

10th February 1938

**THE**

**LEGISLATIVE ASSEMBLY DEBATES**

**(Official Report)**

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**Volume I, 1938**

*(31st January to 22nd February, 1938)*

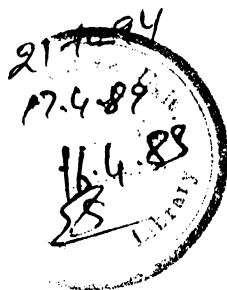
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**SEVENTH SESSION**

**OF THE**

**FIFTH LEGISLATIVE ASSEMBLY,**

**1938**



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1938

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# Legislative Assembly.

## *President :*

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

## *Deputy President :*

MR. AKHIL CHANDRA DATTA, M.L.A.

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DR. SIR ZIAUDDIN AHMAD, C.I.E., M.L.A.

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

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## *Assistants of the Secretary :*

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RAI BAHADUR D. DUTT.

## *Marshal :*

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

## *Committee on Petitions :*

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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.

*Thursday, 10th 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.

## MEMBER SWORN.

Lieut.-Colonel Harry Cyril Smith (Bombay: European).

## STARRED QUESTIONS AND ANSWERS.

### (a) ORAL ANSWERS.

#### FINANCIAL EFFECT OF MECHANISATION OF THE INDIAN ARMY.

192. **\*Mr. T. S. Avinashilingam Chettiar:** Will the Defence Secretary state:

- (a) what will be the financial effect of mechanisation;
- (b) whether it will result in the reduction of men;
- (c) whether there will be a reduction in personal charges;
- (d) whether the cost of remount charges will be saved;
- (e) whether the cost of the maintenance of the army on the North-West Frontier will be reduced; and
- (f) if so, to what extent?

**Mr. C. M. G. Ogilvie:** (a) I refer the Honourable Member to my speech on his adjournment motion of the 31st January, 1938.

(b), (c) and (d). Yes.

(e) The saving will be in the Defence estimates as a whole and cannot be allocated to any geographical area.

(f) Does not arise.

**Mr. T. S. Avinashilingam Chettiar:** May I know, Sir, how many men will have to go out of service as a result of this mechanisation?

**Mr. C. M. G. Ogilvie:** I am afraid I can't tell you the exact details.

#### PENSIONARY AND OTHER CHARGES FOR LENDING INDIAN TROOPS TO BURMA.

193. **\*Mr. T. S. Avinashilingam Chettiar:** Will the Defence Secretary state:

- (a) what are the amounts of pensionary and other charges which Burma is paying India for the loan of her troops to Burma; and



- (b) besides these payments, whether any other conditions have been imposed in the matter of lending Indian troops to Burma?

**Mr. C. M. G. Ogilvie:** (a) As far as can be estimated, approximately eleven lakhs in 1937-38.

(b) The further conditions regulating the loan of Indian troops to the Burma Government are still under discussion, and it is hoped to reach a conclusion in the next three or four months.

**Mr. T. S. Avinashilingam Chettiar:** May I know, Sir, whether any amount will be paid by the Government of Burma to the Indian Government?

**Mr. C. M. G. Ogilvie:** The Government of Burma are bound to pay exactly the same rates as are payable by any one who borrows troops from us, and the amount is approximately that which I have given.

**Mr. T. S. Avinashilingam Chettiar:** May I take it that the Indian Government do not pay any part of the expenses of those troops either pensionary or any other charges?

**Mr. C. M. G. Ogilvie:** The leave contribution amounts to four lakhs, the pension contribution amounts to six lakhs, and the passage contribution amounts to about one lakh.

**Mr. T. S. Avinashilingam Chettiar:** May I know whether no amount is paid out of the Indian revenues for troops stationed in Burma under this agreement?

**Mr. C. M. G. Ogilvie:** No.

#### ACTION ON THE RECOMMENDATIONS OF THE INCOME-TAX EXPERTS.

194. **\*Mr. T. S. Avinashilingam Chettiar:** Will the Honourable the Finance Member state:

- (a) whether Government have received replies from commercial bodies regarding the recommendations of the income-tax experts;
- (b) whether they propose taking administrative action on the proposals not involving legislation;
- (c) if so, on what matters; and
- (d) what increase of revenue they expect from these changes?

**The Honourable Sir James Grigg:** (a) Yes.

(b) Yes, on such proposals as are approved.

(c) Generally speaking administrative action is being taken and will be taken, where necessary, on matters pertaining to efficient administration, prompt assessment, collection and refund of income-tax and the removal of the legitimate grievances of assesseees.

(d) I would refer the Honourable Member to my reply to part (e) of Mr. Satyamurti's question No. 836 which was answered on the 28th September, 1937.

**Mr. Lalchand Navalrai:** May I know, Sir, if any measures have been taken up to now, and what are those measures?

**The Honourable Sir James Grigg:** Certainly, yes.

**Mr. Lalchand Navalrai:** What are they?

**The Honourable Sir James Grigg:** That is too long a story to deal with by way of question and answer.

**Mr. Lalchand Navalrai:** Can't you tell us a few of them?

**The Honourable Sir James Grigg:** They are mostly measures in the administrative sphere.

**Mr. Lalchand Navalrai:** But what are they?

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member said it will be too long a story.

**Mr. Lalchand Navalrai:** I want him to tell me only a few of the most important.

**The Honourable Sir James Grigg:** Matters pertaining to efficient administration, prompt assessment, collection and refund of income-tax and the removal of the legitimate grievances of assesseees.

**Mr. T. S. Avinashilingam Chettiar:** May I know, Sir, if all these measures have been taken with the consent of the commercial community?

**The Honourable Sir James Grigg:** I don't think that that arises.

**Mr. T. S. Avinashilingam Chettiar:** It does arise out of (a).

**The Honourable Sir James Grigg:** I don't think it is incumbent upon Government to ask the permission of the commercial community before taking any administrative measures.

**Mr. T. S. Avinashilingam Chettiar:** It is not incumbent, but as it happened to coincide with the others, I am asking this.

**The Honourable Sir James Grigg:** All the measures which have been taken have been taken after consideration of their views.

#### STATES LEVYING DUTIES ON BRITISH INDIAN GOODS.

195. **\*Mr. T. S. Avinashilingam Chettiar:** Will the Honourable the Finance Member state:

- (a) which of the States levy duties on the entry of British Indian goods into their territories;
- (b) whether corresponding duties are levied on the entry of their goods in the British Indian territories; and
- (c) if not, on what basis this arrangement is allowed?

**The Honourable Sir James Grigg:** (a) Practically all States.

(b) Generally speaking, no.

(c) The desirability of doing what is in the Government's power to maintain free trade within the continent of India.

**Mr. T. S. Avinashilingam Chettiar:** How can it be considered free trade when one party taxes and the other does not?

**The Honourable Sir James Grigg:** I said the desirability of doing what was in the Government's power.

**Mr. Abdul Qaiyum:** Will Government levy protective duties on Afghan goods?

**The Honourable Sir James Grigg:** That does not arise.

**Mr. President** (The Honourable Sir Abdur Rahim): If the Honourable Member wants information upon any specific matter, he must put down a separate question.

**Mr. T. S. Avinashilingam Chettiar:** May I know, Sir, whether this system has adversely affected the industries established in British India?

**The Honourable Sir James Grigg:** I cannot say that. I have no doubt that internal tariff barriers are a restraint upon trade and the development of industries.

**Mr. T. S. Avinashilingam Chettiar:** Have Government received any representations from any of the industries established in British India about their hardships?

**The Honourable Sir James Grigg:** I cannot remember any specific representation. There has been a good deal of general talk on the subject.

#### BAD CONDITION OF THE MOTOR ROAD BETWEEN LANSDOWNE AND FATEHPUR.

196. **\*Mr. Badri Dutt Pande:** (a) Will the Defence Secretary be pleased to state whether the motor road between Lansdowne and Fatehpur is a military road? If so, is it a fact that the road is in a condition which is far from satisfactory?

(b) Do Government propose to repair it early?

**Mr. C. M. G. Ogilvie:** (a) The motor road between Lansdowne and Fatehpur is not a military road.

(b) Does not arise.

#### LEGISLATION TO END PHOOKA.

197. **\*Mr. Govind V. Deshmukh:** Will the Honourable the Home Member please state if it is a fact that the Government of India have addressed the Provincial Governments on the subject of legislation to end

*phooka* practised on milch cattle? If so, when, and what are their opinions?

**The Honourable Sir Henry Craik:** The performance of the operation of *Phooka* on cows is already punishable under section 4 of the Prevention of Cruelty to Animals Act, 1890, but the Government of India addressed the Provincial Governments on the 2nd December, 1937, on the subject of legislation to make the provisions of the Act more effective. The majority of the Provincial Governments from whom replies have been received are in favour of legislation with this object. I may add that I hope to introduce later on this Session a Bill on the subject.

**Mr. Govind V. Deshmukh:** What were the particular points on which opinions were invited from the Provincial Governments?

**The Honourable Sir Henry Craik:** I cannot detail all the points, but generally the object of the reference was whether they thought it desirable to make the Act more effective, and whether they thought it should be done by Provincial or Central Legislature.

**Mr. Govind V. Deshmukh:** May I take it then that the opinion sought was whether *Phooka* should be stopped or not? Was this the only point on which their opinion was sought?

**The Honourable Sir Henry Craik:** No, Sir, there are several other points.

**Mr. Govind V. Deshmukh:** May I know what are those other points?

**The Honourable Sir Henry Craik:** I cannot recollect at the moment. They were generally consulted, as far as I remember, on what amendments were desirable to make the administration of the Act more effective.

**Mr. Govind V. Deshmukh:** Will their opinions be placed on the table?

**The Honourable Sir Henry Craik:** I will consider that.

**Mr. Govind V. Deshmukh:** May I know what is the specific object in addressing the Provincial Governments?

**The Honourable Sir Henry Craik:** To ascertain their opinions.

**Mr. Govind V. Deshmukh:** Do the Government propose to introduce any measure, and, if so, when?

**The Honourable Sir Henry Craik:** I hope to introduce a Bill later on during the Session.

#### ESTABLISHMENT OF AN ORDNANCE FACTORY AT JUBBULPORE.

198. **\*Mr. Badri Dutt Pande:** (a) Will the Defence Secretary be pleased to state if a big Ordnance Factory is to be started at Jubbulpore?

(b) How much land has already been acquired and is proposed to be acquired in the villages of Mebgawan, Karoundi (including Benda tola), Ranjhi and Chandli?

(c) What would be the approximate cost of the whole concern?

(d) What are the materials that it is proposed to manufacture in this factory?

(e) What time will this factory take before it is ready to begin work?

**Mr. C. M. G. Ogilvie:** (a) The question is still under consideration.

(b) No land has yet been acquired but under the provisions of the Land Acquisition Act, a plot of land is being surveyed.

(c) Until all investigations are completed, it will not be possible to give an estimate of the cost.

(d) Explosives.

(e) It is yet too early to make a forecast even assuming that it is decided to carry out the project.

**Seth Govind Das:** May I know when the investigation will be over?

**Mr. C. M. G. Ogilvie:** I am not able to inform the Honourable Member.

#### EXPENDITURE AND CASUALTIES IN THE OPERATIONS IN WAZIRISTAN AND THE KHAISORA VALLEY.

199. **\*Mr. Badri Dutt Pande:** (a) Will the Defence Secretary be pleased to state the total amount of money spent in the operations in Waziristan and the Khaisora Valley and the total number of casualties that had occurred?

(b) With reference to starred question No. 153 of the 27th August, 1937, will he be pleased to give us a sample of the notices that were dropped in the valleys before bombing operations began, as promised in his answer *vide* page 666 of the last Simla proceedings?

**Mr. C. M. G. Ogilvie:** (a) Up to the end of 1937, an additional expenditure of Rs. 194 lakhs has been incurred.

Up to the 15th December, 1937, the casualties to Government forces amount to 245 killed and 684 wounded.

(b) I lay on the table samples of warning notices† that were dropped before bombing operations were begun.

#### *To the Macha Section of the Madda Khel.*

Whereas contrary to the orders of Government you have continued to give shelter to the murderers of Lieutenant Beatty, of one Madda Khel khassadar and of one Daur khassadar, Government have decided to punish your section by destroying the village of Raghzai Kalai through air action.

2. You are therefore warned that with effect from first light on Tuesday 23rd March, 1937 (9th Muharram 1356 Hijri) bombs will fall on and near that village. In order to safeguard your lives and those of your women and children you are ordered to leave this village, and its neighbourhood and not to return until Government has warned you that it is safe to do so. Until you receive such notice it will be unsafe for you to remain in any place within two miles of this village.

3. You are further warned not to touch any unexploded bombs. These may go off if handled and they are highly dangerous.

By Order of Government.

20th March, 1937.

†Pushtu and Urdu notices not printed in these Debates; copies thereof have been placed in the Library of the House.

*Proclamation to the Tori Khel Tribe.*

1. The Tori Khel of the Spinwam area have assured Government that they will commit no further offences against Government. If this promise is fulfilled there will be no further necessity to punish the Tori Khel of the Spinwam area by air action and that area will be safe for all Tori Khel who want peace.

2. Information has been received that some of the Tori Khel now occupying the area between the Tochi and Khaisora Valleys are not at enmity with Government. If this be the case, then those Tori Khel now living in the abovementioned area who are not at enmity with Government should move to the Spinwam area before first light on Wednesday 21st April, 1937, corresponding 9th Safar 1356-H.

3. This is necessary because with effect from first light on Thursday 22nd April, 1937, corresponding 10th Safar 1356-H., Government has decided to take offensive action by means of aeroplanes against all persons remaining in the area mentioned below. This offensive action by aeroplanes will be continued by day and by night until further notice.

4. This area in which it will be unsafe to remain is bounded on the East by the Kharaghora Range, on the South by the Khaisora River, on the West by the main road from Asad Khel to Thal and on the North by the Tochi River (but an area one mile to the South of the Tochi River will be exempt). But take notice that the other areas at present under blockade will still remain under blockade.

5. You are therefore, warned to evacuate this area completely and in particular to remove from it all women and children. You are not to return to it until notice is given you that it is safe to return. In your own interests and the safety of your women and children you are advised to obey these instructions immediately.

6. You are particularly warned not to touch any unexploded bombs. These are dangerous and may explode at any time whether handled or not.

7. To enable the Tori Khel to remove their families and flocks to the Spinwam area it is hereby notified that with effect from the publication of this order until first light on the 21st April, 1937, no Tori Khel moving to the Spinwam area from the South will be molested whether moving on Government roads or otherwise. Such movement however must be confined to night time, i.e., between sunset and sunrise, and military Posts must be avoided.

By Order of Government.

19th April, 1937.

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*Notice.*

Whereas the Faqir of Ipi is still hostile to Government and has established a base for hostile activity in the region of Prekarai Sar, and

Whereas this activity is liable to affect the peace of the Bannu District and the tribal territory.

Government has decided to order the area described below to be cleared of all inhabitants with effect from first light on 1st August, (23rd Jamadiul Awal 1356 Hijri).

Any persons remaining in the area described will do so at their own risk, and if they or their cattle or other belongings suffer injury from aeroplanes they will only have themselves to blame.

(a) The Kareshti Algad and all country to the East and West of it which drains into the said Algad.

(b) All country within one mile to the South and East of the watershed between Gazhghane Narai and Ziarat Ghar.

(c) All country which is drained by the Tabai and Zarai Algas.

You are warned therefore, that with effect from first light on August 1st (23rd Jamadiul Awal 1356 Hijri) offensive action by aeroplanes will be taken against any person remaining in the said area. This will be continued by day and night until further notice.

In order that you may safeguard your lives and those of your women and children and those of your cattle, you are warned to evacuate the said area immediately.

You should not re-occupy the said area until Government inform you that it is safe to do so.

You are particularly warned not to touch any unexploded bombs. These are dangerous and may explode at any time whether handled or not.

*Warning Notice.*

Whereas tribesmen of the Baddar Valley and of the Maintoi Valley have joined Mullah Sher Ali in engaging in hostile activities such as attacking Khassadar posts and raiding into the Dera Ismail Khan District, it is hereby ordered by Government that the undermentioned areas be cleared of all persons and animals from midday Saturday, September 11th (corresponding to 4th Rajab 1356 Hijri) and kept cleared until further notice :

All country drained by the Baddar Algad and its tributaries down to but exclusive of Sinetizha.

All country drained by the Maintoi Algad down to but exclusive of Dand.

2. When the jirgas of the abovementioned areas present themselves to the General Officer Commanding the Troops at the Asman Manza to explain their conduct and to give some satisfaction, for their future behaviour, the matter will be further considered.

3. You are therefore warned that with effect from mid-day Saturday, September 11th (corresponding to 4th Rajab 1356 Hijri) offensive action by aeroplanes will be taken against any persons or animals remaining in the above areas.

4. This action will be continued by day and night until further notice and you should not re-occupy the said areas until Government inform you that it is safe to do so.

5. In order that you may safeguard your lives and those of your women and children and those of your cattle, you are warned to evacuate the said areas immediately.

6. You are particularly warned not to touch any unexploded bombs. These are dangerous and may explode at any time whether handled or not.

By Order of Government.

**Seth Govind Das:** For killing so few people, this expenditure was rather huge.

(No answer.)

**POLITICAL STATUS OF AJMER-MERWARA.**

200. **\*Mr. Badri Dutt Pande:** (a) Will the Honourable the Home Member be pleased to state if any decision has been arrived at regarding the political status of the Province of Ajmer-Merwara?

(b) Are Government aware that the people of Ajmer-Merwara have expressed their opinion that the only way in which their Province can benefit politically is by a merger with the United Provinces?

**The Honourable Sir Henry Craik:** (a) The status of Ajmer-Merwara is as defined in section 94 of the Government of India Act, 1935.

(b) Government understand that some of the inhabitants have expressed a desire that the Province should be merged in the United Provinces.

**Mr. Badri Dutt Pande:** What action have Government taken on the desire of the people?

**The Honourable Sir Henry Craik:** I don't see how one can take action on a desire.

**Mr. K. Santhanam:** Do Government propose to consult the wishes of the people of Ajmer-Merwara in this connection?

**The Honourable Sir Henry Craik:** I expect there will be some consultation. Steps will certainly be taken to ascertain the general desire.

