will go into every detail and will make suitable alterations and bring about the necessary changes which will not work really as a hardship upon those that do not evade the Act and defeat the purpose of the Act.

Sir, last time when we were supporting my Honourable friend, Mr. Lalchand Navalrai's Bill which was a very modest one, being only an amendment of a single clause in the original Act, we were told how many girls were rotting on account of ill-health and early motherhood. I would just like to read a small paragraph from the views expressed by the Principal of the Maharani's College for Women, Mysore, Mrs. Hensman, who has depicted in very beautiful words the joys of college life for girls. She says:

"I think few can realise the feelings of the girl as she stands at the threshold of her womanhood. It is a definite stage in her life and like the early dawn which, with its lovely hues of rose, pink, amber and crimson, holds out the promise of the beautiful day, she stands waiting, eager, anxious for the curtain to lift. Her school-girl life passed within its prescribed limits, is now left far behind and full of expectation and hope, she is about to enter the sacred portals of college with its promise of deeper knowledge and deeper understanding. College life, conducted as it

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should be, is the most delightful time of a woman's life. The light-heartedness and unbounded vitality of girlhood is deepening into the sweet seriousness of womanhood. The joy of living is not less but deeper and fuller. The love of beauty enters the soul almost to hurting point. The ideals of life, embroidered by the imagination, seem altogether possible. The mind is ready to receive and assimilate. Do teachers and mothers, who perhaps have forgotten by now their own early ecstasies, try to understand the student and lead her gently as she should be led."

These pleasures are denied to our girls who are asked to undertake the responsibilities of household and motherhood at the early age of 14 or 15. In order to evolve women side by side with man and make them enjoy a glorious life, this Act is intended and it is not intended to penalise any section of the community. Nor is it an innovation into our religion which is misconceived only in marriage. Sir, with these few words, I commend the Bill for the support of the House.

Mr. Muhammad Nauman (Patna and Chota Nagpur *cum* Orissa : Muhammadan): Mr. President, I do not want to take up much of the time of the House in discussing the present Bill of Mr. B. Das to any such length which would make the House tiresome. Of course, it is a subject so controversial in nature that arguments can be advanced on different lines as probably Honourable Members are aware of the feelings aroused and the criticism made by the general public in India when the original Bill, in the name of Diwan Bahadur Harbilas Sarda, was introduced in 1929 of which the present Bill is only a supplement or a corollary, to strengthen the clauses of the same. The wide discontent which it spread all over India is neither unknown to the House nor to the Government and to give details of those happenings and events would be taxing too much the patience of this House and will amount to repetitions of incidents which are to their knowledge, and which are known to everybody here.

Now, I only want to point out that this Bill although of a social reform in nature is really interfering with the rights and liberties of religions. I speak at least for Muslims and those sections of Hindus who believe in the spiritual side of religion. My Honourable friend, Syed Ghulam Bhik Nairang, has already enlightened the House on this subject and he has stated how we Mussalmans feel that the Sarda Act has been a definite encroachment on our rights and liberties and we, Muslims, would not tolerate any further infringements of our religious laws.

Mr. M. Asaf Ali (Delhi: General): Not the entire Muslim community. You are not talking on behalf of the entire eight crores of Muslims.

Mr. Muhammad Nauman: I have got numerous telegrams and letters from Muslims all over India. This is a telegram from Sukkur which I read here and I think I am speaking on behalf of the entire Indian Mussalmans. The telegram reads:

"The Muhammadans of Sukkur unanimously protest seriously against the Sarda Act and the corollaries which affect seriously our community. For the benefit of other communities it should not be the law of the country."

Then, there are many other telegrams and letters and one is from Delhi from which my Honourable friend, Mr. Asaf Ali, hails. Probably he is not aware of the feelings of Muslims in Delhi as he never cares to know about same.

Mr. M. Asaf Ali: Leave it to me to represent Delhi. You need not bother about Delhi.

Mr. Muhammad Nauman: The Central Jamiat-ul-Ulema-i-Hind have sent the following letter:

"I understand that the Bill brought by Mr. B. Das to tighten the Sarda Act is under discussion in the Central Assembly. As every body knows all sections of Ulemas and practically all the Musalmans in India are opposed to the Sarda Act in itself and look upon it as the greatest interference in the *shariat* of Muslims."

If these people have got any say in the explanations of tenets of religion, if they are considered to be at all experts in religion, then I think we ought to be guided by their opinion. The letter goes on:

"It is therefore quite natural that the Bill introduced to strengthen further the provisions of the Sarda Act is yet a more elaborate interference in the religion of Islam and I would therefore ask you kindly to oppose the Bill vehemently in due representation of Muslim feeling and sentiment."

Mr. M. Asaf Ali: Will you follow them everywhere?

Mr. Muhammad Nauman: That is not necessary at all. If you tell a lie, would it be right for another man to ask him to commit other crimes as well because he tells lies. It is not necessary for you to commit two crimes on the plea that you have committed one. It is a new philosophy that my Honourable friend preaches here that I should follow these Ulemas everywhere and in every direction because I am following them in religious matters.

Mr. B. Das (Orissa Division: Non-Muhammadian): Have you read the opinion of Justice Khwaja Muhammad Noor?

Mr. Muhammad Nauman: He is not an expert in Muslim law and religious tenets of "Quran and *Siasita* and other *Hadis*".

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member will address the Chair.

Mr. Muhammad Nauman: I am sorry, Sir. Definitely I feel I cannot convince the Group of "No religion" as represented by my Honourable friend, Mr. B. Das, or my Honourable friend, Mr. Sri Prakasa. The Honourable Member from Benares said the other day in this House that he did not believe in religious dogmas as heavenly or supernatural instructions or inspirations. He said that religion was invented by different men at different times to suit different ages and conditions. I think this statement of Mr. Sri Prakasa was shocking to many people inside and outside the House. To him, religion and its tenets are nothing holy in nature, nothing sublime or supernatural and not at all heavenly. We, the Muslims, at least do not entertain this view of religion. To us it is holy, sublime and heavenly and the tenets of our Faith are the heavenly orders of the Creator himself for regulation of the world and the lives of His creations.

Mr. Sri Prakasa (Allahabad and Jhansi Divisions: Non-Muhammadian Rural): Then why are there so many religions in the world?

Mr. Muhammad Nauman: There have been so many Prophets and for the same reason there are so many religions. Religion to us is neither the invention of a single human being nor a man's creation, but

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is the Divine Order through such Prophets as God chose to send to this world from time to time. It is for this reason that we believe that Koran is a revelation and not compiled or written by our Prophet, and I hope our Hindu brethren do believe the same about the Upanishads and the Gita.

My Honourable friend, Mr. Das, has brought this Bill further to strengthen the Sadra Act which we wanted to remain as a dead letter. In the name of civilization or social reform or to become the pioneers of women as invoking a sense of independence in them, I do not know how many evils have to be introduced in this country. It has been just said by the Honourable Member who spoke before me that child widowhood is something very abhorrent and inspires pity. To him a widow of less than 14 years is abhorrent and requires all the sympathy, but probably he has no sympathy for widows above 14 years. There is the Widow Remarriage Act, which will safeguard any widows whether under 14 or over 14. You should preach widow marriage and not restrict the marriage even at major age.

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Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member should address the Chair.

Mr. Muhammad Nauman: My submission to the House is that if widowhood is so abhorrent in the eyes of my Honourable friends, on the opposite, then they should logically sympathise not only with widows under 14 years of age, but also with widows above 14 years of age. It looks as if my Honourable friends have no sympathy with widows of say, between 15 and 30 years. If they remain neglected and un-cared for, there is no national outlook in their uplift. What safeguards my Honourable friends opposite will suggest for avoiding widowhood at fourteen or over, which in my opinion is more important. The Widow Marriage Act still exists and the Hindus can enforce it without fear of opposition.

My Honourable friend, Mr. Das, and his friends said that they want this in the name of civilization. Civilization might one day demand the entire abolition of "the marriage institution" and let people adopt animal life of Nature's guidance, as I hear Russia is trying to give a practical demonstration to the world on these very lines. The Leftists in the Congress Group have probably the ideal of Soviet Russia and are trying to drift things in India in a way which would create conditions equal to Russian socialism. They do not believe in private ownership of property and they do not probably believe in the private and individual union of one man and one woman. But the majority of people in this country in which they have been born have not drifted to that ideal as yet. Mr. Das and his friends probably believe that in the name of civilization anything can be enacted which to them appears natural and has nothing to do with the so-called religion which to these pioneers of civilization appear old-fashioned and requires overhauling of the entire society based on "No religion" maxim.

Mr. Sri Prakasa: You cannot have private ownership of wives

Mr. Muhammad Nauman: Yes, by contract of marriage for that period the husband and wife are identical partners and husbands do claim a

certain right of exclusive nature. I think Mr. Sri Prakasa will not challenge this statement.

Mr. B. Das' Group has succeeded in creating discontent and hatred towards the British Government by accusing that Government, wherever possible, of passing such laws as interfere with their religion, and they cite the example of the Sarda Act. The ignorant masses of this country do not understand the process of introduction and passing of Bills and therefore they accuse Government of having passed such laws. I think Government ought to have been more cautious in interfering with the religious rights of the people here. In India religion is the most predominating influence in men's lives and in spite of all good intentions of the Government an impression has been created in the minds of the general masses that Government have sponsored a Bill like the Sarda Bill and enacted same against their will. I think Government would have been well advised not to have lent their support to that Sarda Act as a result of which they are being accused of interfering with the religious tenets and feelings of certain important sections, if not of the entire country. I personally believe that if a plebiscite were taken and an election fought on this issue alone probably my friend, Mr. Das, and his Group would not get even the support of 10 per cent of their own communities. We know the fate of R. B. Sarda in the last election. The Opposition group has of course one satisfaction and it is this that they have succeeded in creating discontent in this country against the British Government here, because the masses do not know who are the people responsible for making such laws, and they begin to hate this Government for interfering with their religious rights and liberties innocently believing the British Government responsible for all Bills passed and enacted.

The Honourable Sir Nripendra Sircar (Law Member): We did not know that you have become such a strong champion of the British Government.

Mr. Muhammad Nauman: I think I should advise Government according to what I think proper. And personally I should inform the House of what the masses feel. It is a matter which Government should have well considered even at the time of the introduction of the Sarda Bill, and I would request Government to reconsider their decision, if they have at all arrived at any, and see whether it is in the interest of the country or of Government to support this present Bill at all. I have made clear statement of facts and I hope Government will use all such means which would help them in ascertaining the views of the majority of the people in this country. With these few remarks, Sir, I oppose the Bill and I resume my seat.

Mr. Umar Aly Shah (North Madras: Muhammadan): Sir, I rise to support this Bill which was introduced by Mr. B. Das. On this subject several Honourable Members have been giving lengthy speeches, but I shall make a very short speech. There are two communities in India, the Hindus and the Mussalmans, and they have got their own marriage laws. Among the Muslims there is the law given by the Holy Prophet Mohammad, and all laws social and political were completely told by Him. There is no mention of marriage age. They are performing many kinds of marriages. This Muslim religion has been going on and will be going on without reform till the Judgment Day. There is no necessity to reform them in any Legislature, through any Act or any agitation by

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Mr. Sarda or Mr. B. Das. Among the Hindus there are the laws given by Manu and Parasara and Vignaneswara and others. There is no difference between those laws and the laws of Mr. Sarda. Our Mr. B. Das's Bill strengthens Mr. Sarda's. My Honourable friend, Mr. Bajoria, brought the Ramayana. I will also quote that authority. Rama with his wife Sita went to the forest and they met Anasuya in the Baratwaja Asramam. Sita told Anasuya her marriage history from the beginning to the end. In that connection she said:

*"Pathi samyoga sulabham vagodushtaratu me Pitha
Chinta mahhyagamath dinu Vitta nasa divadhana."*

It means:

"I was in my father's house for many years after maturity. I was at an age when I ought to live with a husband. My father could not get a match for me. He was crying like a poor man, plundered by robbers."

Babu Baijnath Bajoria (Marwari Association: Indian Commerce): I have not followed one word.

Mr. Umar Aly Shah: That is your ignorance. Sita told Anusaya again:

*"Mama Bharta mahateja vayasa pancha rimsala.
Ashtadasani varshani vayasa mama ganyateh."*

It means:

"When I was married to Rama my age was 18 and my husband's age was 25."

This is from Valmiki Ramayana. There are many other authorities for aged marriages. Vashishta was a great Brahmin, and a noted Guru and Gothrathipathi. He was married to a Paraiah girl, Arundhathi, aged 30 years:

"Vivahakala vayasa thrimsath varshe Arundhathi."

When Brahma married Saraswathi she was 18 years of age. She was Viswakarma's daughter. Viswakarma had five daughters. Ahalya married Gautama, Sachi married Indra, Mandodari, Ravana; Saraswathi, Brahma; and Chaya, Sun. All these marriages were aged marriages. This is all from the Vedas and so is authority, not like Narada Purana and other Mythologies. The next thing is Vedas clearly say:

"Brahmacharyena Kanya Yuvanam vindathe patim."

It means: "a girl has to observe Brahmacharya", of which there are three kinds:—of 18 years (*Brahmacharya*), 28 years (*audithya brahmacharya*), and 38 years (*Rudra Brahmacharya*). After any one of these stages, she can marry a good and noble youth. As this is all Vedic authority if a Hindu fails to observe it, he becomes a *chandala*:

"Veda bahyena chandala."

The next thing is there are four stages of girls, 8 years, 9 years, 10 years and over 10 years:

"Ashta varshe bhavet kanya nara varshetn bhairathi."

"Dasavarshet bhavet Gouri ata urdhvam rajawala."

8 years old girl is called Kanya, 9 years girl will be called Bharathi, 10 years girl will be called gouri, and after 10 she will be called matured girl.

Mr. President (The Honourable Sir Abdur Rahim): All this is very interesting, but I think the Honourable Member must discuss the Bill.

Mr. Umar Ali Shah: Sir, I will come to the point:

"Thrinicarshanyudiksheta kanya rithu mathi kathi."

After maturity the girl will be reserved for marriage for 3 years. Kanya means unmarried girl. There is no difference between the Sarda Act and this Hindu Law. The other day Mr. Bajoria said:

"Mase mase rajo raktam pivanti etc., etc."

A Hindu who kept his daughter or sister unmarried in his house should be punished by his cast people by making him drink the menstrual discharge of the daughter or sister and then be left on the sea shore. I want to know, why does not the same law apply to widows? But it is not correct. That is, however, what Mr. Bajoria explained the other day before the House.

Babu Baijnath Bajoria: Was I incorrect?

Mr. Umar Ali Shah: That rule should apply to widows also. There are many widows among Hindus. Why not you teach them to marry? You did not show any example of an historical child marriage.

With these observations, I support the Bill.

Mr. Ram Narayan Singh (Chota Nagpur Division: Non-Muhammadan): I strongly support the motion. When the original Bill was passed there was great agitation in the country, some for the Bill and some against it, but it was passed. It has not done much good, and it is accepted on all hands that this Act has remained a dead letter on the Statute-book for all time. The Act has not been very useful, and for this Government has been blamed by all sides. When only the other day Mr. Lalchand Navalrai's Bill was under discussion my friends accused Government for their callous indifference towards our religious problems. I do not know why we should blame Government when there are in the country persons like my friends, Mr. Bajoria and Sir Ghuznavi. It is our misfortune we have a foreign Government, but I do not know why this Government will try to please one party and displease another. So it is not good for us to blame Government, but we should blame ourselves, and especially our friends, like Mr. Bajoria and Sir Ghuznavi. He calls himself a Sanatani Muslim. We see that our friends have opposed the Bill in the name of religion. They say that religion is in danger. But I say that any religion which can ever be in

P.M. danger has got no right to exist in this world. I am not learned in religion, but I have got my commonsense. Religion is a human institution which is one of the best products of the human mind and it was meant for the good of humanity and to unify the human race. But what do we find? In these days, especially in this country there are people who are proud of saying that India is a land of religions; but so far as I think, instead of religion being for the good of human society, it has proved to be a curse. I find that in this country religion has divided society into so many groups, so many classes and races

Sardar Sant Singh (West Punjab: Sikh): You are absolutely mistaken on that point.

Mr. Ram Narayan Singh: I do not think I am mistaken. Religion was meant for the good of humanity, but in our country all our perils and troubles are due to religion

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member need not go into that: he need not discuss it.

Mr. Ram Narayan Singh: I say that because in the name of religion this Bill is being opposed.

Mr. President (The Honourable Sir Abdur Rahim): That is diverging from the point.

Mr. Ram Narayan Singh: Some say that this will be a cause of harassment in the hands of the police. There are so many laws already which help the police in the harassment of the people and there is no harm if this will be one of the causes in their hands. It is a very salutary measure and unless the defects of the original Act are removed I think the Act will be perfectly useless. As I said, this has been a dead letter so far and so I hope our friends who are opposing this Bill will withdraw their opposition and will whole-heartedly support the measure and that the House will carry it.

Mr. N. M. Joshi (Nominated Non-Official): Mr. President, I rise to support the motion moved by my Honourable friend, Mr. B. Das. This morning I saw some placards outside the Chamber suggesting that my Honourable friend, Mr. B. Das, should resign his seat in the Assembly. Instead of resigning I hope that on account of his action in moving this Bill he should be re-elected unanimously by his voters. I have no doubt in my mind that my Honourable friend, Mr. B. Das, has rendered great service to the public, especially to the women of this country. The Bill before the House is a very modest one. It does not seek to alter the age of marriage as provided by the Sarda Act. It only makes some, again very modest, proposals for better enforcement of the Act. Only a few days ago we discussed a Bill which was brought forward by my Honourable friend, Mr. Navalrai. Speaking on that motion I pointed out how the Act has been made a dead letter on account of the various defects that have been allowed to remain in the original Sarda Act. The Sarda Act does not make, as it should have made, a breach of the law a cognisable offence. It has not done so, nor does the Bill moved by my friend, Mr. B. Das, seek to do so. The change which he has proposed is a very modest one, namely, to enable a magistrate or the Court to take cognisance of the offence when a complaint is made privately to the Court and when the Court is satisfied that the complaint is likely to be a genuine one. I do not think that this provision will lead to any harassment. The Bill also seeks to make another change and remove a defect in the original Act. It is no pleasure to any one to penalise those people who break this law after the marriage takes place. What really we are anxious to do is to prevent the marriage. It was, therefore, necessary that the original Sarda Act should have contained some provision for the issue of injunctions when there was a likelihood of such a marriage. Mr. B. Das's Bill seeks to give power to the Court to issue injunctions when a news has been received by the Court and the Court is convinced that there is likelihood of an illegal marriage taking place,

to issue injunction and prevent that marriage. The Bill also seeks to provide that when an illegal marriage takes place, the consummation of that marriage should not take place. The Honourable the Law Member the other day, speaking on this Bill, said that there will be some difficulty in providing for the maintenance of the girl. If the girl is not to remain with the father-in-law or the husband and if they and the father are too poor, it will be difficult to find maintenance for the girl. The Bill does not make it compulsory upon the Court to give effect to this clause. The Court will take into consideration all the circumstances of the case and after having done so, will provide for the separate living of the husband and the wife. The defects of the original Bill were serious and the Bill of my Honourable friend, Mr. B. Das, seeks to remove them. The reform is very urgent and I have no doubt that my Honourable friend, Mr. B. Das, has rendered a great service.

While speaking on this Bill it is my duty to pay a tribute to those women who have shown up the defects of this Act and had also prepared public opinion for the removal of those defects. Among those women I feel that I should mention the name of Miss Rathbone, M. P. My Honourable friend, Mr. B. Das, paid very deserved tribute to Miss Rathbone. I know that soon after the passing of the Sarda Act Miss Rathbone began to take interest in the working of this Act. She collected information as to how the Act was being worked. She wrote a book on that subject. She was not quite satisfied with that. I remember, Sir, when I was in England during the Round Table Conferences she tried to meet Members of the Legislatures who were there at that time and point out to them the defects in the Act, and generally she tried her very best to make us take more interest in the matter. It is, therefore, necessary that we should pay her a tribute on account of the great work she has done for the women of India.

As regards, Sir, the speeches of my friends, Mr. Bajoria and Sir Abdul Halim Ghuznavi, I need not say much. They had the satisfaction of having made speeches, and they may get some credit from the orthodox section for having done their duty. Mr. Bajoria has only used his ordinary parliamentary privilege to put forward his view. Unfortunately, the view which he has put forward is a very wrong one. He really spoke against the Sarda Act. Unfortunately not being in the House at that time, he could not make a speech on the Sarda Act, and he took advantage of his membership today to make a speech, which he would have liked to make in 1929 had he been a Member then. I am quite sure that both my friends, Mr. Bajoria and Sir Abdul Halim Ghuznavi, are law abiding citizens. They ought to be anxious that the law passed by the Government of India should be observed strictly by the people in this country, and this Bill is only intended to see that the law passed by this Legislature shall be observed properly. It does nothing more. I, therefore, hope that my friend, Mr. Bajoria, will give up his opposition and support the measure after having done his duty to ventilate views on behalf of the orthodox section of the population. I hope, Sir, the Assembly will pass this motion.

Mr. Badri Dutt Pande (Rohilkund and Kumaon Divisions: Non-Muhammadian Rural): Sir, I cannot congratulate my friend, Mr. Bajoria, on his demonstration of today. It was a petty affair

Babu Baijnath Bajoria: I object to it.

Mr. President (The Honourable Sir Abdur Rahim): What was the word used?

Mr. Badri Dutt Pande: I said I cannot congratulate Mr. Bajoria on his demonstration today, and it was a petty affair.

Babu Baijnath Bajoria: I take objection to it. Demonstration has nothing to do with me.

Mr. Badri Dutt Pande: He brought the adjournment motion also this morning.

Mr. President (The Honourable Sir Abdur Rahim): That is another matter. The Honourable Member said that he had nothing to do with demonstration.

Mr. Badri Dutt Pande: I am glad he dissociates himself from those persons among whom I did not notice any responsible person.

Babu Baijnath Bajoria: That shows the resentment.

Mr. Badri Dutt Pande: Those persons outside were shouting "Mr. B. Das *Murdabad*", but after the passing of this measure, I am sure, they will say "Mr. B. Das *Zindabad*" (Long live B. Das) for after all they are ignorant people and know not what they were saying.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member can continue his speech after lunch.