**Mr. K. Santhanam:** Will they let the Assembly know the result of their consideration?

**The Honourable Sir Henry Craik:** I think it would be premature to give any undertaking to that effect.

**Mr. Badri Dutt Pande:** Have any villages, now administered by the Central Government, been transferred to the Jodhpur and Marwar Durbars?

**The Honourable Sir Henry Craik:** That does not arise out of the answer given.

**Mr. Lalchand Navalrai:** May I know if any of the associations in Ajmer-Merwara have addressed the Government on this point?

**The Honourable Sir Henry Craik:** I have received an advance copy of one representation.

DISCUSSION *RE* CONTRIBUTION TO PROVINCES UNDER THE NIEMEYER AWARD  
AT THE CONFERENCE OF FINANCE MINISTERS HELD AT NEW DELHI.

201. \***Mr. T. S. Avinashilingam Chettiar.** Will the Honourable the Finance Member state:

- (a) whether the amount which each Province is likely to get under Niemeyer award was discussed in the recent Finance Members' Conference held at New Delhi;
- (b) whether any figures were placed at the Conference; and
- (c) whether he will state the approximate sum which each Province is expected to get this year?

**The Honourable Sir James Grigg:** (a) and (b). The proceedings of the conference must be regarded as confidential.

(c) I am afraid the Honourable Member must wait and see.

**Mr. Manu Subedar:** May I know what are the estimates of yield of income-tax and railways, which were used for the purpose of arriving at the figures of the contribution?

**The Honourable Sir James Grigg:** That is a question I have already answered under (c).

**Mr. B. Das:** May I know if the Government will take into consideration the needs of the needy provinces and give them more than the richer provinces?

**The Honourable Sir James Grigg:** Yes, subject to taking into account the prior needs of the Centre.



## SIMILARITY BETWEEN FIVE-RUPEE CURRENCY NOTES IN BURMA AND INDIA.

202. **\*Bhai Parma Nand:** (a) Will the Honourable the Finance Member be pleased to state whether Government are aware that five-rupee notes current in Burma are quite of the same shape as five-rupee notes used in India, with only an addition of the words "Legal tender in Burma only"?

(b) Are Government also aware that some people coming from Burma, bring such notes from there and put them in circulation, thus causing a loss to the person who fails to notice the words?

(c) If the answer to parts (a) and (b) be in the affirmative, do Government propose to make such a change in the shape of the notes that one could easily be distinguished from the other?

**The Honourable Sir James Grigg:** I would refer the Honourable Member to the statement made on this subject in the annual report of the Reserve Bank which was published in the Gazette of India, dated the 5th of February, 1938.

## REFUSAL OF PAYMENT OF MUTILATED CURRENCY NOTES.

203. **\*Bhai Parma Nand:** Is the Honourable the Finance Member aware that in case of five and ten rupee notes, if the number on the note somehow or other gets mutilated, its payment is refused by the Currency Office and if the small number on the hundred rupee note is in any way cut, the value of this note is reduced to half and the holders of these notes have to suffer a great loss? If so, do Government propose to remove this grievance of the public?

**The Honourable Sir James Grigg:** I would refer the Honourable Member to the reply given to question No. 238 asked by Mr. Sri Prakasa on the 9th September, 1936.

**Mr. Lalchand Navalrai:** May I know the position particularly in regard to the question of the notes having been somewhat mutilated in the number only?

**The Honourable Sir James Grigg:** Since my answer to the last question on the subject, I have had occasion to revise my views in certain respects. This question refers to the proceedings of currency officers, and there I am fairly satisfied that there is nothing much in the way of action called for. One Honourable Member opposite called my attention to a note which was refused by a sub-treasury officer in which it was clear on the face of it that the action of the sub-treasury officer was not right but sub-treasury officers are under the control of Provincial Governments, and, therefore, I have to consider rather carefully what if any remedial action is possible.

**Mr. Lalchand Navalrai:** Will the Honourable Member ask the Provincial Governments to be wide awake about this?

**The Honourable Sir James Grigg:** The possibility of action in connection with officers of Provincial Governments is being considered, and it will be required to be considered fairly carefully.

## INCREASE IN THE CIRCULATION OF COUNTERFEIT RUPEES.

204. **\*Bhai Parma Nand:** Is the Honourable the Finance Member aware that the number of counterfeit rupees is increasing and getting wide circulation on account of which a good many people are put to loss? Do Government propose to make an enquiry and find out some remedy to check this evil?

**The Honourable Sir James Grigg:** I would refer the Honourable Member to the reply given to parts (a) and (b) of question No. 54 asked by the Honourable Haji Syed Mohamed Husain in the Council of State on the 4th of March, 1937.

**An Honourable Member:** Since then, have they increased?

**The Honourable Sir James Grigg:** I cannot answer that off-hand.

## SHORT NOTICE QUESTION AND ANSWER.

SHOOTING AT PEOPLE BY A SOLDIER FROM A MILITARY LORRY BETWEEN DELHI AND MEERUT.

**Mr. T. S. Avinashilingam Chettiar:** Will the Defence Secretary state:

- (a) whether he is aware of the news on page 3 of the *Hindustan Times*, dated the 2nd February, 1938, that a soldier had been shooting at random at people from a military lorry and that one Abhey Singh was shot in the thigh;
- (b) whether he has enquired into the matter; and
- (c) whether Government have taken any action against the miscreant?

**Mr. C. M. G. Ogilvie:** Certain soldiers are alleged to have been shooting with an air gun when travelling in a lorry from Delhi to Meerut. It has been established that three villagers were struck by pellets.

It is not desired to add further to this statement at present as the matter is under investigation by the Police authorities concerned who have yet to decide what action shall be taken in the matter.

**Mr. T. S. Avinashilingam Chettiar:** May I know whether after getting the police information, Government will place the matter before this House?

**Mr. C. M. G. Ogilvie:** Certainly.

**Mr. Manu Subedar:** Will there be a military inquiry also?

**Mr. C. M. G. Ogilvie:** No one, I think, has ever been tried twice for the same offence.

**Maulvi Abdur Rasheed Chaudhury:** May I know whether it is the practice to supply soldiers with air guns?

**Mr. C. M. G. Ogilvie:** Soldiers are not supplied with air guns, but occasionally it seems they supply themselves.

**Mr. Badri Dutt Pandé:** Have the soldiers been located?

**Mr. C. M. G. Ogilvie:** Yes.

**Mr. Sri Prakasa:** Are they permitted to have with them more arms than are prescribed? How do they get these air guns?

**Mr. C. M. G. Ogilvie:** Nobody is prohibited from having air guns, as far as I know.

**Mr. M. Asaf Ali:** Having regard to the extreme undesirability of these occurrences, will Government take steps to see that they do not recur?

**Mr. C. M. G. Ogilvie:** I do not think the Honourable Member quite followed the answer to my question, which was that the matter is still under investigation, and while it is under investigation and may easily lead to a trial before the courts, I naturally cannot here give any fuller information; but I agree entirely with the Honourable Member that any such occurrences are most deplorable.

**Mr. Sri Prakasa:** In view of the fact that Government are assured that the soldiers had air guns and practised with them, will the Government pass orders that soldiers must not use air guns so recklessly?

**Mr. C. M. G. Ogilvie:** I do not think I can possibly answer that.

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#### STATEMENTS LAID ON THE TABLE.

*Information promised in reply to unstarred question No. 28 asked by Dr. Sir Ziauddin Ahmad on the 27th August, 1937.*

#### GAZETTED OFFICERS GRANTED EXTENSIONS.

Ten officers were granted extensions of service during the calendar years 1935 and 1936. In two of these cases, leave under Fundamental Rule 86 (a) was refused and for this reason an extension of service was given.

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*Information promised in reply to question No. 859 asked by Maulana Shaukat Ali on the 28th September, 1937, and question No. 1025 asked by Mr. S. K. Hosmani on the 6th October, 1937.*

#### LEVY OF MINIMUM CHARGE ON ELECTRICITY IN NEW DELHI.

The Government understand that the New Delhi Municipal Committee sent a circular to consumers regarding the levy of certain minimum charges for electrical energy. As a result of objections received from consumers, the whole matter will now be reconsidered and the revised minimum charges will not be levied until this reconsideration is complete. In the circumstances, the Government do not think it necessary to give the detailed information asked for.

## THE MUSLIM DISSOLUTION OF MARRIAGE BILL.

**Mr. President** (The Honourable Sir Abdur Rahim): Legislative Business. The House will now resume further consideration of the motion\* moved by Qazi Muhammad Ahmad Kazmi.

**Mr. Abdul Qaiyum** (North-West Frontier Province: General): Sir, the Bill before the House is a very important measure, and if there is any measure the need of which has been so very strongly felt by the Muslim community in India, it is this measure, which aims at regulating and clarifying laws dealing with the dissolution of marriage where Muslim women are concerned and the effect of apostasy on marriage. Sir, it is a quite well-known fact that under Islamic law under certain circumstances a Muslim woman can approach a Qazi and secure the dissolution of her marital tie, but the dead hand of custom and the opposition of males and their aggressive attitude, and also the fact that the law on this point has not been properly appreciated by the Courts in British India have resulted in very great hardships in the case of Muslim women. The result is that while a Muslim male can dissolve the marriage tie at will, the woman is practically tied to her husband, and even if she has got grounds which are considered valid under Muhammadan law for a dissolution of marriage, she is absolutely helpless in the matter. Sir, it is a very good thing that my Honourable friend, Mr. Kazmi, has brought out all those points—under which a Muslim woman can secure the dissolution of her marriage and these have been inserted in clause 3 of the Bill. Sir, when this Bill becomes law, a long-felt need of the Muslim community will have been met and Muslim women will be able to get a dissolution of marriage in accordance with the Muhammadan law. There is one very important point raised in this Bill and it is incorporated in clause 5 of the Bill. It reads thus:

“The conversion of a married Muslim woman to a faith other than Islam shall not by itself operate to dissolve her marriage.”

On this point it is a well-known fact that owing to the attitude of Courts in British India and also owing to the hostile attitude of males, Muslim women have not been able to obtain a dissolution of marriage as easily as was desirable. The result was that with a view to escape from this marriage tie and with a view to put an end to a marriage which could easily have been put an end to under the Muhammadan law, women have been driven to change their religion much against their own will, much against their own inclination and the call of their conscience, with a view to secure the dissolution of the marriage. It has been decreed by certain High Courts in India that a change of religion or apostasy from the Muslim faith on the part of a Muslim woman constitutes a breaking of the marital tie. Now it is quite clear that the law on this point is not properly appreciated by the Courts in British India and there is a very large volume of opinion in favour of the proposition that a change of religion on the part of a Muslim woman does not entail the breaking of the marital tie. In this connection I may only quote one or two passages from a

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\* “That the Bill to consolidate the provisions of Muslim Law relating to suits by married Muslim women for dissolution of marriage and to remove doubts as to the effect of apostasy of a married Muslim woman on her marriage tie be circulated for the purpose of eliciting opinion thereon by the 31st July, 1938.”

[Mr. Abdul Qaiyum.]

well-known book on Muhammadan law written by Syed Amir Ali. From this, it will be obvious that there are two schools of thought and the more modern school of thought is in favour of the proposition that a change of religion on the part of a Muslim woman does not entail the dissolution of marriage. It is a well-known fact that under Islamic law a Muslim is allowed to marry a *Kitabia* or from among the people of the book. If the marriage of a Muslim to a Jew or a Christian woman is valid, there is absolutely no reason why a change of religion on the part of a Muslim woman should result in a dissolution of marriage. It has been remarked by Syed Amir Ali:

"As regards the effect of the wife's abjuration of Islam on the *status* of marriage, there is the same divergence of opinion between the ancient and the modern jurists. The lawyers of Bokhara, who adhere to the doctrines of the ancients (*mutakkadamin*) hold that whatever the religion she adopts, she would be imprisoned until she returns to the Faith, when she should be constrained to re-marry her former husband on a very small dower. The object of the doctrine they propounded as they declared was to prevent women from trying to escape from the bonds of matrimony by the abandonment of Islam."

Now, there is another view also:

"The jurists of Balkh and Samarkand, on the other hand, have laid down that when a woman abjures Islam for a scriptural or revealed religion like Judaism or Christianity, *her renunciation of the Faith does not dissolve the marriage.*"

So it is obvious that there are two schools of thought and the more modern school of thought believes in the doctrine that a change of religion on the part of a Muslim woman does not constitute a breaking of the marital tie. Then on page 392 we find another passage:

"Although the Indian Courts have preferred to follow the extreme Bokhariot view, I submit the more reasonable enunciation of the jurists of Balkh and Samarkand furnish the guiding principle for tribunals who have by their constitution to act according to 'justice, equity, and good conscience'."

Then the attitude of the British Indian Courts is commented upon by this well-known expert on Muhammadan law, who says:

"The British Indian Courts in their adherence to the strict letter of the ancient doctrine have, it is submitted, missed the spirit of the enunciation; and have, accordingly, treated in the case of a wife as a privilege what was intended to be a punishment. By the interpretation put on the rule, a Mussalman woman is thus enabled to obtain by a simple abjuration of Islam a dissolution of the marriage tie which had become irksome. The enforcement of the Mussalman law in its entirety regarding apostates has become impossible under existing conditions in most countries inhabited by Moslems . . . . It is absurd and contrary to the principles of justice that one part of the rule should be enforced whilst the other should be ignored."

Finally, there is one other passage:

"Suppose, then, a Mussalman wife abandons Islam and embraces Judaism or Christianity, there is no inherent vice in the continuance of the contract as a valid contract. It is only as a State offence that the ecclesiastical law pronounces against her a forfeiture of civil rights. But when that law is unenforceable, the union remains as valid as it would be were the wife a Jew or a Christian at the time of marriage."

Now from this it is quite obvious that a greater amount of authority, therefore, leans in favour of the view that a change of religion on the part of a Muslim woman does not result in the breaking of the marital tie; and there is all the more reason in support of this contention in the fact that the Muslim law in the matter of apostasy of males and females is not being enforced in British Indian Courts. So there is no reason why a part of this should be enforced, upon which there is a very great divergence

of opinion, and the other part should not be enforced at all. I for one do not object to a Muslim male or a Muslim female changing his or her religion of his or her own free will provided they do so desire to change their religion. But what we would like to prevent is this that a woman should not be forced, on account of the wrong attitude of the Courts or the aggressive attitude of the males, to seek relief from an irksome marital tie by changing her religion. There have been numerous cases in this country where the Muslim women have changed their religion not out of the dictates of their conscience, but in order to escape from an unpleasant marital connection. The attitude of the Courts on this point has been far from satisfactory. They have not appreciated the true principles of the Muslim law on the point and they have not given the due weight and attention which should have been given to it. So, this Bill of my Honourable friend, Mr. Kazmi, will remove a long-felt demand in the Muslim community inasmuch as it defines clearly and unequivocally the law relating to the apostasy of a married Muslim woman, and also inasmuch as it clearly brings out in clause 3 of the Bill the grounds on which a Muslim woman can approach a Court of law and can seek dissolution of her marriage.

Having said this much, there is, of course, one clause in the Bill, namely, clause 6, on which, I am afraid, I do not see eye to eye with my Honourable friend, Mr. Kazmi. Mr. Kazmi has inserted a clause that a suit arising out of marital disputes between a Muslim male and Muslim female should be decided by a Muslim Judge if one is available in the district, and, if one is not available in the district, then the nearest Muslim Judge in the neighbouring district, and he has also in sub-clause (e) of clause 6 of the Bill made a provision that appeals from the decision of the lower Court shall lie to the High Court and shall be heard and decided by a Muslim Judge of that Court. I, for one, do not subscribe and cannot subscribe to this doctrine. I think that the time has come when we should place implicit faith in our Judges to interpret the law if the law is clear and unequivocal. The trouble has arisen not on account of the attitude of any non-Muslim Judges but on account of the defective appreciation of the Muslim law on the point. I think it would be a dangerous precedent to lay down in a Bill or an Act that certain suits should be heard by a Muslim or a Hindu Judge and by no other Judge. What is required in this connection is a clarification of the law and once that is done there is absolutely no risk in leaving the question of interpretation to a Hindu, Christian or any other Judge. I hope that this particular clause will undergo a considerable change before the Bill becomes law. With these remarks, Sir, I support the motion.

**The Honourable Sir Nripendra Sircar** (Law Member): Sir, I am not opposing the motion nor do I desire to deal with the various clauses which are to be found in the draft Bill, but there is one aspect of the matter which this House has got to consider and I am just now placing it before the House. I believe most Members of this House are aware of certain decisions of at least the Calcutta High Court, a Court with which I am familiar. Those are the cases in which a Hindu wife on account of her conversion becomes a Muslim and then it is said that the Muslim law will apply. In a reported case—I believe the Judge was Mr. Justice Panckridge—and also in another reported case and in two unreported cases the procedure which has been followed and accepted by the Judges at least of the Calcutta High Court—I do not pretend to have made an

[Sir Nripendra Sircar.]

extensive study of the subject—was this. It has been laid down that if a Hindu wife becomes a Muslim, adopts the Muslim religion, then she is entitled to call upon the Hindu husband giving him the option either of embracing Islam or, failing to do that, the marriage stands dissolved. Now, that has been accepted by the Courts.

We had another development in a case which was tried by the Subordinate Judge, I believe, of Jessore last year and it is pending still in the High Court. It is a case of double conversion. The Jessore wife was displeased with the husband and on the merits of the case I wish to say nothing. She then became a Muslim and the procedure laid down by the Calcutta High Court was followed. The wife sent a letter through a pleader calling upon the husband to become a Muslim or to take the risk of the marriage being dissolved. I believe the husband, instead of considering that a risk, was extremely pleased and he said: 'No, I am not going to become a Muslim', and the marriage stood dissolved. Then, later on, this Muslim wife, or rather the wife who had become Muslim, gets herself re-converted into Hinduism and then marries not under Act III of 1872 but according to alleged Hindu rites. It was obvious that both conversions were stratagems to dissolve, to get rid of, the marital tie. But the courts have laid down that that does not matter. The Court has not got any power or any business to inquire as to whether the conversions are genuine or the conversions are merely devices for getting rid of marriages. The Jessore Court said that the last marriage is valid.