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

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

Mr. Badri Dutt Pande: Sir, I was saying that there were placards outside saying "B. Das, *Murdabad*". Those who have cursed him like that will bless him in the end and say "B. Das, *Zindabad*". (Long live B. Das.) Sir, many vices have crept into our society, for instance, child marriage, gambling, drinking, debauchery and other social evils. They have brought about our national ruin and they must be put down with a big hand. There should have been Ordinances for them. In putting down these vices, a Kemal Pasha is required to bring my friend, Mr. Bajoria, and Co. to their senses. (*An Honourable Member*: "You approve of the application of section 144 today.") No, I said virtues are not to be coerced but only vices.

Sardar Sant Singh: Even with lawless laws?

Mr. Badri Dutt Pande: No, no. Only vices should be put down. We cannot uproot the evil. We can only put signboards saying that this way lies danger. Mr. Bajoria was calling himself Sanatanist. He

is only a Vaish and he cannot be a law giver. For says the Bhagwat Gita:

*"Kṛishi gorakṣhya vāṇijyam vaiśya karma swadhwayam,
Pāṭicharyatmakam karma śhūdrāyapi swābhawajam. (44).
Sve sve karmāyabhirataḥ samāśiddhim labhate narah,
Swakarm nirataḥ siddhim yathā vindanti tatshrnu. (45).
Yataḥ pravṛittir bhootanam gen sarvamidam tatam,
Swakarmāna tamabhyarsha siddhim vindati manavaḥ. (46).
Shṛeyan swādharmo wigunah parādharmaḥ swanashṭitat,
Swābhawa nīyatam karma kurvannāpnoti kilbisham. (47)."*

"Tilling the soil, herding cows, and commerce, are the Vaishya's duties, born of his nature; and of a Sudra service is the proper duty, born of his nature.

As each man is devoted to his duty, so does he win perfection; hear how a man devoted to his duty finds perfection.

Him from whom is the forthcoming of beings, and by whom all this is pervaded, a man worships with his proper duty, and so attains perfection.

Better a man's own duty, though ill-done, than another's duty well-performed; if a man do the duty his own nature bids him, he incurs no stain."

If he is a Sanatanist, he has no right to be a law giver, for a vaishya in olden times could not be a law giver. That is reserved for Brahmins like me. Only they can be law givers and others have to obey.

Mr. Brojendra Narayan Chaudhury (Surma Valley cum Shillong: Non-Muhammadian): On a point of order. Can one Honourable Member cast reflections on another Honourable Member and say that he cannot be a law giver because he is a Vaish?

Mr. Badri Dutt Pande: He attacked the Congress saying that they bring in the Harijan Bill, Prohibition Bill, the Child Marriage Bill and other similar Bills that is why I am making a retort. It is because of Congress agitation that Mr. Bajoria has come to this Assembly and become a Manu or a law giver. (Interruption by Mr. Umar Aly Shah.) I am in possession of the House. I am not giving way. What I say is that a Vaish has no right to legislate. We brought Mr. Bajoria into prominence. So he should bless us and not curse us. He should not be a law breaker now.

Babu Baijnath Bajoria: Law breaking has been reserved for you.

Mr. Badri Dutt Pande: A Brahmin can do everything. He was immune from all laws just as the bureaucracy is immune from all laws today. So also were the Kazis. We want to be ruled by reasonable men, patriots and statesmen and politicians and not lunatics and fanatics. In this morning's demonstration, there was not a single woman. If there had been a single woman I would have understood the opposition because the Bill refers to them and the tyrannies that men practise over them. Now, in this opposition Mr. Bajoria and Sir A. H. Ghuznavi have joined hands:

"Khub banegi jo mil baithenge diwane do."

He is an up-to-date Muhammadian gentleman, fashionable, well shaved, well dressed and well groomed, but why do these gentlemen behave like Rip Van Winkles and Robinson Crusoes, it is beyond

[Mr. Badri Dutt Pande.]

comprehension. I cannot understand how a man like Sir A. H. Ghuznavi came to oppose this Bill. He is an old friend of Sir Surendra Nath Banerjea. We have heard his patriotic speeches and now he is going back on everything and calls himself a Muslim Sanatanist. I cannot really understand how an outwardly modernised and up-to-date man like him can oppose progressive laws like this. Let him go to Turkey and Kemal Pasha will rejuvenate him with new ideas in five days. See what is that noble Turk doing for the nation? I commend his views to all Mussalmans and not the retrograde views that have brought our nation to ruin. Whoever breaks the law shall bring ruin on himself. Those who did break the law were punished: and if Babu Baijnath Bajoria is earnest, and if some day he or his company violates the Sarda law, they should not be sorry. We broke the law; we were punished; and we suffered imprisonment and *lathi* charges. So if they are prepared to break the laws they should take the consequences of breaking any social, moral or political laws; they should not be sorry if they are punished or criticised for their reactionary ideas. Sir, this is a very reasonable proposition: and all measures that go to build up a nation should be blessed here and not opposed. My friend, Babu Baijnath Bajoria, should remember that; and as for my friend, Sir Halim Ghuznavi, well, he should be a right Ghuznavi, not a wrong Ghuznavi, and he should remember those days when he was called a right Ghuznavi. With these words, Sir, I support the motion.

Mr. Brojendra Narayan Chaudhury: Sir, I rise to support the motion before the House for reference of this Bill to a Select Committee. I need not go into diatribes against religion or caste because that is unnecessary. I hope the entire House is agreed that immature people of such tender age should not be allowed to cohabit. That is the real object of the Sarda Act. The object of this Bill is much more confined. Sir, during the administration of the Sarda Act during the last few years it has been found that its provisions are being evaded. It has been found that the punishment for evading that Act is professedly not deterrent; and rich people like some of the members of the Marwari community do not care for fines. But in the Sarda Act we have also got a provision for imprisonment. If the magistrates could make it a rule that in case a wealthy person who manages to flout that law, such a person would be made to suffer a sentence of imprisonment, I am sure the Act would not be flouted.

Next, there is the question of the detection of the offence of a child marriage. It is not easy for rich people to clandestinely marry their immature wards. They celebrate marriages with pomp and splendour. So the difficulty about detection does not apply in case of rich Sanatanists who according to their own inclinations and reverence for Sastras marry their children early. But it is very difficult to detect any infringement of this law in the rural areas amongst the poor and superstitious people. Naturally, those who favour such marriages are superstitious. There are many villages in which it will be found that the entire population is in favour of child marriages. It is for this reason—that because complainants would not be coming forward in those cases who according to the present law are required to make a security deposit,—it is because such complainants would not come forward that it is proposed in this

Bill that the magistrate can take the initiative on his own motion whenever he gets reliable information. Sir, it has been objected to that this provision will be a paradise for the police. Honourable Members who say so do not realize that the magistrate has got to be responsible; he cannot proceed on any information received before he has himself tested it or before he has had reasonable grounds to believe that the information is correct.

Another object of the Bill is to remove doubts regarding the power of magistrates to issue an injunction against impending marriages. Of course, it is not contended that the magistrate's injunction, if flouted, should nullify the marriage; that we are not going to do; we are not going to do anything against the religious laws of marriage. The meaning of this injunction really is one of increased punishment. So far as this increased punishment is concerned, I have already said that it will have no additional effect on the marriage of rich people. As regards the poorer section of the people, I believe that the fine which can now be inflicted is sufficiently deterrent.

I hope members of the Select Committee will consider—in addition to the defects in the law—the other real obstacles that exist. We have not yet got any effective public opinion against child marriages. Although I know that the educated community almost to a man realizes the dangers and the evils of child marriages, the general public of the poorer section of the people do not, and of those educated few who do, theirs is more or less lip sympathy. How many of those enlightened gentlemen who deliver long harangues against child marriages on the platform and in this Honourable House go out into the country, make inquiries in cases where child marriages are being performed, and agree to be complainants against such cases by making a deposit of Rs. 200? My Honourable friend, Mr. K. S. Gupta, whom I wish to thank but who is not in this House today, related to us the other day cases which show that he has been a very effective instrument in putting down child marriages. So I would ask members of the Select Committee to take into consideration the fact whether merely increasing the stringency of the punishment would be quite sufficient unless and until we have got effective public opinion for active support.

As regards the third object of this Bill, it is to make effective provision for the separation of husband and wife in case of child marriages. Now if that objective could be secured, I think there would be no need to have this Sarda Act on the Statute-book. If we could enact one section which we could believe could be effectively enforced for keeping husband and wife apart, I think there would be no need for having this Sarda Act. In that case we would escape from the odium that that legislation has received and the outcry that English-educated people, heterodox people are forcing this law on the country and against religion. I would particularly request the members of the Select Committee to put their heads together and see if such effective measures could not be devised. The difficulties against an effective injunction to keep the husband and wife apart have been mentioned by Honourable the Law Member and by Mr. Bajoria.

Sir, the Government has lent its support to this Bill and is getting the credit for it. Of course, I thank the Government for this act of

[Mr. Brojendra Narayan Chaudhury.]

kindness but I would give it no credit. So long as the British Government retained in its hands law and order, the foreign Government was mortally afraid of exasperating public opinion, particularly the opinion of the ignorant masses. But as soon as the duty of preserving the law and order was transferred to the indigenous Ministers in the provinces, this foreign Government began to support this Bill knowing full well that the odium, whatever it may be, of this Bill will not fall on them. With these words, I support the reference of the Bill to the Select Committee.

Some Honourable Members: The question be now put.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That the question be now put."

The motion was adopted.

Mr. B. Das: Sir, I am grateful to the House in the way they have received the motion for reference to the Select Committee. Of course, there has been some bad and indifferent criticism but one ought to be prepared for it. In fact, I am surprised that the opposition was so meagre. In my speech I anticipated the support of the Government but not on the grounds which my Honourable friend, Mr. Bajoria, imputed. But I have already thanked the Government in anticipation. I take this opportunity again to thank the Honourable the Law Member and the Honourable the Home Member for their support. The Honourable the Law Member, expert as he is in matters of law, has said that the Select Committee will have to examine in detail some of the provisions that are contained in the Bill. I entirely agree with him and I hope the Members of the Select Committee will assist us in such a way as to make the Bill work mercifully and not harshly even against those very persons who try to break the law, I mean, friends like Mr. Bajoria and others. My Honourable friend, the Home Member, said that he agreed to the extent that there is a great deal of support and here I may say that I do not agree with my Honourable friend, Mr. Brojendra Narayan Chaudhury, when he said that the Government support was due to the reasons which he advocated. All the Provincial Governments have in their opinions made it perfectly clear that there is public opinion to the extent that it is desirable to change the law. Since then, the Honourable the Home Member and other Members of this House have gone through those opinions and they have found, to put in the words of the Honourable the Home Member, there is a great deal of public opinion for implementing the Sarda Act. There will always be minorities. The conservative opinion will always try in the name of Shastras and Shariat to invoke certain conventions that are nowhere to be found in the religion proper. We are not fighting against the religious practice but against the social functions that have grown because of the circumstances of living in this country.

My Honourable friend, Mr. Bajoria, is afraid of the police. I am not very intimate with the police because I do not live in Calcutta nor am I intimate with the Gundas of Calcutta, as was referred to by my Honourable friend, Sir Abdul Halim Ghuznavi. When I drafted the Bill with the help of those who are my sympathisers, we never thought that the police will in any way interfere or be empowered to take action.

under the provisions of this Bill. We want the parties to go to the Court and the machinery of the Court need not necessarily be that of police. Of course, accustomed as the ordinary mind is, every inquiry of the Court is understood to be made through the police. It has already been made clear by my friends on this side that nobody desires that the police should step in. It is the Court which should device the necessary machinery to get at the facts.