The point which I want the House to consider is this. Assuming that the Muslim law is going to apply to the Muslim wife after this Bill is passed—I am assuming for sake of argument that the Bill will be passed—in that case if the Muslim wife changes her religion, the marriage tie is not dissolved. But what will happen to the Hindu wife, who becomes a Muslim? Will the Muslim law then apply to her? That is what is being done in the Courts. So, it is a case of Muslims having it both ways. So far as the Muslim wives are concerned, it does not matter whether the conversion was genuine or merely strategic, the marriage remains good. But when the Hindu wife becomes a Muslim, then the Muslim law applies. And if this procedure is followed, she will send a pleader's letter and the charge will probably be one rupee. If she sends a letter, then the marriage can be dissolved. So, I think my friends, the Muslims, may have it both ways. That, however, is a matter about which I wish to say nothing at the present moment beyond pointing out that this is a serious aspect which has got to be considered. I do not oppose either the circulation or the whole principle of the Bill, but I thought it my duty to place before the House a very serious situation which may arise so far as the Hindus are concerned if this Bill is passed unless it is properly amended when it goes to the next stage, namely, the Select Committee. I support the motion for circulation.

**Maulvi Muhammad Abdul Ghani** (Tirhut Division: Muhammadan): Sir\*, today, as on the last occasion, clause (6) of the Bill has been objected to on the ground that according to this clause, only Muslim judges will decide cases of dissolution of marriage, and that from Government point of view this would involve administrative difficulties. My Honourable friend, Mr. Abdul Qaiyum, is inclined to this view. My Honourable

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\*Translation of the speech delivered in the vernacular.

friend, Sardar Sant Singh, has said that it would not be desirable to introduce communal considerations into the law. It is indeed true that one won't see the beam in one's own eye but would readily detect the straw in the eyes of others. My Honourable friend, Sardar Sant Singh, should know that a special Gurdwara Act is there for his own community, and that under the provisions of that Act there is the Gurdwara Tribunal. There is also a tribunal under the provisions of the Madras Hindu Endowments Act, who is paid from the taxes collected from all the other communities.

Sir, it is never the intention of either the Mover or the supporters of the Bill to see that room should be made for the appointment of Muslim judges, but it is equally a fact that a non-Muslim judge may not be so thoroughly conversant with the Islamic Law as a Muslim judge. Nevertheless, the clauses of the Bill are so very clear that if there is no Muslim judge in any particular place, any other judicial officer of any grade may hear a case of dissolution of marriage. That being so, the plea of difficulties does not arise. As the Bill is being referred for public opinion, I see no point for objection at this stage. I, therefore, support that the Bill be circulated for public opinion.

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

"That the Bill to consolidate the provisions of Muslim Law relating to suits by married Muslim women for dissolution of marriage and to remove doubts as to the effect of apostasy of a married Muslim woman on her marriage tie be circulated for the purpose of eliciting opinion thereon by the 31st July, 1938."

The motion was adopted.

## THE CHILD MARRIAGE RESTRAINT (AMENDMENT) BILL.

**Mr. B. Das** (Orissa Division: Non-Muhammadian): Sir, I beg to move:

"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."

Sir, the applause that greeted the introduction of this motion which I have just read shows that the mere man is apologetic and wants to undo the wrong that he has so far done to the women in this earth. Sir, so far, every country and India particularly is ruled by man, and man-made laws have all along governed the conditions of women and as woman, she has all along suffered. Adam sinned and Eve had to atone for that sin. The accounts of modern Adams show that they have all along sinned and the women--the modern Eves--suffer hereby.

Sir, it was in 1926 that Mahatma Gandhi wrote in *Young India*:

"Where are the number of men who will work among the girl-wives and girl-widows and who will take no rest and will leave none for men at all till girl marriage became an impossibility."



[Mr. B. Das.]

Sir, the women of India by their hard work and by their arduous work have justified their position. They have carried their agitation from towns to hamlets and every village is today ringing with the agitation that women-workers have created and today almost the whole of India is trying to undo the wrongs which man has perpetrated by his selfishness. The women all over India were not satisfied with the Sarda Act which was passed in 1929. The women were not satisfied with the way in which that Act was administered by the magistracy all over India. They, therefore, went on agitating and the result of that agitation is the Bill which I have just moved for reference to a Select Committee.

Here I must pay a word of tribute to one of our old colleagues in this House, I mean Diwan Bahadur Harbilas Sarda, who though not present here is resting at Ajmer, and here I should remind the House of the indefatigable services which he rendered for the emancipation of women by placing the Child Marriage Restraint Act on the Statute-book. Sir, the Diwan Bahadur has blessed my Bill and Honourable Members will read his opinion in the List of Opinions circulated to the House. He says:

"I wholeheartedly support the Bill and I appeal to the Government to make a genuine effort to stop this corroding evil and protect innocent girls from the oppression which kills some and desolates the lives of others."

Sir, the women of India in their sorrow and suffering received great sympathy from women all over the world. They received valuable support from men and women in England. Some of these letters are before Honourable Members and I will just refer to one or two of them. First of all I must pay a tribute to Miss Eleanor Rathbone, M.P., for the genuine work which she has done for the cause of womanhood in India. Not only did she do a lot of work for the cause of women in India but after she went back, from her Indian tour in 1932, she published a book on child marriage which has already been referred to by my Honourable friend, Mr. Gadgil, and in which she has brought out all the horrors and evils of child marriage in India. In that book she made three recommendations which ought to be embodied in the form of a Bill to implement the Sarda Act and placed on the Statute-book. In fact my Bill is based on those three recommendations which have the full support of all men and women in England who sympathise with the social reform movement in India.

From the public opinions received, we find that even so late as 1936 some of the Provincial Governments were feeling that public opinion was not behind the proposals that have been embodied in my Bill. But since then the support which the Gallant Baronet, my Honourable friend Sir Henry Craik, has given to the proposals that are embodied in my Bill while he was speaking on another occasion when the House was discussing the Bill of my Honourable friend, Mr. Lalchand Navalrai, to improve the Child Marriage Restraint Act shows that public opinion in this country has so much grown that Government are satisfied that a change is necessary. Therefore, the noble Baronet has given his full gallant support. I was absent the other day and I regret it very much, none regrets it more than myself. But I take this occasion to congratulate my Honourable friend, Mr. Lalchand Navalrai, on his being the first in this House to

embody a new section in the Sarda Act. I see that my Honourable and esteemed friend, Mr. Aney, is not present. I was very glad to read a particular passage in his speech the other day where he stated, "We should not leave any loopholes in the Act for people to take advantage of and thus defeat its provisions". I have asked privately my Honourable friend, Mr. Aney, to give his blessings to the Bill that I have tabled. My Honourable friend is a big lawyer and a great Hindu Leader. I am glad he wants that the Sarda Act should be so implemented that there may be no loopholes for anybody to get out of it,—either the Courts or the parties that perpetuate these illegal child marriages. I also here acknowledge that my Honourable friend, Syed Ghulam Bhik Nairang, with all his ideas about the *Shariat*,—I do not think he knows the *Shastras*,—even blessed the Bill of my Honourable friend, Mr. Lalchand Navalrai, and in the end succumbed to it and congratulated him. I hope I too will have his blessings and congratulations by this evening.

Sir, I will now refer to the opinions. I will first refer to the opinions of some of the powerful friends that we possess abroad. The British Commonwealth League which has all along shown sympathy towards all social reform movements in India wrote a letter to the *Times* in 1936 under the signature of Nacy, Viscountess of Astor, Lord Lothian, Mrs. Elizabeth Cadbury, Miss Thelma Cazelet, Miss Eleanor Rathbone, Rev. William Paton, and other distinguished people and they requested the Government of India to accord full support to the Bill which is under consideration. That letter stated:

"It would be nothing short of a tragedy if the much-needed amending Bill introduced by Mr. B. Das, failed to become law."

Then there is another important association in England, the Indian Village Welfare Association, of which the Right Honourable Viscountess Halifax (formerly Lady Irwin), one of the *ex-Vicerines* of India, is the President; and I find many distinguished names, particularly names like Sir Abdul Kadir, Major-General Nawab Sir Umar Hayat Khan, well known to my Muslim friends and to myself. And they appealed to the Members of this Legislature and to the Government of India that the Bill we are considering now should be placed on the Statute-book.

I will now come to the Indian opinions that have supported me. Foremost stands the opinion of the All-India Women's Conference of which Rajkumari Amrit Kaur is the President, and the National Council of Women of India of which Her Highness the Maharani of Baroda is the President. They have not only supported all along that the Sarda Act should be implemented and that the Bill which I have introduced should be passed into law, but they have further suggested that the suggested section 18 of my Bill should be so strengthened that, when the adult husband is separated from the child wife and consummation of marriage cannot take place until the girl attains the marital age, and the husband or the husband's guardians are to support the girl wife during that period, the statute should so provide that the adult husband should not marry again. In India it is the Hindu custom, and also the Muslim custom that a man can take many wives, the Muslims being allowed four and the Hindus an unlimited number of wives. And if a man, bigoted as he always is, takes it into his head that he cannot have his child wife as his

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bed companion, he may marry another wife and kick out his girl wife. Unfortunately the Muslim and Hindu laws and other laws in this country are such that there is no chance for a woman. The law permits a man to marry again and again as many wives as he likes but the wife cannot marry again. That is misery because all laws are man-made laws and woman never had a hand in it.

Sir, I then come to some of the opinions which are more of a provincial and sectional nature. The National Christian Council of India, Burma and Ceylon strongly supports the Bill as also the various Indian Christian Associations; and the National Christian Council of India, Burma and Ceylon says that child marriage is still only too common among village Christians. I hope my Honourable friend, Dr. DeSouza, will take note of this and see that no child marriage takes place hereafter among the Christian community. Sir, I was particularly pleased to get a letter from the All-India Women's Conference, Calcutta section, which is signed by Mrs. M. A. Momen who is the President of the Calcutta constituency. Khan Bahadur Momen was an old Member of this House and I am glad that a Muslim lady presides there and has given full support to the Bill which we are now considering.

Sir, I am glad my Honourable friend, Sir Muhammad Yakub, is here. Nobody deplores as I do his banishment from this side of the House to the Treasury Bench. And now that he is a member of that Bench and knowing that the views of the Honourable the Home Member are the views of the Government of India, my Honourable friend cannot raise his voice of dissent as I was apprehending. Sir, Moradabad is a town which produces Knights,—it has given two Knights to the Treasury Benches,—and it also produces very fine brassware and art works. When I encountered objections from my Honourable friend, Sir Muhammad Yakub, I was somewhat disconcerted, but the very next morning I got a letter from the Moradabad Women's Conference signed by 187 ladies of Moradabad. I then counted the number of Muslim ladies in it and I found that 28 of them had signed this note that has been circulated to the Members of this House. Of these 28, there are ten who are maiden ladies because I find the prefix 'Miss'. That shows that there are ten maiden ladies who must be above 18 and who do not obey the mandates of my Honourable friend, Sir Muhammad Yakub, and who are still unmarried and who want that child marriage should be prohibited for ever. It seems the Knight of Moradabad does not shed any light in his own town. However, I welcome his presence here and I shall be glad if he will give me his whole-hearted support from the Government side. I am anticipating severe criticism from another quarter, I mean my Honourable friend,

12 NOON. Mr. Baijnath Bajoria, one of the prominent members of the Agarwal community in Calcutta, who is now present here.

One day last year at Simla he threatened me saying, do you know that Sardar is no more a Member of the Assembly because he moved the Bill known by his name and therefore we—we means what, infinitesimal microscopic minority of orthodox people—defeated him; you will not be a Member of this House if you do likewise. I said to him I was moving this Bill not only on my behalf but on behalf of half the people of India as well, that is, the women of India and also on behalf of the Congress

India, and if I am defeated I do not mind, but my Bill will be on the Statute-book. I have got a letter from the President of the All-India Agarwal Mahasabha and also one from the President of the Marwari Women's Association. It is very interesting to read the resolutions of the All-India Agarwal Mahasabha and the Marwari Women's Conference. They support my Bill and also the Bill of Mr. Lalchand Navalrai. Both have separate resolutions condemning Mr. Baijnath Bajoria for having tabled a Bill to repeal the Sarda Act. My friend has grown wiser, and he has not brought forward his Bill—I do not find it in the list. The Marwari Women's Conference says:

“This Conference of Marwari Women considers the amendment introduced by Mr. Baijnath Bajoria to the Sarda Act as fatal to the interests of Indian womanhood and while strongly protesting against it requests the Members of the Legislative Assembly to vote it down.”

There is a particular passage in the letter from Mr. Krishna Gopal Garg, General Secretary to the All-India Agarwal Mahasabha, which is very interesting from the point of view of Mr. Baijnath Bajoria:

“Before concluding I would like to say a word about the amendment to the Sarda Act introduced by Mr. Baijnath Bajoria, M.L.A. The gentleman belongs to my community, but he will not find a single supporter even amongst the five members of my community in the Legislative Assembly.”

I do not know who these five gentlemen are, but I hope Mr. Baijnath Bajoria will name them and will say what support he has here:

“Moreover the resolution opposing the said amendment was moved by Shrimati Kunti Devi, a young lady, and seconded by Mrs. Ranglal Jogodia, an elderly lady, both belonging to the community of Mr. Bajoria in the Women's Conference. Thus, these measures of social reform have more support from our womenfolk and that because they are the worst victims of social evils.”

I have been threatened, and the House will soon hear from Mr. Bajoria a long speech. I hope he will meet this point and will refute that women are not the “worst victims of social evils” in India.

**Babu Baijnath Bajoria** (Marwari Association: Indian Commerce): I will reply to all that, to all that nonsense.

**Mr. B. Das:** I do not know if my friend is using parliamentary language, I am not going to question it, but I welcome the heat in him because in the All-India Agarwal Mahasabha and Marwari Conference he must be in the infinitesimal microscopic minority of orthodox fellows and it is well known how some people are exploiting the opportunity of making money by these child marriages. I refer to priests and go betweens.

The other day Mr. Gadgil gave copious references to show that child marriages are on the increase, and although my friend, Mr. Ananthasayanam Ayyangar, who belongs to that benighted part of India, Madras, from where there is one-way traffic to Delhi, said that this was not the case, he stood refuted by his own colleagues from Madras, by my Honourable friends, Messrs. Gupta and Thirumala Rao. I was searching my papers, and I find a very interesting letter from the Honorary Secretary of the Standing Committee, Andhra Conference, Hyderabad, Deccan. That letter says that people always go to Nizam's Dominions to perform child marriages. That gentleman has collected statistics for one village adjacent to the Andhra province and these show that in two and a half years,

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1933-34, 1934-35, and 1935 to 15th May, 1936, 418 marriages were celebrated. Of these 418; 283 were of Brahmins, 189 Vaishyas, 25 Kammas, 88 goldsmiths, 8 Telagas, 3 Satanis, 1 Reddi and 1 Shepherd. The letter adds that there are many villages where such marriages are taking place. The House can judge that Mr. Ananthasayanam is ill-informed about Brahmins crossing the border and marrying baby girls in Indian States. I have a very interesting photograph of a three year child, married at the age of three and widowed at the age of three. Her name is Manamma and she is residing in the village, Jangam, near Narayanpoor, Nalgonda District (Nizam's Dominions). I think I ought to make a present of this photograph to the House so that it may appear in the proceedings, but if this cannot be done I make a present of it to Mr. Baijnath Bajoria, the protagonist of orthodoxy here. There are lakhs of widows at the ages 3, 5, 10 and 15 and if Mr. Bajoria collects statistics he will know how many lakhs there are.

Why is it that man has always been cruel, so heartless, to half the creation of God in this earth? And why should women suffer in this cruel man-governed man-ridden country? The women have no representative here and will the Home Member sitting on the floor of the House refute the arguments of orthodox men, like Mr. Baijnath Bajoria? The time has come when men governing this country should give an equal status to women and an equal place. We cannot go on keeping down half the people of India, the half who are angels, who are mothers to us, who are sisters to us, who are ministering angels to us, always helping men through their toils and troubles. I have learnt from our ancient culture and our ancient literature that there was no child marriage before: it has come recently, very recently: and men in the name of Shastras and Shariat and religion have laid down that child marriage must continue and girl widows must be there. I hope the time is coming—and I find the Government is so very sympathetic—when this House will be half women and half men. Not even my friend, Mr. James, can understand the problems of women and children. The agonies of women cry through all these laws and enactments that we men pass on the floor of the House. I take this opportunity to apologise to the women of India for the mere man that I am. By our selfishness, not only today or yesterday, but for ages and ages, some apology is necessary from this forum and I think every man here present, barring perhaps my friend, Mr. Bajoria, will join with me and will apologise for the wrongs, conscious and unconscious, that we have done to womanhood. The sympathy that I have received on the floor of the House will show to the women of India that we men, however, misguided, however, mistaken, we may be at times, we are now bent on doing our best by the womanhood of India. I will appeal to the Honourable the Law Member and the Honourable the Home Member that when this Bill is taken into consideration and is to be passed into law, they should nominate a representative woman on the floor of this House. Today, the women of India are ministers, parliamentary secretaries and members of Provincial Legislatures. Let one woman represent them on the floor of this House and speak out how women in India have suffered and what they want to be done in future. My Honourable friend, Mr. Asaf Ali, says "Why not do away

with half a dozen of the nominated Members behind the Treasury Benches and nominate half a dozen women?" I would welcome it if half a dozen or a dozen women Members are nominated—that will be the day when men will listen silently with prayer in their hearts to the wrongs done to the womanhood of India. With these few observations, I commend my motion to the House.

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

"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 Honourable Sir Nripendra Sircar** (Law Member): Sir, I am not opposing the motion which has been moved by my Honourable friend, Mr. B. Das. We are supporting this motion and before I come to make certain observations about two of the provisions in the contemplated legislation, may I dispose of some very important points raised by my Honourable friend, Mr. B. Das? For instance, I cannot let go unchallenged the statement that Mr. Baijnath Bajoria is microscopic. At any rate, I can assure the House that the Bajorias pay fees to worthy people which by no means are microscopic. Then my Honourable friend said that he would like this House to consist of certain individuals, viz., half man half woman. That will be an ideal state of things and possibly many marriages will become unnecessary; but so far as my knowledge of the census reports goes their number is not sufficiently large to enable us to select all our Members from that particular kind; and Government has no power to make any local inquiry in respect of any particular Member. My Honourable friend said that this Bill ought to receive our support. So it does. But in order that we may not be absolutely carried away by our enthusiasm, I simply want to place certain points before the House as regards the drafting of the Bill. I quite realise that that can be done at a later stage when the Bill goes before the Select Committee.