I was rather unfortunate not to see the demonstration that was organised this morning by certain sympathisers of my friend, Mr. Bajoria. I wish my friend, Mr. Bajoria, had directed those gentlemen to come to my house. I would have not only seen them but welcomed them and would have distributed sweets amongst them in the proper Indian fashion. If Mr. Bajoria and his friends had intimated to me about this previously, I would have asked a few ladies of the very Marwari community to which my Honourable friend, Mr. Bajoria, belongs and the ladies of those so-called Sanatanists and sympathisers who led the so-called procession here would have been present there to receive them in a befitting manner! The other day I saw a cartoon in the *Amrita Bazar Patrika* which showed how the ladies in the galleries of the Assembly received these Sanatanists on the very floor of this House when they came with cart-loads of books. I was sorry to learn that section 144 of the Criminal Procedure Code was applied against those processionists and they had to be dispersed. In my opinion it ought not to have been applied.

Now, my Honourable friend, Mr. Bajoria, showed me a telegram of which I have received a copy and the Honourable the Home Member and other Members have also received copies of it. It says that the Bill which the House is considering is the right Bill for the nation. The name of the gentleman is Captain Ram Rakha Mal Bhandari and he has wired from Lahore. The telegram runs thus:

"As humble practical thanks-giving for noble support by Government, Congress and other Members to Das's Bill to stiffen Sarda Act, I, on behalf of our daughters and sons, offer Rs. 5,000 for erecting a column on Assembly grounds for inscribing in gold names of benevolent supporters and in black of opposers for our progeny to know our saviours and destroyers. I appeal all to stop early marriage which brings sickness, weakness, tuberculosis, early death and emaciates the nation. Cheque of Rs. 1,000 sent to Honourable Home Member. balance to follow on acceptance of proposal."

Babu Rajnath Bajoria: Ask the Honourable the Home Member to distribute that amount amongst you.

Mr. B. Das: If my Honourable friend, Mr. Bajoria, wants a portion of it, he will get his share of sweets when the column is erected.

Sir, I do not wish to reply in detail to the criticisms that have been levelled against the Bill or against me personally or against my other friends in the House. I assure those who think that they will be exploited by goondas that the Select Committee will give its best consideration to all representations and the Select Committee will try to frame the law in such a way that justice will be meted out and there should be scope for mercy. With these few words, I commend my motion for the acceptance of the House.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That the Bill to amend the Child Marriage Restraint Act, 1929, be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable Sir Henry Craik, Mr. J. A. Thorne, Mr. E. Conran-Smith, Mr. N. M. Joshi, Mr. F. E. James, Mr. Lalchand Navalrai, Sardar Sant Singh, Sir Abdul Halim Ghuznavi, Mr. M. Ghiasuddin, Mr. Abdul Qaiyum, Mr. Sri Prakasa, Mr. N. V. Gadgil, Mr. M. Asaf Ali, Mr. Govind V. Deshmukh, Seth Govind Das and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL. (AMENDMENT OF SECTION 103.)

Sardar Sant Singh (West Punjab: Sikh): Sir, I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1898, (*Amendment of section 103*) be circulated for the purpose of eliciting opinion thereon."

Sir, in moving this motion to amend the Criminal Procedure Code, I am not enunciating any new principle. I am not advocating any change in the existing law. My object is simply to make the letter of the law more effective, living rather than a dead letter as it is found in the Criminal Procedure Code now. Sir, section 103 of the Criminal Procedure Code is intended for the purpose of making searches of the houses of suspected criminals more regular and decent and in a manner which should regain the confidence of the public in the administration of justice. The provisions are that whenever an officer or any other person who is entrusted with the duty of carrying on search goes to search a house, he should associate with himself two respectable men of the locality to witness the search so that there may be no planting or fabricating of evidence against the person whose house is searched. As I said before, I do not want that any change should be made in the provisions of this law or that any more safeguard should be added to it. What I want is that this provision should be made more effective.

In order to appreciate the necessity for my Bill, with your permission, I shall state how section 103, Criminal Procedure Code, is at present applied. The original intention of the Legislature in enacting this measure was that the confidence of the occupier of the place which is to be searched is to be gained by the method employed for search so as to ensure that the search is conducted with decency and in proper order. How this section was interpreted originally is clear from the various authorities of the higher tribunals of the various provinces. We find an authority about the interpretation of this section in the ruling of the Chief Court of Lower Burma in which it was clearly laid down that the headman of the village—"which was connected with the officialdom" as the expression was used—was not the proper person to be a witness to the search. Later on, the same Court in a Full Bench ruling held that the headman of the Rangoon town was the fit person to be associated. This view was not followed in 5, Rangoon Law Reports. The result was that every sort of individual was associated with the search by the officer who carried on the search under this provision. The provision of "two respectable persons of the locality" was overlooked. The first important point to be observed in appreciating the importance of my Bill is that they must be respectable persons. Now, what does the expression "respectable persons" mean? It means persons who are independent

and impartial and who command the confidence of the occupier of the place which is to be searched, and are not connected with officialdom in every way.

An Honourable Member: Early marriage.

Sardar Sant Singh: I will have to clear the atmosphere of marriage because my Bill does not refer to marriage or engagement, but it refers to search. I was submitting that the original idea of the framers of this provision of law was that independent and impartial persons should be associated with search in order that the occupier may have full confidence in the administration of justice and the rule of law to be maintained in the country. This was a very laudable idea. Nobody will disagree with that. Then the object was to associate these respectable persons of the locality because they happen to be the best judges and they will naturally not be a party to planting of incriminating articles in the place which was to be searched. These were the two fundamental and basic ideas which led the legislature to frame this section.

Now, the present position is that the police officer goes with a number of persons and forms what is technically called a raiding party. The expression used in judicial language namely "raiding party" has come to stay. It means that a party which raids a place without calling in respectable persons of the locality. This raiding party is composed of persons at the headquarters who have distinct inclination towards the police officers who collect them. They go and make the raid and discover the articles and they figure as the most competent witnesses for the prosecution to depose to the discovery or the production of incriminating article from the house searched. And if any person is associated from the locality it is the lambardar of the village who, we all know, has, under the rules framed under the Land Revenue Act of the provinces, certain police duties to perform; and these people are given a share in the collection of land revenue. Naturally these persons have a tendency to support the police officer who conducts the search. In my district of Lyallpur the lambardar is given the additional temptation; he is a mule breeder and for the purposes of mule breeding he is given one square of land which brings him at least about Rs. 500 a year as the produce of that land. It is an additional temptation for him to always side with the police officer who takes him. If he does not, immediately follows a complaint from the police officer that he did not help the administration, with the result that either he is suspended from the post of the headman or dismissed later on; and the result is that that valuable plot of land of about 25 acres is taken away from him. Therefore it is not a rare thing to see articles being planted in the houses of the accused, and generally the defence is that these incriminating articles were either placed by the police or by some informer who is invariably with this raiding party when this raid is made.

The Courts have come now to the conclusion, and it is now more or less the settled law in which all the High Courts have concurred, that if the provisions of this section 103 are not strictly observed it makes the search irregular and not illegal; and this irregularity is curable under section 537 of the Criminal Procedure Code. The only use to which this section was put was in those cases in which the person declined to permit the officer who wanted to carry out the search to enter his house and

[Sardar Sant Singh.]

prevented his conducting the search and claimed that he had a right of private defence under the Penal Code, because the officer was not empowered to search the house in the absence of two respectable people of the locality. The provisions of the section are mandatory inasmuch as it lays down that before making the search the officer in charge *shall* call upon two respectable persons of the locality to attend and witness the search. The provision being mandatory the person whose house was to be searched claimed that the officer was not acting in the discharge of his lawful duties as such officer and, therefore, he had a right of private defence against such officer's illegal acts. In some cases this right of private defence was conceded by two High Courts at any rate, but later on this right was denied. In 19 Madras, 349 it was laid down that a search made without the presence of any witness was irregular but that such irregularity does not entitle the occupants of the place to exercise their right of private defence by assaulting the police officer when it was not shown that the officer was acting maliciously and otherwise than in good faith. So in this ruling the Madras High Court has cast upon the owner or occupier of the premises to be searched the onus of showing that the police officer was acting maliciously or was not acting in good faith,—two conditions which are not to be found either in this section or in the Indian Penal Code which gives the right of private defence against illegal acts of even public servants. This ruling was followed later on in 37 Allahabad, 353, where a police officer made a search without a warrant and in the presence of only one witness and a constable entered the house to be searched by scaling the wall. It was held by the Court that the search was grossly irregular but the occupants had no right of private defence and any assault committed by them on the police was punishable under section 323 though not under section 382. Here too, although the police officer had clearly violated the mandatory provisions of this section and the occupier of the house was entitled to protect his rights and defend his property against the illegal acts of a public servant, the Allahabad High Court held that he had not that right, though they made him guilty of the lesser offence than he would have been guilty of if this section had not been there. Later on, the same High Court held that a search without witnesses is absolutely illegal and the occupant of the house is entitled to exercise the right of private defence by assaulting the police officer so as to prevent him from entering the house. Hence, though the intention of the makers of this provision was to give the occupier of the house a right to see that justice is administered to him in accordance with the provisions of the law, yet the High Courts have differed on this point as to whether or not he has a right of private defence against such an illegal act of the officer.

Apart from this question of the right of private defence which only happens when the occupier is brave enough or courageous enough to obstruct the officer carrying on the search in an illegal manner, every occupier of the premises or other man whose house is searched is not so bold nor so courageous nor so well educated as to know and appreciate his own rights under the law. Generally they permit a search to take place and they permit, even with their eyes open, the planting of incriminating articles. And when they go to a Court of law and protest against the illegal acts of the officer who conducted the search or of the raiding party,

they are told that the search may be illegal. It may be argued it may be anything, but the discovery is sufficient to incriminate a man and send him to prison. So, so far as the search is concerned, in spite of its being illegal, the result of the search remains there, and the man is punished. Of course, Honourable Members will agree with me. . . .

Mr. Deputy President (Mr. Akhil Chandra Datta): Order, order. How is all this relevant to the Bill? There are only two amendments, one about locality and the other about evidence.

Sardar Sant Singh: I am coming to that. May I submit, Sir, that my object in pointing out the present state of law is to show what this Bill is intended for. It is intended for this purpose, namely, that I want to make it obligatory upon the officer who wants to conduct the search, to do so in the presence of persons of the locality—what I call neighbourhood, and that at the same time the evidence for that search should be that which is prepared there. I do not want extraneous evidence brought in by bringing in the word of the raiding party who are living sometimes at a distance of several miles from the place where the house is searched, that is, their evidence should not be sufficient to bring an incriminating article as a sort of evidence against the person who is accused; that is the object.

Mr. M. Asaf Ali (Delhi: General): You are also excluding the corroborating evidence of witnesses. You refer to (ii): the following new proviso shall be added to sub-section (2) namely:

“Provided that no evidence other than the list drawn up in accordance with the provisions of this section shall be admitted to prove the articles discovered during the search.”

It means that the corroborating evidence of witnesses cannot be admitted.