The three objects of the Bill are given in the Statement of Objects and Reasons. The first is the power of injunction. I am saying nothing about it, beyond pointing out that as it has been drafted it will mean that injunctions can be issued by Magistrates *ex-parte*, without hearing the person against whom the complaint is made. We know that injunctions issued *ex-parte* by civil Courts after proper consideration very often turn out as having done incalculable mischief; but in the case of a contemplated marriage, will the House really desire that a Magistrate should have the power without hearing the other side to issue an injunction to commit irreparable and incalculable mischief, loss of prestige and what not? I do not think that the power should be given to issue an injunction in that very wide form. That is a point which I beg respectfully to place before this House for their consideration.

About the second object I have nothing to say now.

The third object is for enabling the Court to require the husband of a child wife or if he is a minor, his guardian, to make provision for the

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separate custody and maintenance of the child wife and to refrain from consummating the marriage until she reaches the legal age for marriage or until a later date if it thinks necessary. Sir, I don't think that the language used is happily worded. Now, what is going to happen if that wretched guardian has not got the means for keeping this minor in separate custody? Supposing there is nobody who can be requisitioned other than the father-in-law's family to maintain her? Of course, if the State will make allowance for this and give a maintenance to the father for keeping the child separately and placing her in a nice little home, that is another matter, otherwise this will operate as a very great hardship, and it will be impossible in many cases. That cannot be done.

Then, Sir, it is said that the minor should be segregated until she reaches the legal age of marriage. That I can quite understand. But it goes on to say "until a later date if it thinks necessary", that is to say, the Magistrate will take evidence to decide what is the exact age and hour on which marriage can be consummated, whether it should be 15, 17, 18 or 20 years. I submit this requires attention in the matter of drafting. And the other matter which equally requires our attention is we should not enact a law which it will be impossible to enforce. Sir, as we are supporting the Bill and as we are accepting the principle of the Bill, I don't wish to make any further statement now. Sir, I support the Bill.

**Mr. Lalchand Navalrai** (Sind: Non-Muhammadian Rural): Sir, I am glad that the attitude of the Government on this matter has been very sympathetic, and now that the matter is going to the Select Committee, I do not wish to go into the pros and cons of the whole question, but I shall place certain points before the House for the consideration of the Select Committee. Sir, this mischief of early marriages was remedied to some extent in 1929. Since then there have been so many evasions and so many infringements of the provisions of the Sarda Act that it has become very necessary to amend the Sarda Act itself so that it may be obeyed properly and it may create a certain amount of fear in the minds of the public. With that object my friend, Mr. B. Das, has brought forward this Bill, and now that the Bill is going to the Select Committee, I hope no time will be lost in submitting the Report so that more infringements may not happen. Sir, I will illustrate the point by an incident which happened this morning. A man entered my room and asked me if my Bill had been passed. I said yes. Then he asked me when it will come into force. I asked him why he asks me that question, and when I took him into my confidence, he said that he has arranged two marriages of minor children and he wanted to know on what date this measure will come into force. Then I told him he could not expect me to tell him the date, and I advised him that he should not do any such thing, and I also explained to him that the attitude of the Government was far stronger than my own attitude in this matter. I further told him that my Bill would have come into force on the day on which the Governor General would have given his sanction, but the Government have amended the Bill and said that it would come into force as soon as it is passed. I warned him that he should not do any such unwise thing, but he seemed to be well posted and said he knew that the Bill would go to the Council of State, and in the meantime he would finish those

two marriages. Therefore, I say, Sir, if you do not make this Bill more severe and return it soon from the Select Committee, many such infringements will take place.

Sir, although I am going to be in Select Committee, still I wish to place certain points before the House for their consideration. There are many obstructions which are not in the way of ordinary offences under the Penal Code but only under the Sarda Act. To begin with, lawyers know that anyone can file a complaint of an offence, except in a few cases which have been provided for by the Criminal Procedure Code. In those cases only the aggrieved person goes in, otherwise in every criminal offence anybody can go and move the Court by a complaint. That is not the case here. Why should it not be the privilege of anybody and everybody, just as in other offences, to get into the Court and put in a complaint? And it is for the Select Committee to remove this obstruction.

Then the second point is with regard to deposit. When this Sarda Act was passed there were several people who could not appreciate the necessity of this measure, and, therefore, certain impediments were put in, but now that the public have come to know the exact utility of this measure, I think that this obstruction should be removed.

Next, if a man goes to a Magistrate to file a complaint, he will be asked to bind himself in the sum of Rs. 100 to be paid as compensation to the accused if the offence is not proved or if it is a frivolous complaint, but really there should be no such advance measure since the Criminal Procedure Code already provides for it. Section 250 says that if there is any vexatious or frivolous complaint, the Magistrate can fine him to the extent provided therefor, and it is for the Select Committee to consider why this impediment should not also be removed in this case.

Then the third thing is with regard to the preliminary inquiry. What is done now is, if a man goes to the Magistrate under the Sarda Act, the Magistrate finds that he has perforce to make a preliminary inquiry first. I don't suggest that there should be no preliminary inquiry in every case. At present, the criminal law is that a Magistrate has power to make a preliminary inquiry if he has any doubts about the truth of the complaint. Why should there be compulsorily a preliminary enquiry held? This is also a point for the Select Committee to consider.

According to the Act, a complaint can be filed only before a District Magistrate. Why should it be so? The District Magistrate has first class powers, similarly every first class Magistrate has equal powers. Why should such matters go only to 1st class Magistrates? The District Magistrate may be on tour, he may be absent from the station, and in such cases no complaint can be filed until he returns to the station. That obstruction also should be removed.

Then, Sir, I find that the punishment now provided for is not being cared for by anybody. It requires a severer punishment. What it should be is, of course, for the Select Committee to consider.

With regard to the *ex-parte* injunction, my Honourable friend, the Law Member, said an injunction is absolutely necessary but whether it should be issued *ex-parte* is a question. There are complications in this. If a marriage takes place and it is not prevented in time before it takes place, then it becomes *factum valet* according to the Hindu law and that marriage cannot be annulled. This injunction provision is a very



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sound one, but whether it should be *ex-parte* or not should be considered by the Select Committee. If it is proved to the hilt before the Magistrate that the marriage cannot be avoided except by an injunction, then in that case he can do it. Whether or not it should be *ex parte* and whether it should be at the discretion of the Magistrate are questions to be considered.

As regards the custody of the girl so married, I have received certain representations from people that a marriage, if it takes place in spite of the provisions of the Sarda Act, should be considered void. That is a very serious question. If it is going to be declared void, then the parents of the girl would feel it very much and, therefore, it would not be right to hold it void but in this case it is very necessary that this provision of separation should be there. What it should be ultimately is for the Select Committee. I must say this that separation is made necessary, because unless you separate them you cannot possibly avoid consummation at any time. Therefore, the provision has been made that this separation is with the object of having consummation only after they become mature.

One word more about my friend on the other side, Mr. Bajoria. It has been said that he is a die-hard. I may tell him that he should not be a die-hard. In my opinion personally he is not a die-hard. There are a few Marwaris who go round and tell him to oppose this Bill. If that is why he is opposing, then I have nothing to say against him. (Interruption by Mr. Bajoria). You are so sincere and so lovely. I must inform the House that after my Bill was passed I have received several letters (Mr. M. Asuf Ali: "Of congratulations?")—no I will not say out of modesty but of admiration for the House for having passed this Bill. They are from Agarwal Marwaris of Ajmer. Other Marwaris should take a leaf out of their book. I hope my friend will not be in opposition. If his opposition is only for namesake, then I do not object. With these words, I support the motion.

**Pandit Nilakantha Das** (Orissa Division: Non-Muhammadan): I was a Member of this House and also of the Select Committee when Mr. Har Bilas Sarda's Bill was passed. I know that it took about three years to come to a definite decision, not because the Bill, as such, was a bad Bill but because there was not a majority in the country for the Bill as it was drafted. It was finally decided that the Act should only indicate a social outlook and be framed in such a way as to prevent any social persecution if a man marries his boy or girl young. Practically that was done in the Act, and now after about nine years there comes this Bill to improve that Act. Some measures in the Bill are very stringent but I am very glad to learn from the Government reply that they are against many undesirable provisions of the Bill. First, the Government are practically against the injunction proposed in it.

**The Honourable Sir Nripendra Sircar**: No, no. I said that the question to be considered is whether notice should be given to the other party.

**Pandit Nilakantha Das**: I personally think that such an injunction will create difficulty. The second thing is the separation. There, too, comes the economic consideration involved in such a measure, and it is quite

reasonable that if the Government is not prepared to provide for the maintenance of the girl, under the present circumstances, I agree that such a provision should not become law, even apart from other consideration.

**Mr. N. M. Joshi** (Nominated Non-Official): It is 'may require'; not 'shall require'. The Court has discretion.

**Pandit Nilakantha Das**: Even that discretion may not be given at the present stage. Then the question is whether the complaint will be made by a person, or the Court will take cognizance otherwise. The Court may take cognizance. It is a very small improvement and practically if there are some safeguards, then the present Act will remain practically as good or as bad as the Sarda Act.

**Mr. N. M. Joshi**: You want a stronger Bill?

**Pandit Nilakantha Das**: I do not want exactly a stronger Bill but what I want is that at this stage we should not be cultural fanatics. I am rather the other way. In my opinion we shall do the best thing under the circumstances, if, in our over-zealousness, we do not change the existing Act out of recognition. We shall keep it practically the same. So, with that object in view I support the motion for a Select Committee.

But many things have unnecessarily been said about statistics of young wives and the health of the nation. They are not only controversial but rather irrelevant in this Bill. If this is conducive to the health of the nation, then there are many other things which are also conducive to the health of the nation. They are not surely to be all regulated by statutory provisions. Here again particularly the doctors do not agree. I have read of eminent medical opinions in favour of child marriages, upon the point at what age a girl should be allowed to bear children. Now it has been brought out in agricultural science . . . .

**The Honourable Sir Nripendra Sircar**: You are thinking of bulls. We are thinking of men.

**Pandit Nilakantha Das**: But it is animal science all the same, to which men also are subject. Now, it is established that even a plant has the best chance of its existence if it bears fruit the earliest, and that plant lives the longest which bears fruit the earliest, as agricultural science will tell you. So, let us not here go into these matters which are highly controversial. Now, Sir, I have seen in my own Province that in Sambalpur even expectant mothers contract marriages for their children that are still in their wombs. This was till very recently the general custom in that district. But nevertheless the progeny of these child marriages are generally the strongest and the longest lived, very robust and very handsome. (Interruptions.) My friend, Mr. B. Das, will bear me out when I say that the children of such parents in Sambalpur are much better in every respect than the children of people in any other part of India. In the coastal districts of Orissa, on the contrary, where the marriage age is generally post-puberty, the health is not so good and the progeny are not so strong and virile. Sir, I have seen this. But admitting that late marriage is conducive to the health of our villagers, should we enforce it among them by statutory compulsion? The health of the nation will be

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improved by the administration of quinine and by vaccination and so forth; but should we, therefore, enforce it by law that a man who does not take quinine in a malaria-stricken area should be imprisoned for four months? (*An Honourable Member*: "Why not?") This will be legislative fanaticism. In such things the legislator should give a lead and nothing else.

Sir, many things again have been said even on Mr. Lalchand Navalrai's Bill which were not directly relevant. Perhaps, speeches were prepared for other things and were delivered even on that occasion.

**Mr. Lalchand Navalrai**: I hope you are now satisfied with my Bill.

**Pandit Nilakantha Das**: That was a good Bill on the existing Sarda Act and a simpler affair after all. Sir, even today many irrelevant things have been said perhaps not for this House, but for the outer world—not on the Bill but for the Gallery. What is it to say here that Man is always cruel to woman—throughout history, in culture, and perhaps since the days of creation! (*Interruption*.) On that basis surely, we should not contemplate enactments like this. Let us for a moment examine, who is cruel to whom? Man to woman, or woman to man? As in all other human institutions, so even in respect of the institution of marriage, the progress has been from 'status to contract'. What was the original status? How has the contract of marriage developed? We must remember that there was a time—and many eminent anthropologists are of this opinion—when neither the man nor the woman knew that conception was the result of their coming together, i.e., of sexual act. Their sexual act was to them a mere functional action just like answering the call of nature or any other like operation. For long ages such sexual act was not known to have any connection with the child-birth of the woman or her conception—they did not know this. Then gradually the concomitance of the sexual act and the conception revealed itself to them as a result of long practice and observation. Then, after that,—and these are the stages through which early human society passed and many anthropologists are of this opinion—the woman sat down with the child but the man responsible for the child was not there to take care of it. He was not even known or spotted. The home was matriarchial and so came to be the society. There are such homes and such societies in the world even today. Then after a time contract, called our marriage, came to take its place. The woman said, as it were, "you are responsible for this child of mine, where are you going? You must come and marry me and you should take charge of my children". Then the man said, "what is this? Why should I take charge of these children? How do I know that the children are mine? You must give me the guarantee that your children are mine." So, that is the substance of the contract, out of which came the marriage institution. Sir, a man must breed, he is to distribute seed like any other male creature in nature. He is by nature free, as free as the bird of the air. For woman it is that he is bound down to a marriage and a home. In this contract he has given up his freedom for woman. So, these very controversial questions have no place in the discussion on this Bill. So also is the point of equal status of man and woman. Equality does not mean uniformity. Want of functional uniformity in the very arrangement of nature precludes

that equality of which many of our woman-minded men make so much of. But why should we bring in these things into the discussion of a Bill of this nature?

So, I suggest that these extraneous matters should not be discussed in connection with a simple Bill like this. Some women have given opinions; whether they are representative women or not we do not know. We should dispassionately consider whether this measure will be good. We are the representatives of the people, and we should see whether it will be convenient to the majority of our people; that is the only consideration by which we should be guided. But we should always remember that we should not be fired by cultural fanaticism—we should not assert that such and such a measure will give salvation to our race, to our nation; it may be that most of us may be fired with such a belief, verging on a faith; but should we on the point of the bayonet enforce it on the country at large? The tendency seems to be, in all our speeches, in all our conversations, that we feel somehow or other by our cultural eminence, or because we believe we have gone to a very high stage of culture, that such and such a thing will give salvation to our race. Then, we must come out like a band of fanatics and enforce it on the nation. But we must realise that we are representatives. The Select Committee ought to remember that there should be no such measure which should be enforced with a proselytizing culture, a culture which wants to proselytize others without educating or leading with reason. That they should not do; for a culture which proselytizes is rather crude. Besides, a proselytized culture is also slavery and under that culture man does not grow. With this psychological background they must approach measures like these even in the Select Committee and in this House. In this Bill, after the Government speech, I am quite hopeful that this measure will be a necessary corollary to the existing Act and I support it.

**Mr. Sri Prakasa** (Allahabad and Jhansi Divisions: Non-Muhammadan Rural): Sir, I rise to support the motion of my friend, Mr. Das, who, because of the eternal lisp in his voice, may almost be called the eternal child of this House. I should have preferred that the Bill might have been passed into law straight off instead of going through the agony of a Select Committee. The Bill, I think, is beautiful in its drafting and complete in itself, and meets most, if not all, the defects of the existing Act on the subject. But, as objections have been raised by various Members of the House to many of the provisions of the Bill, I think it is but right that it might go through detailed discussions in a Select Committee and come before the House again for final passage.

In the meantime, with your permission, I shall deal with some of the provisions of the Bill. Marriage is always a delicate subject of discussion or even of conversation; and therefore it is always particularly difficult for a modest man like myself to talk about it, especially when questions of half-man and half-woman and even of local inspections have been mooted before the House. But before I say anything further, I want to make it quite clear that I am supporting the Bill on behalf of men. I do not want to pretend to be a champion of women and to seek cheap notoriety by pretending that I stand for them. It is best that women may stand for women and men for men; and I think that when the problem of marriage inevitably involves both man and woman, in the very nature of things, it is best that each sex should stand for itself. I think that early marriages are worse for men than even for women; and therefore

[Mr. Sri Prakasa.]

in the interests of the manhood of my country, I must oppose all attempts at early marriages. When one talks of marriage one is inclined to take into consideration only the physical aspect of it. My friend, Mr. Nilakantha Das, with his vast knowledge of anthropology, has proved conclusively to the House that children born of mothers who are still themselves in the wombs, are the healthiest in the world. I am willing to agree to what he says. I may agree with him also when he says that no physical harm is done to parents or children when there is early marriage. But the trouble is—and that concerns men particularly—the early responsibility that early marriages entail. The result is that in our country there is practically no youth. Youth is just the time when the latent energies and ambitions of man have a chance of evolving; and when, by early marriages we are all deprived of the very possibility of youth in its fullest and freest sense, then there is serious set back to the growth and progress of society. Mr. Das has also talked about widows. After all, when you come to think of it, widows are more dangerous to men than to women. Therefore, it is in the interests of men themselves that we must save ourselves from early marriage.

If we look at the provisions of the Bill, we shall find that there is a wholesome provision, which is not in the existing law, of stopping the performance of marriage in time. The existing law only deals with marriages actually performed. But, here, Mr. Das very rightly lays stress on the point that when an early marriage is going to be performed, there should be some provision of the law by which it could be stopped. Therefore, that particular provision is to be welcomed. I should have preferred a provision making early marriages a cognizable offence, because in that case there would be neither any danger of harassment on the part of men having a grudge against their neighbours, nor any possibility of people hesitating to prosecute when a wrong is being committed for fear of earning the displeasure of their relatives. But I can realise that feelings being what they are, it is possible that the time has not yet come to make an offence like that cognizable, and that it is best that private parties, as a rule, should take the initiative in this matter. I am glad that Mr. Das is doing the second best and is making a provision that a Court can initiate proceedings on its own motion if it is convinced that an early marriage is being performed or has been performed. Mr. Lalchand Navalrai was doubting the desirability or the necessity of requiring the deposit of securities, etc. I am one with him. But I can also realise that there is a possibility of unnecessary vexation and harassment of individuals. Therefore, if there is a provision requiring a Court to take security if it so likes in particular cases, I think the objection can be safely met.

The Law Member very rightly pointed out the many difficulties that may arise regarding the ensuring of early married pairs living apart. The points that he made are worthy of consideration. But what has one to do when the social conditions of our country are what they are. In the United Provinces, for instance, every marriage of the orthodox type goes through three stages. The first is the betrothal where parents agree to marry their children. Then, Sir, there is a formal ceremony of marriage when the marriage is legally and religiously solemnised. Lastly, Sir, there is the third stage of consummation. Now, as parents

are anxious to marry their children, especially their girls, and feel very anxious if girls attain a particular age without being married, they go to the parents of all eligible bridegrooms and ask them to fix up the marriage saying that it would be only in the nature of a betrothal and that the actual marriage may be performed later. As soon as the betrothal is finished, there are pourparlers and interested go-betweens get busy; and it is agreed: "Well, let us have the marriage, the consummation can wait". Then the marriage is solemnised and the parents think that no harm has been done and that actual consummation will come in its own good time. But, Sir, there is a very convenient and almost unavoidable factor in the Hindu, and I am sure in all other Indian, communities, namely, the sister-in-law; and when a bridegroom is on a visit to his father-in-law's house—and in the early days such visits are not at all rare—the obliging sister-in-law comes on the scene and, before anybody knows what is going on, the bride and the bridegroom have met. Now, Sir, that you cannot avoid. Thanks to the sister-in-law to whose lures these brides and bridegrooms fall as willing victims, we have to have some arrangement by which the pair, if they happen to have been married earlier than they ought to have been, should be kept apart. I am not quite sure what practical arrangements will be possible and what suggestions will be made by the Honourable the Law Member himself in the Select Committee, in order to make the Bill practicable. To my mind, there is no doubt that some provision has got to be made so that the two are not to come together if they have married before they ought to have done, because of the folly of their parents.

Sir, I shall end with a few words of appeal to my Honourable friend, Babu Baijnath Bajoria. I think he does represent a school of thought that has got to be taken into consideration. I am not one of those who would laugh at the existing feelings of any class of my people. After all, as Bernard Shaw has said, we regard all those beliefs to be superstitious which have ceased to be our own; and when a large number of Members of this House have ceased to believe in early marriages, they can lightly make fun of those who still adhere to the older beliefs. My Honourable friend, Babu Baijnath Bajoria, is one of the old guard; and, instead of laughing at his faith, I would like to persuade him to give up his opinion and come in line with the current thought of the world. Sir, it is within his own knowledge as one who is greatly interested in the social well-being of his own community, that a great deal of harm is being done to men and women of that community by their persistence in early marriage. He knows how the throwing of responsibility on young and immature shoulders does result in harm to the physical and moral well-being of the race. I should beg of him not to oppose this measure on the ground of religion being in danger. No religion can ever be in danger when a right thing is being done. After all religion stands for the well-being of society. Religion has been invented by man in order that society may be held together and may evolve and prosper from age to age. To say that something that was done thousands of years ago is good even today is not to follow religion but to ridicule it. I beg him not to quote copiously from the *Shastras* because that might bring upon his head copious quotations opposing his point of view from others. I do not pretend to be very learned in the *Shastras* but I do know from some such study as I was able to make of them that in them you can find support for practically anything you like.

**Babu Baijnath Bajoria:** Why don't you quote some of them?

**Mr. Sri Prakasa:** It would be difficult for me to quote the original verse of Manu because I have not brought it with me. I have forgotten the original words. I recollect that it clearly says—I can bring the book later on if he so desires—that no girl should be married till three years after she has attained her puberty; and as the age of puberty in our country is 13 or 14 for girls, I think the age limit fixed in the Bill of my Honourable friend, Mr. Das, is within the mark and not beyond what Manu has prescribed. If you come from Manu to Parashara, he will find many other things that would give him the shock of his life. Therefore, it is no use throwing treatises and text-books about in a wanton manner. The best thing is to depend upon one's own reason and intellect. After all those who are responsible for the writing of these *Shastras* were men just as we are; and that they wrote what they did because they thought that was good for the times in which they lived. They depended upon their knowledge and their reason; upon their experience and their intellect, to write them; and if today the times have changed, and if today the needs of society require other laws and other ways, then it is time that we also wrote a new Parashara and a new Manu in conformity with the requirements of the time. In the time of Manu surely there was not British Government in the land and I ask my Honourable friend, Babu Baijnath Bajoria, what he and his community have done in order to get the country free from the clutches of the foreigner. In fact, if I am not mistaken, that community has been in the forefront in consolidating that rule in Calcutta and elsewhere. Where in our *Shastras* is there any laudation of foreign rule, of tamely submitting to the rule of a person from outside the land? As regards those things that require grit and courage, that require fight and sacrifice, we tamely surrender regardless of the tenets of our faith. But when it comes to torturing young girls, of loading young boys with responsibility which they are unable to bear, we call to aid our *Shastras*.

If that is my religion, I do not belong to it. But I am sure that the Hindu religion and every other religion that has been produced by man in the past, or may be produced in the future, can only depend upon reason, and knowledge, upon intellect and experience; and if our reason and knowledge, our intellect and experience today say that we should go along certain paths for the behoof of our children and our children's children, we must tread that path and not the path that we suppose our ancients laid down long ages ago. Let it not be forgotten that as time lays its dust on many things it also lays its dust on the texts of religions; and it is possible that interested priests and vested interests are interpreting the tenets of one's faith in a very different way to what they were originally meant to convey. I have no doubt, Sir, that the Hindu religion like other religions has suffered at the hands of priests, and potentates, of vested interests, and selfish men. And today many things are being interpreted in a manner in which the founders never meant them to be taken. Therefore, Sir, I hope that my Honourable friend, Mr. Bajoria, and all those who may think with him, will not only depend on what Manu or Parashara or other great givers of laws of the past have said, but will use their own reason and knowledge, their own experience and wisdom, in order to evolve a new *Smriti*, a new *Sruti*, a new *Shashtra*, a new *Shariat*, a new something.

suitable to the needs of the time, so that human beings may prosper and may grow higher and higher in stature and greatness from century to century.

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.

**Sir Abdul Halim Ghuznavi** (Dacca *cum* Mymensingh; Muhammadan Rural): When my Honourable friend, Mr. B. Das, asked my permission to put me on the Select Committee I readily accepted the position. The object of that was that I wanted to move certain amendments in the Select Committee; although I am sure that I shall be in a minority and shall be defeated. I wish to make my stand on the Select Committee and put in my amendment irrespective of whether it is lost or whether it fails. Many of the Honourable Members here are not aware of the object Mr. Sarda had in view when he brought in his Bill. With crocodile tears he came to this Honourable House and, when he asked for the Select Committee of his Bill, what did he say?—

“Sir, the primary object of the Bill is to put a stop to child widowhood: (*That was the primary object*). No country in the world except this unhappy land presents the sorry spectacle of having in its population child-widows who according to the customs of the country cannot re-marry.”

Sir, that contingency does not exist amongst the Mussalmans. Therefore, this Bill should not apply to the Mussalmans at all. The object was, as was pointed out by the Honourable the Mover, to prevent child widowhood because there was no re-marriage of widows. I would have welcomed a Bill today by Mr. B. Das to make widow marriages legal and not a Bill . . . . .

**An Honourable Member:** It is already legal.

**Sir Abdul Halim Ghuznavi:** If there is a statute I would welcome Mr. B. Das going into the country and preaching widow marriage instead of coming in with this Bill to enforce it. What did he further say?—

“Enforced widowhood is a feature peculiar to Hindu society, and when we consider that some of the victims of this pernicious—I had almost said inhuman—custom are babies eight or ten months old, Honourable Members will realise how urgent and imperative is the call for legislation in the matter.”

When Mr. Sarda introduced his Bill, he introduced it only for the Hindu community . . . . .

**Mr. M. Asaf Ali** (Delhi: General): On a point of order, I wonder if all this is really relevant to the discussion of the Bill. Here we are concerned with a *fait accompli*: this Bill only extends the scope of the punishment and does nothing more. The principle and the provisions of the Sarda Act are on the Statute-Book. This Bill does not seek to extend the scope of the Act at all in any manner in respect to its principle, but only seeks to make it effective. That is all. I do not know how the discussion of the principles of that Act is relevant to this Bill.



**Mr. Deputy President** (Mr. Akhil Chandra Datta): I hope the Honourable Member will try to make it more relevant.

**Sir Abdul Halim Ghuznavi**: I want to make it perfectly clear to this House that the House should be aware of what was the original Bill for, which we are now coming to amend.

**An Honourable Member**: Everybody knows it.

**Sir Abdul Halim Ghuznavi**: My Honourable friend was not here: everybody does not know it.

**An Honourable Member**: I do not know.

**Mr. M. Asaf Ali**: You had better read the proceedings.

**Sir Abdul Halim Ghuznavi**: Now, Sir, mark this, the second paragraph of his speech:

"The Bill before the House does not attempt to lay down the ages at which boys and girls should marry" . . . . .

If you interrupt me you will hear more from me, but if you will not interrupt me I will finish as soon as possible. He says that for Hindus that was done by their law-giver Manu, who laid down that a girl may marry three years after she attains puberty, and that Doctor Dhanwantri, a great Hindu authority on the subject, says that ordinarily girls attain puberty at the age of 16:

"The social and domestic environment of the present day and the other things have perhaps slightly lowered the age in India, yet as according to Manu marriage is three years after puberty, even at the present day the marriageable girl cannot be below sixteen."

Now, Sir, this is the Bill that he introduced first, and to our surprise what did come out from the Select Committee later on? It was a Bill purely to restrict Hindu marriages, and the reason was there was no re-marriage of widows. That was the original idea of the author of this Bill:

"Whereas it is necessary to regulate the marriages of children among the Hindus." why then do you include us? That evil does not exist amongst us, Mussalmans.

**An Honourable Member**: It does exist.

**Mr. Sri Prakasa**: In Benares Mussalman widows are not re-married, owing to social convention.

**Mr. M. Asaf Ali**: Once again I must rise to a point of order: all this discussion is not relevant to this Bill.

**Mr. Deputy President** (Mr. Akhil Chandra Datta): The principle of the old Bill is not before us now. The Bill that is now before us is only intended to facilitate the more effective enforcement of the Act, that is the whole question now before the House. I do not think we should go behind this Bill and start a fresh discussion of the principle of the old Bill.

**Babu Baijnath Bajoria:** Even Mr. B. Das today mentioned about these widows!

**Sir Abdul Halim Ghuznavi:** I think I am entitled to move an amendment that this particular Bill should not apply to Muslims. Therefore, I want to adduce arguments that it should not apply to Muslims. My Honourable friend has just now pointed out that the evil does exist among the Muslims. His colossal ignorance of the Holy Koran has made him say so . . . .

**Mr. M. Ghiasuddin** (Punjab: Landholders): I never said anything about the Holy Koran. I said that the evil does exist by social custom.

**Mr. Sri Prakasa:** It is the colossal ignorance of my friend of social customs in India, that is so pitiable.

**Sir Abdul Halim Ghuznavi:** The Koran enjoins that widows should be re-married. . . .

**Mr. M. S. Aney** (Berar: Non-Muhammadian): If they like.

**Sir Abdul Halim Ghuznavi:** There is no question of any compulsion; it is the law. If they do not follow it, it is their fault . . . .

**Mr. Sri Prakasa:** But if no men are forthcoming to marry them, what will you do?

(Interruptions.)

**Sir Abdul Halim Ghuznavi** The Honourable the Leader of the Opposition wants to close the debate soon—you are only preventing me from doing it. As I was pointing out, that was the Bill that Mr. Sarda the Great had introduced in the Assembly. It was only intended for the Hindus because there was no widow re-marriage among them . . . .

**Mr. Sri Prakasa:** May I inform the Honourable Member that amongst the humbler castes of the Hindus where they marry early, there is also the custom of widow marriage. Let not my Honourable friend labour that point too much.

**Mr. Deputy President** (Mr. Akhil Chandra Datta): Order, order. The question of widow marriage does not arise in this Bill.

**Sir Abdul Halim Ghuznavi:** Very well, Sir. You will give me an opportunity to continue my speech on the very Bill that is going to the Select Committee.

**An Honourable Member:** What about your own Bill?

**Sir Abdul Halim Ghuznavi:** Throw it out if you like . . . .

**Babu Baijnath Bajoria:** On a point of order, Sir. Is bargaining like this, that if you oppose this Bill we will not support your Bill, allowed on the floor of the House? That was the implied bargain.

**Mr. Deputy President** (Mr. Akhil Chandra Datta): I have not heard of any bargaining in this House.

**Mr. N. V. Gadgil** (Bombay Central Division: Non-Muhammadan Rural): You cannot take any objection, being a merchant.

**Sir Abdul Halim Ghuznavi**: Perhaps, Sir, you are also aware how the present Act is enforced. It is done in this way, at any rate in Calcutta, to my own personal experience. There are about half a dozen goondas who find out . . . .

**The Honourable Sir Nripendra Sircar**: How do you know them?

**Sir Abdul Halim Ghuznavi**: I know because there is a list of goondas kept by the police.

**The Honourable Sir Nripendra Sircar**: They only keep a list of externed goondas.

**Sir Abdul Halim Ghuznavi**: Also a list of the goondas who are allowed to stay on the ground of being so dangerous as those who are externed.

**An Honourable Member**: And you keep yourself in their good books!

**Sir Abdul Halim Ghuznavi**: They are not so dangerous as those who have been externed. I will not say goondas if it does not suit the House: I will say half a dozen people: they keep a watch on these marriages in rich families: and although they are past the Sarda age . . .

**Mr. Bhulabhai J. Desai** (Bombay Northern Division: Non-Muhammadan Rural): Sarda's age is about 70!

**Sir Abdul Halim Ghuznavi**: I mean the Sarda Act age. They immediately go and deposit one hundred rupees and a summons is issued to show cause why they should not be prosecuted, and a couple of thousand rupees settles the whole business. This is going on. You cannot stop that evil. Social evils can only be stopped by appealing to the good sense of the people and not by legislation. Nowhere has legislation succeeded. I would be at one with my Honourable friend, Mr. B. Das, in going from village to village and seeing that they observed these conditions that there shall be no such marriages, but this cannot be effected by legislation. There is a feeling among the Muslims that it affects their religion . . . . .

**An Honourable Member**: Oh.

**Sir Abdul Halim Ghuznavi**: As if you know what the Muslim religion is. My Honourable friend over there (Syed Ghulam Bhik Nairang) will tell you what Muslim religion is . . . . (Interruptions.)

**Mr. Deputy President** (Mr. Akhil Chandra Datta): I do expect a little more of order.

**Sir Abdul Halim Ghuznavi**: I will deal with the Bill, Sir. Section 3 says that for section 9 of the said Act the following shall be substituted: Now, let us see what section 9 of the said Act says . . . . .

**Mr. Lalchand Navalrai**: I rise to a point of order, Sir. Can the whole Bill be read in order to waste the time of the House?

**Mr. Deputy President** (Mr. Akhil Chandra Datta): He has not yet read the whole of it.

**Sir Abdul Halim Ghuznavi**: Sir, section 9 of the Sarda Act says:

"No Court shall take cognisance of any offence under this Act save upon a complaint made within one year after the solemnisation of the marriage in respect of which the marriage . . . . ."

Now, what does this Bill want? This is what it wants. For section 9 of the said Act, the following shall be substituted, namely:

"9(1). The Court may, if it is satisfied on information laid before it through a complaint or otherwise, that an offence under this Act has been or is about to be committed, upon its own motion issue process against any person suspected of having committed or being about to commit such offence."

Now, Sir, hundreds and hundreds of applications will pour in. Any man who wants to blackmail a party will give information to the Magistrate, that an offence like this is about to be committed, and the Magistrate will take cognisance of it immediately. Therefore, this is no improvement on the existing Bill at all.

Then, Sir, it provides that no Court shall take cognisance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed. Thanks to the Mover of this Bill. If they can escape one calendar year, then they are out of the trouble. Why fix one year?

**The Honourable Sir Nripendra Sircar**: Make it two years then.

**Sir Abdul Halim Ghuznavi**: For one year the fellow has to hide himself somewhere outside British India and escape from the punishment—that is what my friend wants to provide. In section 11 of the said Act,—(i) for sub-section (1) the following shall be substituted, namely: And what is that sub-section?

(Here the Honourable Member stood for a few seconds without continuing his speech.)

**Mr. Sri Prakasa**: On a point of order, Sir. For how many minutes can a Member keep standing without speaking. z

**Sir Abdul Halim Ghuznavi**:

"When the Court takes cognisance of any offence under this Act upon a complaint made to it, it may, at any time after examining the complaint and before issuing process for compelling the attendance of the accused, require the complainant to execute a bond, with or without sureties, for a sum not exceeding one hundred rupees, as security for the payment of any compensation which the complainant may be directed to pay under section 250 of the Code of Criminal Procedure, 1898, and if such security is not furnished within such reasonable time as the Court may fix the complaint shall be dismissed."

Sir, this is wonderful indeed. A man goes and complains, and immediately a summons is issued or is being issued. The Magistrate asks him to deposit the money, 100 rupees for compensation, otherwise he will not proceed with the case. Information is sent to the party. When the blackmail is paid, the complainant does not deposit the compensation money and the case drops. Then, Sir, clause 5 says this:

[Sir Abdul Halim Ghuznavi.]

"The following sections shall be added as sections 12, 13 and 14 of the said Act, namely :

'12(1). Notwithstanding anything to the contrary contained in this Act, the Court may, if satisfied from information laid before it through a complaint or otherwise, that a child marriage in contravention of this Act has been arranged or is about to be solemnised, issue an injunction against any of the persons mentioned in sections 3, 4, 5 and 6 of this Act prohibiting such marriage' . . . . .

**Mr. Deputy President (Mr. Akhil Chandra Datta):** Instead of reading the whole section, the Honourable Member may just refer to it or give a summary of it.