Sardar Sant Singh: I will try to explain the provisions of my Bill.

The Honourable Sir Henry Craik (Home Member): It wants a lot of explanation.

Sardar Sant Singh: My object is that two respectable witnesses of the neighbourhood should be obtained to witness the list which is prepared in accordance with section 103: the provisions of this section are already there, only the list is to be proved by these witnesses and nobody else.

The Honourable Sir Henry Craik: Your Bill provides exactly the opposite.

Sardar Sant Singh: May I submit, Sir, it reads like this:

“Provided that no evidence other than the list drawn up in accordance with the provisions of this section shall be admitted to prove the articles discovered during the search.”

It means that the list which is drawn up in accordance with the provisions of section 103 will be signed by two respectable persons of the locality or neighbourhood.

Mr. M. Asaf Ali: Whose evidence will not be admitted.

Sardar Sant Singh: How will it be proved? How is the list to be proved? "Proved" does not mean simply putting in a list, it means proved by the oral evidence of the person.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): It means secondary evidence should not be taken.

Sardar Sant Singh: What I mean is that no evidence of any other person except of two respectable persons of the locality should be admitted.

The Honourable Sir Nripendra Sircar (Law Member): I do not want to interrupt Sardar Sant Singh, but I will show that if this Bill is passed, the accused will be in a terrible position.

Mr. M. Asaf Ali: Even articles discovered need not be proved. The list alone will be good enough.

Sardar Sant Singh: It will not be. My submission is

Mr. Sri Prakasa (Allahabad and Jhansi Divisions: Non-Muhammadan Rural): Let us go to the next Bill.

Sardar Sant Singh: There is no question of going to the next Bill. You had better be reading your Shastras.

Mr. Sri Prakasa: I may be a "respectable witness". That is why I am interested.

Sardar Sant Singh: My submission is that, as I explained in my speech, I want that two respectable persons of the neighbourhood should be the witnesses to the search list which is to be prepared under the provisions of section 103 of the Criminal Procedure Code, that the list should be prepared then and there, and that no extraneous evidence should be admitted.

Mr. Deputy President (Mr. Akhil Chandra Datta): There is nothing like that in this amendment.

The Honourable Sir Nripendra Sircar: That is not the Bill.

The Honourable Sir Henry Craik: You can move an amendment to your own Bill.

Sardar Sant Singh: Unfortunately we are reading the provisions with different meanings, but I am making my position very clear. Of course, if there is some defect it can be corrected in the Select Committee.

The Honourable Sir Nripendra Sircar: It is incorrigible.

Sardar Sant Singh: The Bill is nothing like incorrigible. What I am submitting, Sir, is that the provisions already existing in section 103 should be made a more effective and living law and not a dead letter as it is at present. I submitted at the very beginning, and I still hold to it, that the witnesses should be very respectable. Now, I am coming to the word "locality". The word "locality" has been interpreted by various

High Courts as meaning not necessarily the neighbourhood, but that persons living at a distance from that place and unconnected with that place, that is, where the search is carried on, may be obtained as witnesses to the list of goods recovered. If we interpret the word "locality" as meaning a place which is at a very great distance from or beyond a reasonable distance from the place where the premises to be searched are situate, we nullify the healthy provisions of this section. My object is that in order to bring home to the accused the offence of possessing any incriminating article discovered from the place which is under his control, it is essential that only those witnesses in whom he has *prima facie* confidence should come to witness the search, otherwise it is useless to permit a raiding party to come from a distance, from the headquarters of a district; raid the house, bring out certain things which may or may not be there, as it may give a reasonable opportunity to the officer who conducts the search to plant the incriminating article. The interpretation of the section arises in cases where illegal arms or excise articles are discovered. Now, some of these articles are so small that they can be easily carried and placed there. My aim is that this planting should become impossible or almost impossible, and fabricating of evidence should be entirely eliminated from the search of the premises. Coming to the criticism which the Honourable the Law Member has been pleased to direct against this Bill, he adversely criticised the language of the proposed amendment. I want to make it quite clear that I am not wedded to the language of this clause: it is capable of being changed—of course even in official Bills we are changing the language: take the case of the Insurance Bill: how many times ordinary grammatical mistakes were pointed out in the draft Bill introduced by such high authorities as the Legislative Department. . . .

The Honourable Sir Nripendra Sircar: I am not objecting to your not being wedded to the language, but it seems you are divorced from common sense.

Sardar Sant Singh: I really feel that Bengal and Punjab have different common senses: we in the Punjab have got a reputation of having better common sense than Bengal ever possessed: so we need not be worried on that point

Mr. M. Asaf Ali: Different standards?

Sardar Sant Singh: It is a standard fixed by the Government of India in various pronouncements

The Honourable Sir Henry Craik: The standards vary according to the locality or neighbourhood, do they?

Sardar Sant Singh: Coming to this provision about the proviso, I submit that if the language does not convey the proper meaning or is not very definite, as the language of a statute should be, it can be cured when it is referred to the Select Committee. At present I have tried to make my position clear, that in the interests of the accused I want that there should be no chance for fabricating evidence or planting incriminating articles in the premises which are searched. It may be said, as remarked by my Honourable friend, the Law Member,—of course nobody can doubt his ability in law or in interpreting the sections—and if he thinks that the language does not express my real intentions, I will seek

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his help when he is Chairman of the Select Committee to bring out my meaning clearly

Mr. Deputy President (Mr. Akhil Chandra Datta): Will the Honourable Member explain what that intention is?

Sardar Sant Singh: I have made my intention very clear, that I want that these mandatory provisions of section 103, where it is made obligatory upon the officer who carries out the search to associate with himself two respectable witnesses

Mr. Deputy President (Mr. Akhil Chandra Datta): We are thinking of the second amendment—the proviso. What is the real intention of this proviso?

The Honourable Sir Nripendra Sircar: It has no intention!

Sardar Sant Singh: Let me finish my first point and then I will come to the proviso

Mr. Deputy President (Mr. Akhil Chandra Datta): The first point is very clear.

Sardar Sant Singh: The second is that I do not want that the evidence of outsiders who come from great distances, whom the officer conducting the search associates with himself, should be admitted to prove that list a genuine list later on, incriminating the accused from whose house the article is discovered. That is what the proviso is intended to express. I want that the evidence of the incriminating article having been found or discovered in the premises from which it is alleged to have been found, should be confined to the persons who are respectable persons of the locality and not outsiders. That is the restriction I want to place . . .

Maulvi Abdur Rasheed Chaudhury (Assam: Muhammadan): On a point of information: do you want to make the search list conclusive evidence?

Sardar Sant Singh: I do not want that: what I want is that the evidence of persons of the locality should be the evidence which should carry conviction later on. From the interruptions I find that it is not the principle of the Bill that is opposed

The Honourable Sir Nripendra Sircar: There is no intelligible principle in the Bill!

Sardar Sant Singh: There is a principle in the Bill which my Honourable friend will discover very soon; the only point of difference is about the language, which I think can be set right later on when the Bill goes before a Select Committee. I move, Sir, that the Bill be circulated for eliciting public opinion.

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

"That the Bill further to amend the Code of Criminal Procedure, 1898 (*Amendment of section 103*) be circulated for the purpose of eliciting opinion thereon."

The Honourable Sir Nripendra Sircar: Sir, I desire to meet most of the arguments—possibly “arguments” is not the proper word—but the alleged arguments of my Honourable friend. But, Sir, listening to my friend’s speech which occupied forty-three minutes, I have come to one very important conclusion, and that is, if, God forbid, I happen to be accused in Lyallpur I would seek some other lawyer who can put up better arguments. Let us start from the proviso and my submission to the House is that this will be extremely dangerous from the point of view of the accused and it will be of immense help to the prosecution. The proviso says:

“no evidence other than the list drawn up in accordance with the provisions of this section shall be admitted to prove the articles discovered during the search.”

That is to say, the list which has been drawn up in pursuance of the provisions of that section, attested by two witnesses and so on, that is the only evidence and no other evidence is admissible. Let us pause and consider what this means. I am now looking at it from the point of view of the accused and not of the prosecution. Supposing a search takes place: two witnesses have prepared the list: they have signed the list and it happens that only two articles are there—two boxes. Sardar Sant Singh happens to pass by, supposing he is in the locality or neighbourhood. About his respectability there is no question. He sees for himself that there are only two boxes and nothing else found. As he passes by, the person whose house has been searched says “They are now trying to plant a revolver and get it into the list: you see it is not here” Sardar Sant Singh says “That is all right: they dare not do that when I have seen what has been seized” and passes on. They produce that list—I am assuming that the police are using the list containing the two boxes and a revolver signed by two witnesses of the locality. In that list are found two boxes and a revolver. Then according to the proviso the accused is not to be allowed to call Sardar Sant Singh to prove that as a matter of fact the revolver was not there. That will be the position. That is to say, the prosecution will have the whip-hand; it produces the list, and that list will be the only evidence. The accused cannot call in evidence to show that that list is a false or manufactured list, because what is the language employed here? “No evidence other than the list drawn up in accordance with the provisions of the section shall be admitted to prove the articles discovered during the search.” Therefore, the accused cannot call evidence to show that those were not the articles produced at the search, but there were other articles. As I said, Sir, it will be a terrible position for the accused, and he will have to save himself from his friends like Sardar Sant Singh.

Then let us proceed a step further. Take another case. Supposing the accused makes a confession and says “Yes, the revolver was in my possession”. Is that evidence admissible? No, because the only evidence admissible to show what was the article seized is that list, and nothing but the list. Once the police can get hold of two persons who will be willing to sign a false list, then the accused is bound hand and foot, and he cannot get rid of that list, which will be the only evidence for the purposes of proving the articles at the search

Mr. M. Asaf Ali: In fact, he need not get hold of two persons at all. Forged signatures will be enough.

The Honourable Sir Nripendra Sircar: Therefore, Sir, from the point of view of the accused, the proviso introduces a dangerous provision. It is not a question of clarifying the language, it is a question of clarifying the ideas, if that is possible for my friend, Sardar Sant Singh, to do in connection with the proviso.

Now, let us see what my friend really argued here. First of all, he said that lumbar-dars ought not to be search witnesses as they will be helping the police. Assuming that it is so, how is it remedied by this Bill? Is there a single word here to say that certain classes of persons cannot be search witnesses? No. Then why advance that argument about officials, lumbar-dars and non-officials and so on, which is an absolutely irrelevant argument, which does not touch the Bill at all?

Then, Sir, we had a series of learned arguments about the rights of private defence. Whether those rulings are right or wrong, how are they affected by this Bill? In spite of this Bill, if the question arises as to whether an alleged illegal search can be resisted under cover of the right of private defence, those rulings will hold good. I submit, Sir, every argument which has been advanced here, barring the last two, has nothing to do with this Bill. If there are difficulties, they are not removed by this Bill. So I submit again it is not a question of clearing the words, but it is the question of clearing the ideas which my friend wanted to express, and which have not been expressed in the Bill at all. The difficulties that have been pointed out as existing today by reason of section 103 and by reason of the decision of the various High Courts will all continue to exist in spite of this Bill. All that my friend gains is this. He will prejudice very seriously and severely the accused person when he comes before a Court.

Then the other point is about locality and neighbourhood. Now, Sir, what is neighbourhood? What is its definition? How is anything clarified by putting in the word "neighbourhood" instead of the word "locality"? I believe my friend, Sardar Sant Singh, has read some of the cases in the civil Courts about covenants restricting certain things from being done in the neighbourhood in commercial contracts. Has he appreciated what neighbourhood means there? Has it not been laid down that the word "neighbourhood" must depend upon circumstances and the situation? Again, I speak from my personal experience,—there was a case from Assam in which a high police official was prosecuted for having fired recklessly in a village, and I had to appear for the Crown in the High Court to upset the order of acquittal,—he had been acquitted in the lower Court. The evidence there was that there was in the wilds of Assam a small village consisting of barely 12 wretched huts, and they consisted principally of two or four families. If my friend's idea is, as is apparent from his Objects and Reasons, that it must be the same quarter of the town, how does that apply to the situation I have described? Where is the town? And where is the same quarter? Therefore, neighbourhood must depend upon the situation of the locality where this thing has been searched. My friend is assuming that wherever a search takes place, it must be a town. It is not so. It is practically one quarter so far as the small village is concerned. Therefore, if the object is,—though I say that object will not be gained,—that the two persons must come from the same quarter of the town, that is an impossible position.

Then, Sir, if you have got to find two respectable persons,—of course the word “respectable” has not been defined,—it may not be possible to get a man from the immediate neighbourhood,—I am adding the word “immediate”. Possibly, the two neighbouring houses belong to friends, they may belong to persons of the same gang, and therefore the police officer may have to go a little further if technically it may not be the same quarter of the town. I submit that no improvement is made by substituting the word “neighbourhood” for the word “locality”. Nothing will be gained. One is as vague or as definite as the other, and as I have already said, the proviso will create an extremely dangerous situation for the accused.

Mr. Lalchand Navalrai: Sir, this Bill aims at two points. One is contained in para. 1 of clause 2, and the other is the proviso. After hearing the arguments of the Honourable the Law Member, I am of the opinion that it is not necessary to spend so much time and labour, as my friend, Sardar Sant Singh, has done, on a Bill of this kind. We can very well understand the meaning of para. 1, and we can find no fault with its phraseology. Lawyers and advocates who have been dealing in Courts fully know the difficulty in practice with regard to searches, and those gentlemen will not quarrel with the object which the Mover of this Bill has in his mind, so far as para. 1 is concerned. I shall briefly explain the object of this Bill. Those who are lawyers know the sections of the Criminal Procedure Code, but those who are laymen and who have to deal with Courts should also know what is meant by this Bill, and I shall explain it briefly. Under section 96 of the Criminal Procedure Code a Magistrate has got power to issue a search warrant for the production of an article or property, which is included in the words “thing and documents”. Now, that search warrant goes to the police and certain precautions have been laid down in the Criminal Procedure Code. The precaution is that two respectable persons of the locality should accompany the police officer. Now, the whole question with regard to para. 1 is with regard to the word “locality”. It is no use giving long discourses on this. This Bill aims at asking that the word “locality” should be removed and the word “neighbourhood” put in.

Mr. M. Asaf Ali: How does that improve the situation?

Mr. Lalchand Navalrai: I am going to say that. I will give you an example.

Mr. M. Asaf Ali: I know the difficulties.

Mr. Lalchand Navalrai: You are not practising in the mofussil.

Mr. M. Asaf Ali: Delhi is as good as mofussil and I have been to Karachi also.

Mr. Lalchand Navalrai: Neither Karachi is mofussil. The position is this. Take the case where a police thana is far away from the village where the search has to be made. It may be ten miles away. The police officer armed with the warrant takes to that place two persons who are his own chums. (*An Honourable Member:* “Stock witnesses?”) Would you allow the word “locality” to cover such a case and allow the police officer to take a man from a distance of ten miles. That is the

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point. I say that mischiefs are being done to this effect. We know in practice how they bring these men from headquarters. I would call them two bull dogs. They are titled persons who are at the beck and call of the police. They come to search the house of a poor man and a list is prepared. The law says that the list must be prepared in the presence of two respectable witnesses. If I show to the House what the police officers actually do, I think there will be sympathy from the House for this Bill and they will allow it to go for circulation. It is not uncommon that they take their own men with them. My Honourable friend, the Law Member, was eloquent in saying "what is the harm done" and he called the Mover's common sense in question. He is not now there in his seat, but I know he would not question my common sense. My learned friend the Law Member was saying that if the list is going to be the only evidence for the search then there will be great harm done to the accused. That is right but actually forging is taking place in the list and that is what we want to remedy. Suppose two boxes are found as my learned friend put it and they want to fabricate the case against a man who may be undesirable to them. They may put a third box of certain stolen property connected with some other theft, and the list might be prepared saying that three boxes were found. The boxes come before the Court. The occupant of the house concerned says that only two boxes were found and not three, but these two chums of the police officer will come forward and say "The list is quite correct. Three boxes were found". I need not elaborate this point. I submit that the House should realise the mischief, the difficulty and the handicap for the accused. Therefore, I am suggesting that the word should be changed from "locality" to "neighbourhood". How are you going to define it. A locality may mean 10 or 20 miles away, but I would ask a question of my friend, the Honourable the Law Member. He is not here in his seat but his representative is here. They will give a reply to this. Now, I ask: if a man is taken from 10 miles away will that be covered by the word "locality" or not, or would it be covered by the word "neighbourhood". Neighbourhood would not mean Karachi from this place.

Mr. M. Asaf Ali: It is nowhere defined?

Mr. Lalchand Navalrai: Therefore I say that the Bill should go out for circulation. Some other suitable word may be suggested in the opinions obtained by circulation. Why should you cut away this Bill at this stage? If you send it for circulation, many suggestions will come. They might say that instead of the word "neighbourhood" some other word should be put in, which may be easily defined. I only suggest that the mischief should be remedied. When the opinions are received, the Bill may go to Select Committee and all these suggestions can be considered there.

I now come to the second part. I do realise that the wording of the proviso is not happy. I know what it means. I will tell you what my reading of its meaning is and if it is correct, then no proviso is needed. According to section 103 of the Code, it is incumbent that a list shall be prepared. That is true. When a document is required by law to be put into writing, what does the Evidence Act say in regard to it?

Section 92 of the Evidence Act says:

"When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained."

Therefore there should be a distinction between the primary character of the evidence and the corroborative or contradictory. There are two things: evidence given which first of all proves a certain thing, and then there are provisions in which you can give corroboratory evidence. There are also provisions in which you can give contradictory evidence. Therefore, I say, that what my friend, Sardar Sant Singh, meant was this, that the list itself should be the primary evidence and not a pretence merely as is at present being done, when police do not bring the list; but say, "we will not produce the list, but will tender some other evidence". But according to section 92, that evidence will not be admissible because, the original document not having been produced, no secondary evidence can be given in its place. Therefore, he meant that when the list is required to be in writing, that list must come before the Court; then you can give evidence corroborative as well as contradictory; but if the list is not exhibited in Court, the mischief will have been done. The police may always say, "well, we found three boxes". When asked for proof, they say, "we won't give you that list, we are not bound to do so, we will give you two witnesses to say that these things were found". Will you allow that evidence? Therefore, the proviso has been put in the Bill, though it is not happily worded, with the intention that the list must be produced; the proviso when paraphrased or analysed comes to this that the list which has been prepared at that time must be produced in Court, and no secondary evidence of the list be accepted unless as it is provided for by the Evidence Act. This is what the Mover of the Bill means. In my opinion, however, that proviso will not be necessary because when we read the Evidence Act along with section 103, it requires compulsorily that the list be prepared in the presence of two respectable men and signed. Then, according to that section, read with sections 91 and 92 of the Indian Evidence Act, it is quite clear that if the list is not given, then no other evidence will be accepted, because that is the primary evidence.

This proviso of course has not been happily worded, rather I would say that it is misleading as has generally been taken to be so by the House. However, let the Bill even with this proviso go for circulation, and let us then see if any men of better common sense put it better. If they consider it in the light in which I take it, they would say that this proviso is not needed at all because the Evidence Act provides for it. We are only asking for the opinion of the public. Therefore, I submit that it is very necessary that this Bill should go for circulation. I think my learned friend has perhaps read I. L. R., 34 Madras, 349, Full Bench, and 11, Criminal Law Journal, 136. They say that "ordinarily the list is proved and exhibited but its contents need not be proved by the list alone." Thus the list must be there. These authorities may have prompted the proviso to be inserted by my learned friend, but I say it is quite clear, reading section 103 along with the Evidence Act that this proviso is not necessary, but if the Mover of the Bill wants that

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the point should be made more clear, so that the police hereafter may not think that they can only give two or three witnesses to prove the fact without the list, then let the proviso be there to be made better and put in good legal phraseology by the Select Committee. I think that at least the doubt with regard to the point in question will be removed. I submit that this is not a Bill which can be derived at or slighted, or with regard to which it can be said that it is not in consonance with common sense; I say it is a necessary Bill and it would be only wise on the part of the Legislature to take into consideration these matters which are today, in the country, disturbing the people at the hands of the police, and our attitude ought to be very rigid about it and we ought surely to take such Bills into consideration, we ought therefore now to send this Bill for circulation.

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

Mr. J. A. Thorne (Government of India: Nominated Official): Sir, I do not think any speech of mine is required to make it further clear that this Bill is an extremely ill-considered, ill-drafted and I think one might say without exaggeration absurd Bill. But I think it is my duty to warn the House against the insidious appeal of my Honourable friend, Mr. Lalchand Navalrai. He said, in effect, that this Bill is no doubt nonsense.

Mr. Lalchand Navalrai: I never said nonsense.

Mr. J. A. Thorne: My friend, in effect, said that "it has some sense but requires to be put into better sense; the Bill is not happily worded and the good sense does not appear on the surface; well, let us circulate the Bill and we will collect opinions and suggestions, and no doubt they will contain some material on which we shall be able to turn this Bill into something that can be decently put before the Select Committee". Well, Sir, this is a very good-natured House, but I feel it is my duty to show that my Honourable friend, Sardar Sant Singh, has already grossly abused its good nature over this Bill. It has not been previously mentioned, but it needs to be mentioned, that in 1931 Sardar Sant Singh produced in this Assembly a Bill to amend the Code of Criminal Procedure which contained a number of clauses and one of those clauses is identical with the Bill now before the House, with the negligible difference that instead of the word "neighbourhood" which he now favours he then wanted to introduce the word "vicinity". However, in other respects that was exactly the same as the Bill which he has inflicted upon us today, and the Statement of Objects and Reasons was exactly the same, almost word for word,—and certainly exactly the same in substance. Well, Sir, that Bill came before the Assembly and was introduced in February 1932. There was a full-dress debate on it on the 9th February, 1933. Another long debate there was later in February, 1933. That did not finish it, and then the House took it up in Simla and it was discussed in Simla on two days in August, 1933. Now, Sir, in the course of that debate this particular part of his original Bill, that is to say, the Bill which is before the House today, was absolutely riddled with criticism. The Statement of Objects and Reasons was shown to be totally irrelevant and it was demonstrated quite clearly and positively

that this Bill did not in the least express what the Honourable the Mover put before the House as his intention; and that Bill was thrown out by a very handsome majority.