**Sir Abdul Halim Ghuznavi:** One more section, Sir, and I have exhausted the Bill.

**Some Honourable Members:** We are also exhausted.

**Sir Abdul Halim Ghuznavi:** Very well then. Sir, this is very dangerous; this is unworkable. On the complaint of an informant who wants to levy blackmail on another, the Magistrate without further inquiry or investigation immediately issues an injunction that the marriage which is to take place, say this evening, shall not be proceeded with. That will mean a very great hardship if this section remains as it is drafted in this Bill.

Then further on it says:

"Whoever knowing that an injunction has been issued against him under sub-section (1) of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months or with a fine which may extend to one thousand rupees or with both".

Sir, this is also equally dangerous, because the man who is interested in the affair will somehow or other see that the peon does not serve the injunction on the proper person. So after the period is over the poor man will be hauled up for disobeying the order which had not been actually served on him. Then section 13 is equally funny. It says:

"Upon conviction" . . . . .

**Mr. Sri Prakasa:** Are you speaking from conviction?

**Sir Abdul Halim Ghuznavi:**

"Upon conviction under this Act and in addition to the penalties provided therein, the Court may require the husband of a female child (or, if he be a minor, the person having charge of him in any capacity whatsoever) to furnish a bond with or without sureties, for the separate living, custody and maintenance of the wife and for preventing the consummation of the marriage until she ceases to be a child or until such later date as the Court may appoint"—

And in addition to penalties provided therein, the Court may require a bond—

"A Bond taken under section 11 or section 13 of this Act shall be deemed to be a bond taken under the Code of Criminal Procedure, 1898, and the provisions of Chapter XLII of that Code shall apply accordingly".

It is impossible to give effect to it. You can put things in black and white, but they will remain a dead letter. Therefore, my submission is that while we have full sympathy with the object which my friend, Mr. B. Das, has in view, there is no justification for the provisions of the

Bill and in particular making them applicable to the Muslim community. The Bill has not been restricted to Hindus only but Muslim community is included also within its purview.

**Mr. M. Asaf Ali:** It is included actually.

**Sir Abdul Halim Ghuznavi:** It is wrong.

**Mr. M. Asaf Ali:** You cannot alter it here and now.

**Sir Abdul Halim Ghuznavi:** I am not saying that we could alter it here and now.

**Mr. M. Asaf Ali:** We can't alter it in the Select Committee either.

**Sir Abdul Halim Ghuznavi:** But there can be an amendment to that effect.

Sir, there is another point which has to be considered very seriously. As regards my Sanatanist friend. . . . (*An Honourable Member:* "Are you a Sanatanist?") I am a Muslim Sanatanist. You are a Hindu Sanatanist. The Hindu Sanatanist point of view is that according to their Shastras there can be no marriage till three years after puberty. If they feel that the Bill encroaches on their religious susceptibilities the House should consider seriously whether they ought to encourage a Bill like this. I do hope that when we meet in the Select Committee we shall be able to evolve a Bill which will take into consideration the points that have been raised here this afternoon.

**Babu Baijnath Bajoria:** Sir, needless to say I rise to oppose this motion. I do so on religious, social, political and moral grounds (*An Honourable Member:* "On medical grounds?") and also on medical grounds. In my humble opinion this Bill as well as the existing Sarda Act which this Bill wants to strengthen or to tighten are both totally opposed to our religious and social customs. This Bill, if enacted into law, will lead to political disorders. I will illustrate each and every word of what I say. It will lead to family feuds and frictions between different sections of the people and disturbance of peace and order. It will create a spirit of lawlessness and place the peace loving people in the hands of unscrupulous and evil designing persons. (*An Honourable Member:* "It has not done up to now.") Yes, it has. You have no knowledge of the working of this Act. I know that. My task has been rendered most difficult by the unholy alliance between the Government and the Congress Party.

**The Honourable Sir Nripendra Sircar:** That alliance is not prohibited by the Sarda Act.

**Babu Baijnath Bajoria:** It is an unholy alliance for an unholy act. Following the directions of Lord Krishna who says in the Gita:

*"Karmanyevadhikaraste ma phaleshu Kadachana."*

**Mr. Umar Aly Shah** (North Madras, Muhammadan): Gita is not a marriage law. It is a philosophical book.

**Babu Baijnath Bajoria:** I am not saying it is a law. I am saying, following the directions of Lord Krishna, we should do our duty and we should not think of the consequences or of the results.

3 P.M.

**Mr. Sri Prakasa:** At what age did Krishna marry?

**Babu Baijnath Bajoria:** I think, Sir, it is my bounden duty that I should place before this Honourable House my views and the views of millions of the orthodox section of the Hindu Community, I mean the Sanatanists. (*An Honourable Member:* "Oh, oh.") You cannot deny that there are millions of Sanatanists. Rather I will say that the bulk of the population of the Hindu community are Sanatanists. (*An Honourable Member:* "Question.") Mahatma Gandhi has himself stated that he is a Sanatanist. (*An Honourable Member:* "Not your type.") Sir, You are no doubt aware of the opposition to the original Sarda Bill. There was opposition to that Bill from every nook and corner of the country and the Bill was passed in the teeth of strong opposition both inside and outside this Honourable House. I will give you the names of a few of those who opposed the passing of this Bill. I will first give the name of Pandit Madan Mohan Malaviya, the venerable Hindu leader. I am under the impression and that impression is also shared by lakhs and lakhs of people that the Government lent their support to the original measure for the sake of political expediency.

**Mr. Bhulabhai J. Desai:** On a point of order. I submit that this is only an amending Bill, trying to improve certain defects which have been found in what is now the law, and I do ask that the Honourable Member should confine himself entirely to the Bill before the House and not go into the origin and history and the purpose of the original Bill.

**Mr. Deputy President (Mr. Akhil Chandra Datta):** I have already ruled that the principle and history of the original Bill cannot be discussed. But the trouble is it is having no effect.

**Babu Baijnath Bajoria:** This Bill is inseparably connected with the original Bill. I obey your ruling. I am not discussing the original Bill but what I am saying is that if I have to develop my arguments and to speak against the Bill, I have to refer to some extent to the past history of this Bill. Otherwise, it is impossible for me to develop my arguments against this Bill.

**Mr. Deputy President (Mr. Akhil Chandra Datta):** Order, order. I should like to make the position clear with regard to this point. If the point sought to be made is that the original Act is already too rigid, and it should not be made more rigid by the provisions proposed to be enacted in the Bill of Mr. B. Das, then to that extent discussion of the original Bill is certainly relevant, but one should not go further than that. You cannot now question the very underlying principle of the old Bill.

**Babu Baijnath Bajoria:** I am not questioning the principle of the old Bill, but what I am at the present moment contending is that I must say something about the old Bill so that I may come to the present Bill. Even the Mover of the motion today made a reference to the old

Bill to show how it was enacted, why it was enacted, and so on and I think I have got a right of replying to what he said.

**An Honourable Member:** You can reply in two minutes.

**Babu Baijnath Bajoria:** I can take my own time,—not two minutes but two hours and if necessary two days. Sir, I am under the impression—an impression that is shared by lakhs of people—that the Government lent their support to the original measure for the sake of political expediency. (Interruptions), in order to pacify certain clamouring reformists which included prominent Congress personalities so that they would keep quiet and give the Government some rest from political upheavals. But the results have been just the opposite. Instead of satisfying the reformists or the political leaders, it put the Government into greater and greater difficulties. The reformists, encouraged by their success, began to demand further and further revolutionary changes in the laws and customs of society, including those affecting the religious beliefs of the people, as is evident from the numerous Bills of such a nature introduced and discussed in this House ever since the passing of the Sarda Act. It also, Sir, enraged the orthodox section of the community against the Government, as they thought and truly thought that Government had violated the fundamental principles of religious neutrality and wounded their religious feelings which were so long protected under the Queen's Proclamation and repeated by later Sovereigns.

Sir, we Sanatanists have always persisted in demanding religious safeguards and it was a very great disappointment to us that this demand of ours was rejected and that religious safeguards were not incorporated in the Government of India Act. Sir, now that we have got no religious safeguards in that Act, it is for those reasons that such measures, which are entirely against the Hindu religion and Hindu culture and interfere with religious beliefs, have been introduced in this Legislature. (Voices: "Question, question.") Sir, these anti-religious Bills have become the order of the day and God knows where the present tirade of the Congress Leaders against our religious beliefs and customs will lead the country. (Question.) You may question, but I will give you an example of what is being done in the Provinces against our religion. (Interruptions.) Sir, what do we find in the United Provinces? There is a Bill . . .

**Mr. Bhulabhai J. Desai:** Sir, I do object, on a point of order. What has the United Provinces Bill got to do with this?

**Babu Baijnath Bajoria:** Something is being done to wound our religious feelings, and this is only part of that scheme.

**Mr. Bhulabhai J. Desai:** It has nothing to do with that.

**Babu Baijnath Bajoria:** Of course they are all connected. Sir, in the United Provinces they have got a Bill which aims at taking away the Badrinath Temple . . .

**Mr. Sami Vencatachelam Chetty** (Madras: Indian Commerce): On a point of order, Sir, it is reviewing the proceedings of another House with which we have no concern. I can understand his criticism if it were an



[Mr. Sami Vencatachelam Chetty.]

Act. It is in the stage of a Bill and certainly the Honourable Member has no right to speak anything about that Bill and the proceedings of that House in this House.

**Mr. Deputy President** (Mr. Akhil Chandra Datta): I think the Honourable Member must try to keep himself more within the limits of the Bill now before us. It is no doubt sometimes very difficult to draw a line of demarcation between what is relevant and what is not relevant, but after all there are certain limits beyond which we should not proceed.

**Babu Baijnath Bajoria**: Sir, there has been an enunciation of the Shastras by my friend, Mr. Sri Prakasa.

**An Honourable Member**: Be done with your manuscript eloquence.

**Babu Baijnath Bajoria**: Then there is the Temple Entry Bill in Bombay, a Harijan Worship Bill, in Bombay.

**Mr. Sri Prakasa**: Are not Harijans Hindus?

**Babu Baijnath Bajoria**: I do not deny that, but they have got their rights and limitations prescribed by the Shastras. They are Hindus and they are certainly a part and parcel of our community, but you can have separate temple for them. Why should you try to ruin our existing temples? (Interruptions.) Sir, the same thing is also being tried in Orissa; there is the Jagannath Temple Bill. Sir, the Congress want to capture all these temples and they are trying to ruin them. (Interruptions.) Sir, even in Madras that is what they are doing. Sir, I would not like to go further in this matter as it will create much unpleasantness between me and my friends on the right.

**Mr. Sri Prakasa**: Go on, we are broad-minded.

**Babu Baijnath Bajoria**: Sir, I may refer to only one more instance. In Madras the Premier, Mr. Rajagopalachariar, has said:

"I will not die if I can before the temples are opened up to the Harijans . . ."

**Mr. Deputy President** (Mr. Akhil Chandra Datta): I do not think this is relevant.

**Babu Baijnath Bajoria**: Very well, I will not go further. Sir, ever since the Sarda Act has been on the Statute-book, there have been numerous amendments to have it either repealed or amended from the Sanatanists' point of view. Sir, I will give you a list of those Bills; I have got this reference because you will be able to know which way the wind was blowing. There was a Bill to repeal the Child Marriage Restraint Act moved in 1932 by Khan Bahadur Haji Wajihuddin and Raja Bahadur Krishnamachariar. They could only be introduced because there was no time afterwards. Then again there was a Bill to amend the Child Marriage Restraint Act moved in 1932, by Khan Bahadur Haji Wajihuddin and Mr. Bhuput Sing and Raja Bahadur Krishnamachariar. Even now there is a Bill pending before this House—that of my friend, Mr. Kazmi.

That Bill seeks to exclude the Muhammadans altogether from the operation of the Sarda Act. Then, there is another Bill by my humble self which aims that this Act should not apply to those who have got religious objection to this Bill. (Mr. B. Das: "Your community has repudiated it.") My community has never repudiated it; I can challenge that statement. There are bound to be a few dissenters in every community and the number of reformers is microscopic in our society. I know more about my society than the learned Mover of this Bill does. Again, Sir, I find that a petition signed by 3,928 persons has been presented to this Legislative Assembly opposing this measure. With your permission, I will read that petition. It is to be found in Paper No. VI, page 73. It reads thus:

"Whereas the Bill entitled a Bill to amend the Child Marriage Restraint Act, 1929, by Mr. B. Das, is now under the consideration of the Indian Legislature, the humble petition of the undersigned people sheweth that the Bill is subversive of Hindu religion and society and accordingly the petitioners pray that the Bill be not proceeded with and your petitioners as in duty bound will ever pray."

Then, I will read out the statement showing the number of signatories from different districts of my province, Bengal—

Serampur, Hooghly, Calcutta, etc.,	162
Burdwan, Hooghly, etc.	135
Calcutta, Hooghly, Burdwan, etc.	96
Midnapur	132
Burdwan, Dacca, etc.	1,273
Howrah, Hooghly, etc.	715
Howrah, Hooghly, etc.	773
Howrah, Hooghly, etc.	642
Total	3,928

I may say that these signatories, barring a few Marwaris, are all Bengalis and belong to all classes of Bengal.

As regards the present Bill itself, the Honourable the Mover himself was wavering and faltering all the time. He had not the courage to proceed with this Bill and I will give you a specific instance of that. The Mover was called to move this motion four times on each non-official day last year. He was asked to move it on the 3rd February, 10th February, 17th February, and the 1st of April, of last year, but he was to be found nowhere. He was loitering in the lobbies all the time.

**Mr. B. Das.** I was not in the lobbies at that time.

**Babu Baijnath Bajoria:** Then you must be loitering in the streets of Delhi.

**Mr. B. Das:** I was not in Delhi in those days: I was in Orissa.

**Babu Baijnath Bajoria:** On the 1st April, you were here because you had drawn your daily allowance for that day.

**Mr. B. Das:** The reason why I absented myself on the 1st of April, last year was that it was due to the Congress command and I obeyed it.

**Babu Baijnath Bajoria:** This House is not yet being governed by the Congress rules. There, again, I say that it is not a fact. The Honourable Member has not put the facts correctly before the House. The Congress gave special mandates . . .

**Mr. Deputy President** (Mr. Akhil Chandra Datta): We are not concerned with all that.

**Babu Baijnath Bajoria:** There is a point behind this. The point is this that this Bill would have lapsed and, as a matter of fact, did lapse. It was only on a continuation motion in September last at the Simla Session that this Bill was revived. I was just a fraction of a second too late to oppose that motion. I did stand up but unfortunately I could not catch the eye of the President. Again, the Honourable Member had not the moral courage to go forward with this Bill and even on the 3rd February, that is to say, last week, he was not present. It was only the last week, when the Government gave him the indication that they are going to support him and support his Bill, that he had the courage to come up and make this motion before the House today.

I would like now to deal with the Bill clause by clause.

**Mr. Deputy President** (Mr. Akhil Chandra Datta): I would like to remind the Honourable Member that at this stage one cannot go into the Bill clause by clause: the Honourable Member can discuss the principle of the Bill and its general provisions.

**Mr. M. S. Aney:** May I submit that this is a stage where the Bill is being referred to the Select Committee. It is a stage when the principles can be discussed by the Members and also the clauses of the Bill if they involve certain principles. Members are entitled to discuss them.

**Mr. Deputy President** (Mr. Akhil Chandra Datta): I have already said that the general principles can certainly be discussed, but not individual clauses except in so far as they are necessary to explain the principle. That is my ruling.

**Babu Baijnath Bajoria:** I would like to place my humble views about the clauses of the Bill so that my views may also be considered, however unpalatable or undesirable they may be to the Members who do not share my views. Still, I hope they will give them some consideration. (Interruptions.) I know that no consideration will be given to them because I know that the Congress does not want to hear the viewpoint of others.

What they said, I quite remember. In the last Simla Session, my Honourable friend, Sri Prakasa, claimed for his Party infallibility. He said they could not do any wrong.

Now, Sir, clause 2 of the Bill says:

"In clause (c) of section 2 of the Child Marriage Restraint Act, 1929, (hereinafter referred to as the said Act) between the words 'is' and 'thereby' the words 'or is about to be' shall be inserted."

The object of this clause is that even would-be marriages, marriages which have not yet been performed and which are about to be performed or which, in the opinion of the informer whoever he may be, is about to

be performed, these proposed marriages also are sought to be roped in under the mischief of this Act. I think this is a very harmful provision. How can you penalise a thing which has not yet been performed?

**An Honourable Member:** You can prevent it.

**Babu Baijnath Bajoria:** Yes, you can prevent it. That is entirely different. But how can you penalise it?

**An Honourable Member:** What about an injunction?

**Babu Baijnath Bajoria:** I will come to that later on. Now, clause 3 of the Bill seeks to substitute a new section in place of section 9 of the original Act. Clause 3 reads:

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

—mark the words 'or otherwise'—the clause goes on:

"that an offence under this Act has been or is about to be committed, upon its own motion,"—

I repeat it again,—

"upon its own motion, issue process against any person suspected of having committed or of being about to commit such offence."

The idea behind this is that a complainant has to go to a Magistrate or he may even go to a police officer and the police officer may go to the Magistrate and then just give him that information—it may be true or it may not be true, there is nothing to verify that—and upon that information, they can just move the Court and the Court upon its own motion can issue process against the contracting parties. The complainant is behind the scene all the time. He has not got the audacity, he has not got the courage, he has not the conviction of coming in the lime light. He only does the mischief, he only sets fire to a pile of wood and then disappears. He is nowhere to be found at all. If in a matter like this, if the complainant has not the moral courage to come forward and substantiate the case against any person, then I think such information deserves to be treated with contempt and it should be thrown into the waste paper basket. The point is how the Court can of its motion issue process. The police officer will go to the Court and ask the Court to issue process. I submit a provision like this will give a greater handle to the extortioners and to those who want to feed fat the grudge which they bear against other parties. I am aware of the cases which come to Court in Calcutta. Most of them have been either for the purpose of extorting money or for harassing parties. I think the Honourable the Law Member will bear me out in this. He also knows about these things and I hope in the Select Committee he will consider these points. Such a clause in the Bill will be taken full advantage of by personal enemies. Now, Sir, I will read some of the opinions received on this clause. I will read, to begin with, the opinion of my Association which I have the honour to represent in this House. My Association consists of the leading Marwaris in Calcutta.