Now, Sir, one has heard about the Bourbons who forgot nothing and learnt nothing. I would say that Sardar Sant Singh has a capacity for forgetting everything and still learning nothing. He has produced identically that Statement of Objects and Reasons which was shown to have been completely unacceptable and completely at variance with the intention he endeavoured to give it. Therefore, I say that the good nature of this House has already been sufficiently abused. I think there is no claim whatever for us to look at this motion with benevolence and to say that circulation does not matter, that we will send the Bill round and see what people think about it and when it comes back we can make up our minds again. Circulation involves a good deal of trouble and a fair amount of expense, and is, I suggest, not a measure to be agreed to in this House as a matter of course. But the main argument, I suggest, against circulation is this, that a Bill which has been demonstrated today once more and on several previous occasions to be irrational and badly expressed and, if I may repeat that word, absurd, should not be circulated because the circulation of a Bill of that kind must inevitably make this House ridiculous and a laughing-stock throughout India.

Mr. M. Asaf Ali: Sir, I have just risen to address a request to my Honourable friend, Sardar Sant Singh—and I hope, he will be kind enough to accept it—to withdraw this Bill for further consideration. I regret the various compliments which were exchanged in this House between Sardar Sant Singh and others. They might have been spared. There was no occasion for them. But I would request Sardar Sant Singh to consider the impossibility of anybody really agreeing to his proviso. In fact, I think the learned Law Member did not go far enough to show the dangers of the accused's position if this proviso were accepted. The proviso runs thus:

"Provided that no evidence other than the list drawn up in accordance with the provisions of this section shall be admitted to prove the articles discovered during the search."

If I were a prosecuting counsel and if a dead body were discovered from the house of a person or not discovered; but if I wanted to accuse a person of murder, I would not produce the dead body, I would not produce the witnesses in whose presence that dead body was alleged to have been discovered, because the production of both the corroborative witnesses and the articles discovered, namely, the dead body, would be wholly unnecessary by accepting this proviso. The list prepared on that occasion will be more than enough for my purposes. Now, where will the accused person be if this proviso were accepted? And it is not merely a question of my exercising any option in that matter because you leave me no option. You say no evidence shall be admitted beyond that list prepared in accordance with section 103 as amended by you. I am afraid this is too dangerous a position for the accused person and I am afraid I cannot possibly lend my support to this proviso.

As for the first part of the Bill, I do not think I need dilate upon it because a good deal has already been said on both sides. I have been practising lawyer for the last 26 years and I know a little bit about criminal law and I can assure Sardar Sant Singh that the substitute

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which he is suggesting is not likely to improve matters in the slightest degree. In fact, I think it may easily lend itself to the very abuses which he has mentioned on an extensive scale, because, for instance, a neighbouring village may be 10 miles away and that may be the very place where the *thana* is situated. In that case, how on earth can you say that that is not a neighbouring place because it is in the neighbourhood of the place of occurrence. As the law stands at present, the investigating officer whoever he may be may find two persons belonging to that particular village or they may belong to the neighbouring village and if they do not happen to be the stock witnesses of the police—they are generally supposed to be respectable witnesses—the case can be proceeded with all right. In so far as the stock witnesses are concerned, it is always open to you in cross-examination to expose their position.

Mr. Lalchand Navsrai: Have you ever found it very easy to do that?

Mr. M. Asaf Ali: I have found it extremely easy to prove it, because you can always find out in how many other cases they have appeared. If the man says that he has not appeared in any case before, you can prove it by previous records that he has done so and, therefore, he is not a person worthy of credit. That is not difficult. So, I personally think that the purpose and the intention of the Bill may be perfectly legitimate. In fact, reading the Statement of Objects and Reasons, I find that it is quite good, but unfortunately the language used in the Bill is diametrically opposed to the Statement of Objects and Reasons. That being so, I would certainly make an earnest request to the Honourable Member to consider the possibility of withdrawing this Bill now and bringing it up again in a more acceptable form.

Sardar Sant Singh: Sir, it is really very unfortunate that I have not been able to persuade the Honourable Members of this House to my point of view in which this Bill was framed and I am thankful to the Honourable the Home Secretary, Mr. Thorne, for showering abuses on me. However, I take it in the sense that everything is fair in love and war. So far as the objections of the Honourable the Law Member are concerned, I will like the Honourable the Law Member to be the resident of a village at Lyallpur.

The Honourable Sir Nripendra Sircar: God forbid!

Sardar Sant Singh: Then he will come running to me for defending him in Court. I am sure of that. Then he will see how harmful this provision of section 103 is in the way in which it is worked by the police. I am not aware of the conditions prevailing in Bengal. Perhaps the police there may be better and I hope they are better though the reports in the newspapers do not say so. But I know, Sir, how things are planted, how stock witnesses are employed to commit raids upon innocent people's houses. Incriminating articles are alleged to have been discovered and such discovery is proved by evidence of persons imported from long distances when as a matter of fact the person was not at all present there and that the incriminating article was found from a place which was not in his possession. These are facts which nobody can challenge. The only difficulty is to make the law effective.

That is what I said in the opening remarks of my speech. I said that the object of the legislation is to prevent fabrication of evidence, the provisions contained in the Criminal Procedure Code are healthy provisions and the framers of these provisions were actuated by a desire to see that no fabrication or no planting of incriminating article was possible by the officer who conducts the search. There can be no two opinions about this. The point is that these are not at present living provisions. They are merely dead letters. I want to make these provisions living ones and not dead letters in the Code itself. Doubt was raised as to how the insertion of the word "neighbourhood" would solve the difficulty. My submission is that the substitution of the word "neighbourhood" for the word "locality" will make the intention of the Legislature more clear. The word "neighbourhood" does not necessarily mean the house adjoining or adjacent to the house which is searched. It may be at a distance and yet it may be in the neighbourhood. The Honourable the Law Member has given an illustration. Supposing there is a single hut and there is no other hut.

The Honourable Sir Nripendra Sircar: I did not say that.

Sardar Sant Singh: Supposing there is only a single house where there are ten persons living and that no witnesses are available in the locality. In that case of course, neighbouring place means the nearest place where people live and persons from that place would be persons in the neighbourhood though they may not come within the definition of "locality" as it exists now. The word "neighbourhood" certainly conveys a narrower meaning than the word "locality" which has a wider meaning.

An Honourable Member: Question.

Sardar Sant Singh: The other objection raised is about the proviso, that it makes the provision more stringent against the accused than I intended that it should mean. It is alleged, Sir, that it will debar the evidence as to the fact. The Honourable the Law Member put it that a person calls in a respectable person to see that nothing was recovered from a house; well, the list is prepared that these two boxes have been recovered and this proviso will debar the admission of this evidence. My submission is that it does not debar at all. The question of discovery and the question of fabrication are two questions which are quite distinct from each other. It cannot be said that because an accused takes the plea that nothing was discovered from his person or his house, while the list says that it has been discovered, will that make the evidence irrelevant or will it exclude that evidence. Nothing of the sort. One can certainly prove that this list which is said to contain the fact that this thing has been discovered in my house is a fabricated list and that nothing was discovered. As regards discovery, evidence will be confined to the list prepared, but as regards the plea that nothing was discovered, that would be taken up in spite of this proviso if it is there. So the distinction between the plea of fabrication and the proving of a thing by the list still remains open to the accused. The Honourable the Law Member stated that this Bill does not touch the question which I tried to state that some official persons like the

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lambardars or persons connected with the police will be debarred from giving evidence. There is no doubt that this will not debar it. This is right, but at the same time it will make it obligatory in proving a case of discovery that two respectable persons of the locality have come in. If there is contradiction in the statement of the two sets of witnesses, one set of respectable witnesses saying that nothing of the kind was discovered therefrom and the other official witnesses saying that it was discovered, the prosecution will find it very difficult to prove the case against the accused. Therefore, though directly it does not touch that point, yet still indirectly it will help the accused considerably by associating independent and impartial witnesses of the locality, in so far as the evidence of the witnesses of neighbourhood will have helped the accused by making it very difficult to fabricate or plant incriminating articles in the house of the accused. Those of us who have seen cases, particularly of the discovery of arms and the cases in which excise articles are discovered, know that it is extremely difficult for the accused to meet a case where the persons associated with the police or the excise officers are hauled up. Most of these cases are what they call trumped up cases in which one member of a faction wants to get a member of the other faction imprisoned on account of private malice or private enmity. It is in the interest of the administration of justice that the fountain of justice should be pure and everybody should feel that he has security in his place. In order to create that feeling it is the duty of the Government themselves to see that the law is so amended that it should put an end to all sorts of planting and fabrication of evidence.

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

"That the Bill further to amend the Code of Criminal Procedure, 1898 (*Amendment of section 103*) be circulated for the purpose of eliciting opinion thereon."

The motion was negatived.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

(AMENDMENT OF SECTION 167).

Sardar Sant Singh (West Punjab: Sikh): Sir, I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1898 (*Amendment of section 167*) be circulated for the purpose of eliciting opinion thereon."

This Bill relates to the grant of remand to the police after a suspected offender is arrested. According to the state of the present law, an accused person after he has been arrested cannot be detained by the police for more than 24 hours. After 24 hours, he is produced before a Magistrate and he can be remanded to custody up to a limit of 15 days. The remand is taken in this way. The police brings the accused in handcuffs to the magistrate's Court or to his house to get a remand. In accordance with the provisions of section 167, the magistrate if he remands the accused back to the police custody is bound to give reasons for the remand, and those reasons must be reduced to writing in his order of remand. And if the magistrate granting the remand is other than the District Magistrate or the Sub-divisional Magistrate, a copy of

his order with his reasons for making it is to be forwarded to the magistrate to whom he is immediately subordinate. These are the existing provisions of section 167 of the Criminal Procedure Code. But these provisions are not observed when the remand order is obtained from the magistrate. What happens generally is that the magistrate is sitting at ease either in his home or in Court, if he is there at all; in the midst of his other duties the police place the papers before the magistrate who, without even reading the case or acquainting himself with the facts as collected by the investigating officer, signs the order of remand according to the wish of the police and sends the accused back to custody. In most cases the terms of the order have been written by the police officer who wants the remand and in some cases even the accused is not brought before the magistrate; he is kept either outside the Court or outside the house where the magistrate is living. The result is that the poor accused has no opportunity to make his position clear before the magistrate and cannot raise any objection to the remand being granted and explain why he should not be sent back to police custody. The provisions clearly are that the object of getting the remand is that the accused should be given an opportunity to plead before the magistrate and to inform him how he has been treated by the police during the 24 hours that he has been in police custody. The object of my Bill is that the accused should be brought before the magistrate at the place where the magistrate ordinarily holds his Court, that is to say, that the proceedings of remand should have some solemnity attached to it,—solemnity of a nature which is due to the Courts,—and sufficient publicity should be given to the question of remand so that the accused or his relations may have an opportunity of putting their objections to the Courts as to why the remand should not be granted; secondly, that it should be made obligatory upon the magistrate to hear the accused or his counsel if the accused so desires. This is the object of my Bill.

There are many cases in which a game of hide and seek is played at the time of getting the remand. If a counsel is engaged to oppose the remand, he has to keep a man watching when the police brings the accused and to what magistrate he is taken for the purpose of getting the remand. And it often happens that before the information is received by the Counsel that the accused has been produced before such and such magistrate, the magistrate had written the order of remand and the police has got back the accused to the lock-up. I am sure some of the Honourable Members have been on the Bench and they know how they have been giving remands to the police when remand papers were placed before them. And I am also sure that some of the Counsel here who practise on the criminal side will bear me out as to the difficulties they have when they have to oppose a remand which is to be obtained by the police. It is in the interest of the sound administration of justice to create confidence among the litigant public and among the public at large; and these remand orders should have due publicity, and fair opportunity should be given to the accused to have his own say before he is remanded to police custody. These are the two principles which underlie my Bill. In my Statement of Objects and Reasons I have stated that the presumption of all law is that every accused person should be presumed to be innocent till he is convicted by a competent Court of law. At the time of getting the remand the accused should

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not be considered a guilty person until the evidence is recorded and he is proved by the prosecution to be guilty. Till then he possesses all the rights and privileges which an innocent man possesses. In these circumstances, it is but fair that an opportunity should be given to the accused to have his say and that opportunity can only be given if the remand orders are passed in open Court and not in the manner of a game of hide and seek played by the police.

Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): Motion moved:

"That the Bill further to amend the Code of Criminal Procedure, 1898 (*Amendment of section 167*) be circulated for the purpose of eliciting opinion thereon."

Mr. J. A. Thorne (Government of India: Nominated Official): Sir, this is another of my Honourable friend's remarkable Bills which seem specially designed *not* to produce the effects mentioned in the Statement of Objects and Reasons. But no one can fail to sympathise with the professed objects of the Bill. The position of an accused person who has been arrested and is under detention is one which the law should make as easy as is consistent with the performance of justice. One must presume sufficient reasons for arrest, but it must often happen that the case is eventually not proved, and it is proper that nothing should be done to cause unnecessary hardship to any person who is under detention during the investigation of a case. Therefore, in opposing the motion I do not question the Honourable the Mover's principles, but I oppose on the grounds that his remedies are not feasible in practice. Where the police arrest a person and cannot complete their investigation within a period of 24 hours, they must send the accused at once to the nearest magistrate along with the information against him. That is the law as it stands—section 167. That section, I would remind the House, was amended by this Legislature in 1923, and it contains various safeguards: for instance, there is a proviso in sub-section (2) that no magistrate of the third class, and no magistrate of the second class not specially empowered in this behalf by the Local Government, shall authorise detention in the custody of the police; there is a further provision that no magistrate shall authorise detention without recording his reasons in writing. Well, the Bill proposes that the prisoner should be sent, not to the place where the magistrate is likely to be found, but to the place where the magistrate ordinarily holds his Court. I would remind the House that a great number of magistrates throughout India spend a great deal of their time on tour, and if the Honourable the Mover's amendment were accepted, the whole duty of the police would be performed if they took the prisoner to the Court house at the headquarters of the magistrate although he may be many miles away. The prisoner might in fact have been brought from a place within a mile of where the magistrate was known to be, or he may be brought from the very place where that magistrate is actually staying, but the prisoner could not be taken to him there. He must be taken right off to headquarters, where the magistrate will not be found. What should happen then the amending Bill does not provide. In the interests of the accused and of every one else concerned the important thing is that within 24 hours of arrest a prisoner should be produced

before the nearest magistrate. My experience is and has been that pains are taken to ensure this, and that magistrates at no little inconvenience to themselves give their earliest attention to the prisoner and the case against him. Now, I have an analogy which I believe is exact, and which I hope will commend itself to the House. Suppose a person is in urgent need of attention from a doctor. Should you require him to be taken, not to where the nearest doctor will certainly be found, but to a place where between certain hours—it may be the following morning—a particular doctor holds his surgery? I think the House will recognise that as a perfectly good analogy and one which destroys, at any rate in those parts of the country where the magistrate has to perform his duties frequently on tour, the basis of this Bill. So much for the first part of the Bill.

The second part would require that when the prisoner is produced before the magistrate, the prisoner or the counsel on his behalf shall be heard before the magistrate authorises further detention. Well, Sir, in my own magisterial days it was my practice to hear anything that the prisoner had to say when he was produced before me, and if as sometimes happened, a lawyer came with him, I heard the lawyer also. I have no doubt that most magistrates do in fact adopt the same practice. But what I suggest is that as a rule there is very little light that can be thrown on a case when the prisoner is brought before you by an examination of the prisoner or by listening to his counsel. If the information sent along with the prisoner gives good grounds for his arrest, it is unreasonable, I suggest, that that should be brushed aside, and immediate release ordered merely on the strength of the prisoner's own version. What is necessary in the interests of the accused himself is to get on with the investigation as speedily and thoroughly as possible. It is the magistrate's duty to see that continued detention is not ordered without good *prima facie* grounds. Government in their attitude towards this Bill cannot accept a provision for imposing more elaborate duties on magistrates at the rudimentary stage of investigation. May I, Sir, in conclusion, remind the House that this measure also was included in my Honourable friend's pantechinon Bill which was inflicted on the House both in Delhi and in Simla in 1933 and debated threadbare. The debate on this section may not have been quite as destructive as the debate on section 103, but at any rate it did show the absurdity of the first part of my Honourable friend's Bill. The Bill had a thorough airing then, it was fully ventilated, and it was defeated by a very large majority—I think the voting was 49 to 27. I suggest that as regards this Bill, equally with the lost Bill, it would be an unwarranted infliction on the provinces to send the Bill for collection of opinions.

Mr. Abdul Qaiyum (North-West Frontier Province: General): Sir, I rise to support the motion for the circulation of this Bill. I submit that the relevant section, section 167, of the Criminal Procedure Code is not being satisfactorily worked in practice by magistrates. The Honourable gentleman who spoke immediately before me, remarked that there was a practical difficulty if the police had to conduct the prisoner to the place where the magistrate ordinarily holds his Court, and he gave as an instance the case of magistrates who may be on tour. Now, it is not necessary that there should be only one magistrate in a station—as a rule there are several magistrates, and it is not

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usual for all magistrates to be on tour, and I think this tour difficulty has been magnified by the Honourable speaker. I can inform him and also the House that the practice followed by the police in such cases is far from satisfactory. It always resolves itself into a game of hide and seek between the defence counsel and the police. Those who have practised on the criminal side have a very unfortunate experience in this respect. Whenever the police come to know that an accused person has engaged a counsel, then they see to it that they do not produce the man in Court at a time when it would be convenient for his counsel to be present; and generally the unfortunate counsel has to wait all day if he wants to be present at the time when the police come and ask for a remand. I know that in the Frontier Province such prisoners are brought in at 3-30 or even at 4 with a view to force the counsel to leave the Court room and his patience is taxed to the utmost. There is no reason why this should be so and I think that the provision in Sardar Sant Singh's Bill making it obligatory on the police to produce the accused or the prisoner in the Court of the magistrate where he ordinarily does his work is a very wholesome provision. I really fail to see the force of the contention of the Honourable Member who preceded me who took exception to this very reasonable proposal.

Then, as far as the second part of the Bill is concerned, *viz.*, clause 2(ii), I really fail to see how anybody can take exception to these words "after hearing the accused or his counsel if the accused so desires". Why should there be any objection on the part of the magistrate to hear the prisoner or his counsel? After all when a remand is being obtained there is absolutely no reason why the accused person should not be heard and why his counsel should not be given an opportunity to put his case before the magistrate. The magistrate will hear both sides and will be in a better position to decide whether the prisoner's case is a fit case for remand or not. We know that as a result of the unsatisfactory provisions in section 167 of the Code, the hands of the police have been considerably strengthened and they come to Courts and obtain remands in succession without any rhyme or reason, even in the absence of the accused. There are many instances where the accused is either in the *hawalat* or he is being brought to the Court room when, the *naiib-court* writes the order and the magistrate simply signs it. This state of affairs is absolutely unsatisfactory, and as far as the long wait which it involves is concerned, I know as counsel, it has been my unfortunate experience that we have to put in more work by waiting in Court day after day to frustrate this game of hide and seek of the police. The actual case does not take very much time and does not cause so much trouble to the unfortunate counsel as these remands do. Therefore, I think that Sardar Sant Singh's Bill will remove a long felt difficulty and that it is very necessary: the provisions are absolutely wholesome and satisfactory; and I am really surprised why the Government have taken up such an unreasonable attitude in opposing this motion for circulation of this Bill. I am sure that if this Bill is circulated and if opinions are invited from the various bar associations and even from the magistrates and the High Courts, it will be found that section 167 is being very much abused in practice by the prosecuting agency, and the accused persons and prisoners are being put to needless expense. I know of instances where these unfortunate prisoners engage counsel and the counsel sits there all day

and just when he is tried and leaves the Court, suddenly the case is brought before the magistrate and the accused person is remanded to custody; and afterwards they have to engage another counsel and sometimes they have to spend much more money in order to get bail during remands than in getting themselves defended at the time of the trial. I strongly submit that this Bill deserves to be circulated and to be brought on the Statute-book, because then only these abuses which are very much in evidence at present will disappear. I support this motion for circulation.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan): Sir, I shall say only a few words. I do not think the Government really means to take any objection to the second part of the Bill. I was very glad to learn from my Honourable friend, Mr. Thorne, that he as a magistrate behaved very well; but then the point is if the other magistrates will take a leaf from his book. In practice we know that they ordinarily do not allow counsel to appear. They say this is a state when an order has to be made to give some time to the police for investigation and that it is premature for counsel to come and put the case of his client there. But it should be remembered that, at any rate at that time, there is a great necessity to bring to the notice of the magistrates that an accused person against whom there is no case at all is being kept in custody only for the purpose of putting him to difficulty and hardship; and there may be certain points that could be brought to the notice of the magistrate at that time. From that point of view I submit that it would be very necessary that this second proviso should be provided for because unless and until that is done it is more or less being left to the mere discretion of the magistrates to allow representation or not. But if this proviso is enacted then it would be incumbent on the magistrate to hear the accused or his counsel. If the accused is able to bring counsel, why should he not be heard? I do not think there is any reason why help should be refused to the accused.

There have been many occasions in which accused persons are taken before magistrates and, as has been put by my learned friend, Mr. Abdul Qaiyum, it is no wonder that they are generally taken before magistrates with whom there is no difficulty for the police to get a remand. But if counsel is present then I am sure that there will be some safeguard and the counsel could be bold enough to say that the order should not be such as merely written by the police officer present and simply signed by the magistrate. These alliances cannot possibly happen when these remands are not given in camera. I admit there is some efficacy in leaving to the magistrate discretion to give this remand in his own private residence as well, because it may happen that the accused may be brought up at an unearthly time and not during the Court time; and in such a case if he is taken before the magistrate and he says "No, bring him up tomorrow", a respectable man may suffer very much. Therefore, I do not say that there should be no such exceptions, but what is wanted and is aimed at by my learned friend is that ordinarily a man should be taken before a magistrate in his open Court. I think that is very reasonable. Ordinarily it should be so. But at times it may be necessary—there may be holiday and there may be some places other than the Court room where he has to hold his Court, as sometimes they are held on railway stations. In those cases, if a man is brought before the

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magistrate at his private residence or where he actually works in his off-day time, then there will be no objection to that at all. But to say that they should be taken at the pleasure of the magistrate and the police to any places where it is easy for them to do harm to the prisoner, then in that case I would certainly say that this Bill requires circulation . . .

Mr. President (The Honourable Sir Abdur Rahim): If the Honourable Member has more to say I think he will have to resume his speech the next day.

Mr. Lalchand Navalrai: All right, Sir.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 17th February, 1938.