**Mr. B. Das:** It is a commercial body.

**Babu Baijnath Bajoria:** But they can also deal with religious topics, just as you see I am doing here now. They have been invited by the Government to offer their opinions. I am reading from the opinion:

"At the outset, I am to say that my Committee consider it a matter of the deepest regret and surprise that the introduction in the Legislative Assembly of this Bill which proposes to rigorously enforce that extremely obnoxious and irreligious Act, namely, the Sarda Act and thereby to compel the orthodox Hindu community to adopt un-Hindu system of marriage against the doctrines of Hindu religion should have at all been permitted. None knows better than the Government of India that from one end of the country to another the orthodox Hindu community expressed itself with one voice against the Sarda Bill. In common with all sections and classes of the orthodox Hindu community my Association too condemned the Bill in no uncertain terms, and requested the Government not to create discontent in the orthodox Hindu community by allowing the Bill to become law of the land at the behest of a few Hindu Members of the Assembly whose position in the orthodox Hindu society is that of politicians only, which does not entitle them to speak with authority much less to legislate on social and religious questions affecting the orthodox Hindu community. Government have no doubt watched the working of the Sarda Act since it was placed on the Statute-book in 1929 and have seen that prosecutions and convictions have failed to shake the faith of the orthodox Hindu community in their religion which lays down that girls must be given away in marriage before the age of puberty. Even among the educated classes, to say nothing of the masses, pre-puberty marriage of girls is still therefore the rule. The orthodox Hindus firmly believe that the mandate of the Hindu religion in this respect is based on reasons of unquestionable soundness. They believe that post-puberty marriage of girls is fraught with possibilities of the gravest danger to the peace and purity of home and family life, and that it is entirely wrong to lay the blame for the degeneracy that is overtaking Hindu society, namely, the alarming prevalence of mortality among children and for the growth of wasting diseases and premature death among young men and women at the door of the Hindu system of marriage."

**Sir H. P. Mody** (Bombay Millowners' Association: Indian Commerce): Then you prefer two girls of 9 to one of 18?

**Babu Baijnath Bajoria:**

"The fact that the existing system of marriage has been in vogue in the Hindu society from time immemorial"—*mark these words*,—"and yet the Hindus were a sturdy and long-lived race of people shows unmistakably that the degeneracy must be due to a cause or causes other than the Hindu marriage system. My committee have always held the view that it is the growing poverty of the people that is responsible for the present deplorable state of things."

**Prof. N. G. Ranga** (Guntur *cum* Nellore: Non-Muhammadian Rural): For that also you are responsible.

**Babu Baijnath Bajoria:** Yes; and we have seen what the Kisan Sabhas are doing at the present moment and we know how labour unrest is growing in all parts of the country. I think Sir Homi Mody will bear me out.

**Mr. Badri Dutt Pande** (Rohilkund and Kumaon Divisions: Non-Muhammadian Rural): Sir, on a point of order, can an Honourable Member read a whole book here?

**Babu Baijnath Bajoria:** Yes, I am within my rights in reading a whole book:

"The fact that even the communities in which the system of early marriage is unknown suffer equally with the Hindu community from diseases brought about by lack of resisting power confirms them in that view and proves beyond doubt that that cannot be put off by merely raising the marriageable age of girls. For these reasons my committee in all their several representations to Government opposing the

Sarda Bill expressed the apprehension that the Bill if passed into law would fail to serve any useful purpose and do more harm than good to the Hindu society. The Act has proved a total failure and has given a handle to blackmailers for extorting money and for harassing people against whom they bear personal grudge. My committee therefore expected that Government with their experience of the working of that obnoxious Act would take steps to repeal it and set their face definitely against any measure that might be brought forward by the reformists for further strengthening it. The introduction of the Bill under notice which proposes to force that Act down the throat of the unwilling Hindu community has therefore caused great disappointment to my committee."

Sir, I am very sorry that Government have not listened to our advice and have accepted the principle of this Bill. I think after they hear me and also the view point of the oppositionists to this Bill they will reconsider their decision and will not be a party to any Bill which the public does not want.

Dealing with clause 3 of the Bill, this opinion says:

"Clause 3 proposes to substitute a new section for section 9 of the Act, and the new section 9, sub-section (1) authorises the Court to issue process upon its own motion against any person if it is satisfied on information laid before it through complaint or otherwise that the person has committed or is about to commit an offence under the Act. My committee apprehend that it will result only in the harassment of innocent people on flimsy grounds. Designing persons out to give trouble may with the purchased help of the police set in motion the machinery of the law without themselves incurring the risk and trouble of prosecution. It is curious that of all persons a Congressman should have thought fit to provide for placing such matters in the hands of the police; in other words, for inviting police interference in a social matter, although it professes want of confidence in the police in all matters."

**Mr. B. Das:** The Congress Ministry controls this police in several provinces.

**Babu Baijnath Bajoria:** Yes, I am coming to that. Sir, the Congress people in season and out of season, inside this House and outside this House and everywhere, have never been tired of abusing the police. They have no confidence whatsoever in the police; and now in a matter like this where family honour is at stake they want to place the honour of respectable people and of everybody else in the hands of the same police. My Honourable friend, Mr. B. Das, says that now that seven of the provinces are being controlled by the Congress people, they have now got confidence in the police. As if by a magic wand only the Congress Ministries have changed the attitude of the whole Police administration, of the personnel of the Police force—is it possible, Sir—but if they have done it I congratulate them, but they have done nothing of the kind. Only when it suits them they want to place these things in the hands of the police. Are you even now, I will ask them, when the Congress Ministries are in power in seven provinces, prepared to accept the Criminal Law Amendment Act which gives power to the police and to the magistrates?

**Mr. Lalchand Navalrai:** Where do you find this power in the Act?

**Babu Baijnath Bajoria:** Here it is. Your complaint is not to be made before the police, but the police themselves can take cognisance. "The Court may, if satisfied from information laid before it through a complaint or otherwise," what does it mean?

**Mr. M. Asaf Ali:** It means "information received".

**Babu Baijnath Bajoria:** A police officer can go before a magistrate—the Court need not take a formal complaint,—and can take out a process. That is what I say. They want to throw dust in my eyes. I would also like to quote, Sir, what the Anjuman-i-Islamia of Kohat, that is a Mussalman organisation, says of clause 3. I think my friend from the frontier, Mr. Abdul Qaiyum, will hear this.

**Mr. Abdul Qaiyum:** I know something about them: they do not represent anybody except themselves.

**Babu Baijnath Bajoria:** This is what they say:

"In the first place I beg to bring to your Honour's notice" . . .

**Mr. Sami Venkatachalam Chetty:** On a point of order, even with the unrestricted permission an Honourable Member has to speak on the Bill, I do not think he is entitled or has the right to read *in extenso* all the opinions. If an Honourable Member takes into his head to read all the opinions which have been received on a circulation motion, I am sure, Sir, the whole tenure of three years of the Assembly will not suffice for the purpose. I should think, Sir, prudence and regulation of orderly conduct of debate requires that in spite of the limitless time an Honourable Member may take to speak upon the motion, he ought not to repeat arguments, he should not read book after book and volume after volume.

**Babu Baijnath Bajoria:** Is it a long speech or a point of order.

**Mr. Deputy President (Mr. Akhil Chandra Datta):** Members should not read *in extenso* all the opinions. But if a certain opinion is important, a material portion of it can be read, but it is not necessary that the entire volume of opinion should be quoted before the House.

**Babu Baijnath Bajoria:** I am not reading the entire opinion.

**Mr. Deputy President (Mr. Akhil Chandra Datta):** The Honourable Member will excuse me. He read the entire opinion of his own Association covering about 2/3 pages.

**Babu Baijnath Bajoria:** It was only one full page. Here we are today to accept the principle of a Bill which most vitally affects the Hindu community, especially the Sanatani community. Sir, this Bill was circulated for public opinion, and we have received copies of these opinions. These are here to guide us in our deliberations today and to enable us to form an opinion on the subject under discussion. If it is not the purpose that we should follow these opinions or take note of them, then it would have been much better that the Bill should not have been circulated and these opinions should not have been distributed to the Members of the House.

**Mr. Deputy President (Mr. Akhil Chandra Datta):** The Honourable member has misunderstood the position: I do not stand in the way of any Member having his full say, but at the same time it is not permissible to take the time of the House by going through voluminous opinions.

**Babu Baijnath Bajoria:** I bow to your ruling and I will try to follow it. But I must give you, Sir, the views of Sanatanists and the views of persons and institutions who are of my view.

**Mr. Deputy President** (Mr. Akhil Chandra Datta): Certainly, you can do so.

**Babu Baijnath Bajoria:** That is what I am doing and nothing more. I will read only those portions which suit me. Anjuman-i-Islamia, Kohat, says:

"I beg to bring to Your Honour's notice that the Sarda Act from the very start is in direct conflict with the personal law of the Mussalmans. It clearly interferes with the rights and obligations social as well as religious of Muhammadans. Any way as it has become law . . ."

**Mr. B. Das:** We are . . . . .

**Mr. Deputy President** (Mr. Akhil Chandra Datta): Order, order.

**Babu Baijnath Bajoria:**

"The report of the Committee concerning the existing section is as follows :

'In order to avoid the risk of frivolous prosecution and harassment provision has to be made that cognisance can be taken only upon a complaint accepted.

In the new section the words are :

'If the Court is satisfied that a complaint as defined by section 4 of the Criminal Procedure Code is not necessary'."

Now do you think, Sir, the risk of frivolous prosecution has disappeared? An irresponsible person can go to a court and give information against a very respectable person and harass him by putting on him the burden of proving that his daughter is of the legal age. Why not leave the original section as it is. Moreover section 11 will be rendered useless. When a man can reach his object by satisfying the Court privately why should he make a complaint. It is said in the Statement of Objects and Reasons that one of the principal impediments to the enforcement of Sarda Act lies in the obligation placed on the complainant to incur publicity of a formal complaint and, if required by the Court to execute a bond, to incur also the risk of losing the sum mentioned in the bond. Do our learned legislators propose to remove the machinery of law for protecting respectable citizens? This Bill, I am afraid, will be the cause of countless feuds in the provinces. Sir, the Honourable Members here may consider the two opinions which I have read.

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

I believe I am right in saying this: it may be said that the two opinions

I have read out are from laymen who do not know the law.

4 P.M.

Now, I propose to give some extracts from the opinion of the Government Pleader of this very city, Delhi. He says:

"Another thing desired that the Court may take action on its own motion once that information has been laid before the Court more or less means that offences of this kind are to be regarded as cognisable offences. In my opinion it puts a great burden upon the Courts. The Courts are not likely to know the parties; once the Court takes cognisance and proceeds on its own motion, then it will be for the Court to arrange the evidence for its production before the Court. It would be an extremely difficult thing for the Court to collect evidence regarding the age. It is the function of the party to collect its evidence and produce it in Court. In criminal cases it is the function of the police department to do that. I am of the opinion that it would



[Babu Baijnath Bajoria.]

be extremely difficult for the Court to arrange for the evidence. The complainant after filing the complaint will never come to Court at all and may not give any assistance to the Court at all" . . . . .

**Mr. M. Asaf Ali:** On a point of order, Sir: I am bound to draw your attention to paragraph 57 (6) of the Manual. I have urged the point about relevancy already and the Deputy President ruled that most of the discussion here was wholly irrelevant to this Bill. What I am now drawing your attention to is para. 57(6) where it is laid down that a Member shall not "use his right of speech for the purpose of wilfully and persistently obstructing the business of the Assembly". I am afraid the long quotations which the Honourable Member has been resorting to are known to everybody here and they are being made only for the purpose of obstructing the business of the Assembly.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member must confine himself to the question of principle now involved.

**Babu Baijnath Bajoria:** I am doing that, Sir. I am just opposing the principle of this Bill and its provisions . . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): The detailed provisions are not under discussion now. You can point out the general feature which you consider objectionable. But detailed discussion of clauses is not relevant now.

**Babu Baijnath Bajoria:** I have made general observations on the Bill.

**Mr. President** (The Honourable Sir Abdur Rahim): You cannot discuss the provisions of the Bill in detail at present.

**Babu Baijnath Bajoria:** I will not do it in detail but I have to refer to the clauses.

**Mr. President** (The Honourable Sir Abdur Rahim): Then the Honourable Member must not make lengthy quotations from other people's opinions. I quite realise that the Honourable Member has a headway to make against difficulties; but at the same time the business of the House must go on according to the rules.

**Babu Baijnath Bajoria:** I have no intention of violating any rules.

**An Honourable Member:** Only the Sarda Act!

**Babu Baijnath Bajoria:** I was just reading what the Government Pleader of Delhi has said . . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): I think the Honourable Member has quoted enough. We are concerned now with his own opinion and the opinion of the House.

**Babu Baijnath Bajoria:** But the opinion of the House can only be formed by . . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member must take my ruling.

**Babu Baijnath Bajoria**: May I not refer to these opinions now?

**Mr. President** (The Honourable Sir Abdur Rahim): Not in detail certainly. The opinions are before the House and it is for every Member to read; if the Honourable Member means to read them all, it would amount to obstructing the business of the House.

**Babu Baijnath Bajoria**: I am reading only extracts . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): You can refer only to such and such persons as having given opinions against the Bill.

**Major Nawab Sir Ahmad Nawaz Khan** (Nominated Non-Official): Mention only the names of those in favour or against.

**Babu Baijnath Bajoria**: The point I was referring to is about clause 3 of the Bill. It says that the Court will be given the power to issue process on its own motion and a formal complaint need not be made by any person. In my opinion this is a most objectionable clause because it will give shelter to the complainant. He will remain behind the scenes and will be doing all the mischief all the time. It will give also a long rope to extortioners and personal enemies. In a big family there will be one or two members who have a grudge against others and they may go and give information and the machinery of the law will be put in motion. This is not fair. I hope you will give me an opportunity to quote the names of the persons who are opposed to this Bill and I shall do so at the end of my speech.

Now, coming to clause 4 of the Bill it says:

"When the Court takes cognizance of any offence under this Act upon a complaint made to it, it may, at any time after examining the complainant and before issuing process for compelling the attendance of the accused, require the complainant to execute a bond, with or without sureties, for a sum not exceeding one hundred rupees, as security for the payment of any compensation which the complainant may be directed to pay under section 250 of the Code of Criminal Procedure, 1898, and if such security is not furnished within such reasonable time as the Court may fix, the complaint shall be dismissed."

The difference between the present Act and this Bill is that, whereas under the present Act the Court has to take a bond for one hundred rupees and may dispense with it if and when it thinks expedient (and then it will have to give reasons), under the present Bill it gives the option to the Court entirely not to take a bond. In my opinion this bond is a very salutary provision. I would even like that instead of one hundred rupees the bond should be for Rs. 500 or even Rs. 1,000. Look at the loss of prestige, look at the harassment and loss of money which the accused persons will have to bear in case of failure of these prosecutions. From experience of what we find in Calcutta during these last several years, most of the cases have resulted in acquittal: they were launched only for extortion or harassment. An informer need not make any complaint; he has only to give private information and keep himself aloof. He has also not to enter into a bond; he has practically got no liability or responsibility in the matter. Even if he makes a mischievous or

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frivolous complaint, he is still absolutely scot-free. *(An Honourable Member: "No, no'")* Yes, certainly. I will just pause a little while, and I should like the Honourable Member who just said 'No' to tell me what will be the effect of these clauses, how the informer will suffer if the information proves to be false. Sir, I pause for an answer.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member need not pause for a reply.

**Babu Baijnath Bajoria:** He contradicted me, Sir, and so I wanted to have more light from him. As I have said, Sir, the percentage of convictions in such cases has been very very small. This Act has been the most abused Act on the Statute-book. It has never been properly used, and that shows that the people at large do not want this Bill at all. And now, what are the reasons for this Bill? Only because a few reformers are anxious to tighten up this machinery and so they have brought forward this Bill. This Bill is absolutely uncalled for, and this clause is also equally unnecessary . . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): The discussion of the clauses need not be taken up at present. When the Bill is taken up for consideration clause by clause, that will be the proper moment for discussing all these clauses.

**Babu Baijnath Bajoria:** I am coming to the Statement of Objects and Reasons, Sir.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member cannot go on discussing clause by clause as if the clauses are now under consideration.

**Babu Baijnath Bajoria:** I think I can discuss the object of the Bill, because here it says . . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): If the Honourable Member means he wants to discuss the Statement of Objects and Reasons line by line that is not relevant.

**Babu Baijnath Bajoria:** Can I not speak about injunction and bonds?

**Mr. President** (The Honourable Sir Abdur Rahim): I thought the Honourable Member was speaking about the bond.

**Babu Baijnath Bajoria:** I was speaking on the bond of hundred rupees: that is another provision.

**Mr. President** (The Honourable Sir Abdur Rahim): You can refer to it.

**Babu Baijnath Bajoria:** That is what I was coming to. Now, Sir, it is proposed under this Bill to give power to the Court to grant injunction on information received through complaint or otherwise. In my opinion, this is the most unkindest cut of all. An informer need not make a

formal complaint. A police officer can get an injunction for the mere asking. The accused person need not be heard at all. It provides that an injunction may be given even without the other party being heard, even without giving a notice to the other party. No attempt is made to verify whether the information is correct or not. I will just cite one instance to show how it will prove a great hardship on the people. It is well-known, Sir, that we Hindus have auspicious days for celebrating marriages. Marriages are fixed not in a day or two, but in most cases months ahead. (*An Honourable Member*: "In Heavens.") And, Sir, supposing at an auspicious moment when invitations have been issued and arrangements have been made for celebrating the marriage, and when the feast is going on, a frivolous report is made to the Magistrate,—and even though the contracting parties may not be children under this Act the Court grants an injunction,—what will be the position of the host at that time . . . .

**Mr. N. V. Gadgil:** Dinner will go on all right.

**Babu Baijnath Bajoria:** The host will be put to great shame and humiliation. Sir, there is no provision that the injunction should be made after hearing the parties. In my opinion, there should not be any injunction against the marriage under the Sarda Act until and unless the marriage has been already performed, until and unless the crime has been committed.

Then it is provided here that any person who knows that an injunction has been issued and so on, even though the injunction is not served upon him, the mere fact that a person goes to him and conveys to him the information that an injunction is being served on the contracting party, either as a joke or seriously, that should desist them from celebrating the marriage. If some one goes and tells the father of the bride or the bridegroom that an injunction has been issued against him, and if he still celebrates the marriage after getting this information, then it will be construed as his having disobeyed the order of the Court and committed a contempt of Court, and the penalties for such marriages and offences have also been extended from one month to 3 months, and even rigorous imprisonment has been provided. Sir, I submit that this is not at all fair. Until and unless an injunction has been served upon the contracting parties to whom it relates, they cannot be said to have committed a contempt of the Court.

Then again, Sir, in clause 5 it is provided that a bord should be taken from the husband or his guardian for separate living, custody and maintenance of the wife and for prevention of consummation of marriages and I object to this. The wife will live separately, she will be under the custody of somebody else, neither the husband nor the members of his family will have anything to do with her, but still the husband or other members of his family will have to provide for maintenance. What a sense of justice! Supposing, Sir, my daughter has been married. Then there is another marriage in my family of my son or there is some other ceremonial occasion. Can I not invite my son-in-law or daughter-in-law to come to my house. Even if the consummation of marriage does not take place, can I not invite them? Sir, they must live separately and they cannot come into the same house. This I say is very very unfair. I do not think that any Hindu family will ever fail to invite the son-in-law

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or the daughter-in-law to the house on ceremonial occasions. This is most iniquitous. In the Statement of Objects and Reasons it is mentioned :

"In default of such a provision, those who have the welfare of an illegally married child wife at heart are often deterred from prosecuting the offenders by the knowledge that the prosecution, even if successful, will not rescue the child from the dangers of premature marital intercourse and may actually cause her to be maltreated by the husband or his family in revenge for the prosecution."

I do not understand a word of this. I ask how an outsider can have a greater interest in a girl than the father or the brother or the near relatives under whose custody and maintenance the girl lives and has been brought up. Is not the girl more dear to that person than to a rank outsider? (*An Honourable Member*: "Sometimes not".) There may be exceptions but it is the rule. I say, Sir, that no outsider can possibly have any interest in the girl and the only object of this provision is to harass the family of the girl, and then it is mentioned that the husband or his family will maltreat the girl in revenge for the prosecution. This is absolutely a new thing. I have never heard of this before. The prosecution is not launched by the bride's party. If the bride's party had launched a prosecution against the husband or his family then of course the husband or his family may have taken the girl to task. Because they cannot do anything to the bride's father or her guardian they might have taken revenge on the girl, but as far as my knowledge goes there is not one case in which the bride's party or any of her near relations have brought a suit against the husband or against a member of his family. This reminds me of a small proverb :

*"Man na man main tera mehaman."*

"Whether you agree or do not agree, I am your guest."

In my opinion this is a most obnoxious measure. Each clause of the Bill vies with another in its obnoxiousness, perversity and notoriety. This Bill will only create lawlessness which is already rampant, extortion, litigation, bribery, corruption and so on. My friends call themselves champions of civil liberty and here we see that whatever liberty we have in the field of religious and social manners and customs, they want to snatch it away from us. I would never have objected to this measure if it had been restricted only to those persons who want it but to thrust this upon unwilling millions of people, both Hindus and Muslims, is an obnoxious act and cannot be too highly condemned. It is painful indeed that Government has also joined hands in such legislation which is against our Shastras, against that policy of religious neutrality which is contained in the Queen's Proclamation. I can only say this about their joining hands with the Congress :

*"Vinasha kale vipareeta buddhi."*

"When ruin is staring them, their knowledge also disappears."

My friends, the Congressmen, proclaim that they are for the masses, that they are for the development of rural uplift. During these three years they have been in this House I have not found one measure from that side which is aimed at economic development or rural development or for the benefit of the masses. We have found on the other hand only marriage laws and social and religious interference. What do we find? We had the Arya Marriage Bill. Then we had the famous one clause Bill

of the revered father of my revered friend over there, Mr. Sri Prakasa. I am sorry the learned doctor, Dr. Bhagwan Das, is not here.

**Mr. Sri Prakasa:** He would have given you plenty of quotations.

**Mr. N. V. Gadgil:** He is repeating his arguments for the seventh time.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member cannot discuss now a measure which has been passed by this House.

**Babu Baijnath Bajoria:** As regards marriage laws, am I to follow my marriage laws as prescribed in great details in our Shastras, in Manu, in Yagnawalkya, Vyasa smriti, Vashishth smriti, Narad and Parasara or are we to be dictated to by persons of the type of Mr. B. Das or Mr. Sri Prakasa. These marriage laws as prescribed in Shastras have worked most satisfactorily for ages without any intervention, without any cause for intervention and without any amendments. They have preserved Hindu culture . . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): If the Honourable Member is really wanting to obstruct the business of the House, then I will have to accept closure.

**Babu Baijnath Bajoria:** I am not repeating what I said.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member is undoubtedly repeating himself. There is no doubt about it.

**Babu Baijnath Bajoria:** Sir, these laws have preserved Hindu culture and Hindu society against numerous onslaughts and foreign invasions.

**Mr. Ram Narayan Singh** (Chota Nagpur Division: Non-Muhammadan): Sir, we have been compelled to hear the Honourable Member for more than two hours.

**Babu Baijnath Bajoria:** But Mr. Satyamurti spoke for six and a quarter hours.

**Mr. President** (The Honourable Sir Abdur Rahim): But that is no precedent.

**Babu Baijnath Bajoria:** And these marriages, as propounded in our Shastras, have produced the great men of the past and also of the present (*An Honourable Member*: "They have produced a Bajoria")—and not only Bajorias but Mahatma Gandhi as well, Mr. Bhulabhai Desai as well, do you understand? They were born long before these present obnoxious laws. Sir, my Congress friends want to revolutionise the marriage laws. They pose before the public as the true friends of the teeming millions, but is there any demand from them for this change? Certainly not. On the contrary, the masses greatly resent such uncalled-for intervention and interference with hoary age-long customs and religion. Sir, marriage is not a contract among the Hindus but is a sacred religious

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act and sacrament. It is one of the sixteen *samskaras* or one of the most important *samskaras*. To flout that injunction as our friends the reformists are doing, is simply a deplorable thing and cannot be too highly condemned.

Sir, I may also remind the House that the Muhammadans do not like either the original Act or this Bill. Throughout the "Opinions" I have read through I have not come across one Muhammadan opinion in support of this Bill. (*An Honourable Member*: "Take the opinion of Mr. Justice Khwaja Noor.") There is a Bill already pending that Muhammadans want to be excluded from the operation of this Act. My friend, Sir Abdul Halim Ghuznavi, in his speech today also said that he wants that the Muhammadan community should be excluded from the operation of this Act. Now the Sanatanists are the orthodox section who form the bulk of the Hindu population and they are deadly opposed to it, and it is only a handful of reformers who are clamouring for this change. Sir, to thrust this Bill upon the unwilling masses is to cause the destruction of society. I would challenge my friends and ask them—have they brought this Bill up before the masses, and have they got their consent? I would invite them to go to the Kumbh Mela in April next when lakhs and lakhs of the Hindu people will be there and then if they preach anything like what is contained in this Bill, they will know the consequences, and they will know what reception they will get.

**Mr. Sri Prakasa:** The naked *nanga sannyasis* will attack them with their tongs!

**Babu Baijnath Bajoria:** Sir, I am not for violence. I do not want any of my friends here, whatever his views may be, to suffer violence. I do not want child marriages, but the question is—what do you call a child? I do not want a child marriage which is not sanctioned by our *Shastras*. The *Shastras* prescribe definitely the ages. I will give you quotations from the different authorities from which I am reading. Then there is this question. In our *Shastras* it is ordained that we must marry our girls before puberty, and it is prescribed that it is a great sin if this is not done.

**Several Honourable Members:** Sir, I move, that the question be now put.

(Voices of "Closure, closure.")

**Mr. President** (The Honourable Sir Abdur Rahim): Will the Honourable Member conclude his speech now. I have to ask him to discontinue his speech; I think the Honourable Member ought now to conclude his speech. He is really covering the same ground over and over again.

**Babu Baijnath Bajoria:** With due respect, I am not covering the same ground; about the question of "puberty" I have not referred to one word yet.

**Mr. N. M. Joshi:** Sir, the question of "puberty" does not arise here.

**Babu Baijnath Bajoria:** May I quote a Sanskrit *sloka* here now?

*"Rajohi drishtim yadi kanyakayah, kuladwayam durgatimeti tasyah,  
Tasmannitantaneh tadukta kalam, nolanghya panigrahanam vidheyam,"*  
Vasistha Smriti.

"If the girl attains puberty before marriage, then both of her families, viz., father's family and husband's family will suffer a great downfall. Hence this period must not be passed, and marriage must be performed before that."

This is from the Vaistha Smriti.

**Mr. Umar Aly Shah:** For whom is this Act intended?

**Babu Baijnath Bajoria:** Then, there are other *slokas* :

*"Yavantah ritavastasya samteeyah pativina,  
Tawantyo bhroonahatya syustasya yo na dadati tam."*

This is from the Narada Purana.

**Mr. Sami Vencatachelam Ohetty:** Sir, on a point of order, the text which my friend is referring to refers to abortions and not to puberty.

**Mr. President** (The Honourable Sir Abdur Rahim): If that is the fact, then it is not relevant.

**Mr. M. S. Aney:** May I say, Sir, that the objection which my friend has taken is only a misunderstanding of the stanza. It says that he incurs the sin of abortion if he does such and such a thing.

**Babu Baijnath Bajoria:** The *sloka* says that if a marriage is performed after puberty is attained, then he will be guilty of the sin of abortion,—as if he had committed an abortion. Sir, even according to the Ayurveda, a girl generally attains puberty after the age of twelve and this is also to be found from the following *sloka* :

*"Masi masi rajah streenam, rajasam sravativyayam,  
Vastarad dwadasa doordhavam yati panchashata kshayam."*

Sir, a woman has her menses every month from her twelfth year up to the fiftieth year . . . .

**The Honourable Sir Nripendra Sircar:** On a point of order, Sir. In this amending Bill there is nothing about age or the age of puberty and therefore this discussion is wholly irrelevant.

**Babu Baijnath Bajoria:** Very well, I shall not refer to that again. Sir, when my esteemed friend, Dr. Bhagavan Das, put in his Bill about inter-caste marriages he pleaded that that was a permissive measure . . .

**Mr. Bhulabhai J. Desai:** I again rise to a point of order, Sir. That Inter-caste marriage Bill had nothing to do with this Bill.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member is really wasting the time of the House. I must point that out.

**Babu Baijnath Bajoria:** I am mentioning this that this Bill on the contrary is a most coercive measure, and I think this is relevant. We



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find, every clause and every sentence of it is greatly coercive. Then, there is the question of marriage and the consummation of marriage. I think this is relevant to this Bill.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member has been talking on that subject all this time. The Honourable Member is really repeating himself. The whole Bill relates to marriage and consummation.

**Babu Baijnath Bajoria**: Sir, I am doing my best to conclude as early as possible.

**Mr. Ram Narayan Singh**: Sir, we have been tortured for the last two hours and we seek your protection.

**Babu Baijnath Bajoria**: Sir, I must say this that our system of marriage has proved to be the best of all other systems. We have no system of courtship or the system of consummation of marriage before the marriage itself. We have no system of 'divorce made easy' as is now the order of the day in Europe and in America, which my friends here would like to introduce. I know that what you Congressmen want is that in marriage there should be no laws and there should be absolute liberty. Any person can marry any woman and this point was also mentioned by my friend, Pandit Krishna Kant Malaviya, in another debate. Lord Krishna had said that there are two kinds of persons in this world . . .

**Mr. President** (The Honourable Sir Abdur Rahim): That has nothing to do with this Bill.

**Babu Baijnath Bajoria**: If you think that it has nothing to do with this Bill, then I will obey you and will not speak about what Lord Krishna has said.

Now, I will refer to some of the observations which were made by the previous speakers. I think I am entitled to speak on that. My Honourable friend, Mr. B. Das, said that in a Women's Conference in Calcutta I was bitterly attacked. He also said that my Bill about the amendment of the Sarda Act found no support. He further said that none of my Marwari friends in this Assembly support me. Well, Sir, I can cite my friend who sits next to me as my supporter. Mr. Das said that the women of this country are in favour of this Bill and, therefore, he is moving this motion to oblige them. I know he is influenced by women and he cannot deny it. In Ramayana, Tulsi Das has also written a *chopai* and it has come to my mind.

*"Nari vivasha nara sakala gusai,*

*Nachahi nara markatki nai."*

When translated, it means that all male persons in the *Kaljug* will be under the influence of women and they will dance just like monkeys at their beck and call. Now, he says that this Bill is also designed to reduce the number of the widows to the very minimum. Can my

Honourable friend or any other Member of this House or even the Government guarantee that if this Bill is passed there will be no widows or their number will be considerably decreased? If they can give me that guarantee, I will very gladly reconsider my attitude towards this Bill. But I am sorry to say that no guarantee is forthcoming. According to us, females become widows not for their past sins but because of the sins of their previous life.

**Mr. President** (The Honourable Sir Abdur Rahim): This Bill has nothing to do with widows.

**Babu Baijnath Bajoria**: Then, my Honourable friend said that there should be equal status for men and for women. He has also gone a step further and said that half the Members of this House should be men and half women. The Law Member went even further than this and said that each person must be half male and half female. I say this is not possible. God has created men for a definite purpose and so also the women for a definite purpose, and each one has to perform the functions allotted to them.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member is really going outside the scope of the Bill altogether and I must ask the Honourable Member not to indulge in observations which are not relevant.

**Babu Baijnath Bajoria**: Very well, Sir, I will obey your ruling.

In the motion which my Honourable friend, Mr. B. Das, made, he did not speak one word about the provisions of this Bill and about the utility of any of its provisions because he had not the moral courage. If he had the moral courage he would have undoubtedly taken the trouble of explaining to us what these provisions really mean. He kept silent like the dumb cattle. The Honourable the Law Member said that if a State allowance is given for the maintenance of the girls, then the provision about the bond from the husband may be kept, otherwise there may be trouble. Is he going to do that? I would like to ask from my Congress friends whether the Congress Ministries propose to give such a maintenance allowance.

**An Honourable Member from Congress Benches**: If they violate the law?

**Babu Baijnath Bajoria**: Can I take it from the Honourable Member authoritatively that the Congress Ministries will provide for those girls who live separately and whose maintenance is not to be given by their husbands? Then, my Honourable friend, Mr. Sri Prakasa, said that these marriage laws were made by men who were just like ourselves. It is absolutely wrong. I think he is doing a great injustice to our Rishis who made these laws. He is insulting them. He has got no faith whatsoever in the Rishis or in our Scriptures or in our Shastras. They used to live for a thousand years: some of them even lived for tens of thousands of years and they spent their days in meditation: they spent their days in thinking for the uplift of the human race. The laws which they made tens of thousands of years ago still hold good today. Now, if you want to make one law today and another law tomorrow, we do

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not know where we shall stand. I say this is not fair. I humbly request my Congress friends that they should not try to play or toy with our marriage laws. Leave us where we are. Do something more good to the country and bring out measures which will be helpful to the masses. This is not the thing which the masses want. I would like to quote . . .

**Mr. President** (The Honourable Sir Abdur Rahim): I cannot allow the Honourable Member to quote any further. I must really warn the Honourable Member that I will have to exercise my powers which I am very reluctant to do and to ask him to discontinue his speech, because he is repeating himself much too much, his observations are often not relevant and I am getting very suspicious that he is really trying to obstruct business. I will give the Honourable Member two minutes more to conclude his speech.

**Babu Baijnath Bajoria:** In that case I will not speak any further. I resume my seat.

**The Honourable Sir Henry Craik** (Home Member): Sir, I will not attempt to follow the previous speaker traversing the whole ground covered by this thorny social question. I only want to make it clear that Government is supporting the motion for reference to the Select Committee, and I have very little to say by way of comment or justification or explanation of Government's decision. The last speaker reproached Government for entering into what he called an unholy alliance with the Congress on this subject. Well, Sir, I do not know that in regard to this particular action, I need defend myself against such a charge. If Congress thinks its cause is right and we think that its cause is right, why should we not support it? (Hear, hear.) If there is any unholy alliance, I may remind the Honourable Member that we are in pretty good company. I would like to remind him for instance that a very well-known and very respected Indian lady has declared publicly in the *Times* newspaper that "there can be no living man or woman who knows the facts and understands the implications of child marriage in India who does not wish its cessation". That, Sir, is a sentence from a letter written by Miss Cornelia Sorabji. I may perhaps remind the Honourable Member of another letter, which he perhaps missed, in the *Times* supporting explicitly and specifically urging the Government to support this particular Bill. That letter was signed by half a dozen lady Members of Parliament including Lady Astor, Miss Cazalet, and Miss Rathbone and also by Lord Lothian. So, if there is any question of an unholy alliance between the Government and the Congress on this question, as I have said, we have some pretty good names on our side.

As a matter of fact this is a social reform which the Government have always supported. They supported the original Sarda Act and it is therefore only logical and natural, as I observed the other day in speaking on the Bill of my Honourable friend, Mr. Lalchand Navalrai, that we should support any measure which is intended to fill up what are generally acknowledged to be clear deficiencies or loopholes in the Sarda Act. Now, it is admitted that this is a measure which merely aims at strengthening and improving that Act which has now been in force for

over eight years. Although it is not a perfect Act,—nobody claims that,—it was passed with the support of the Government, and therefore it is only natural that Government should join hands with the Honourable the Mover and those who think like him, whatever their Party, who wish to improve that Act.

I think the Honourable Member who spoke last can hardly boast of accuracy when he said that “only a handful of reformers are clamouring for this measure”. I have analysed fairly carefully the opinions that have been received about this Bill and that is certainly not the conclusion that I have drawn. It is clear from the opinions that have been received that the Bill has received a great deal of support throughout the country. Indeed I do not think that the Government would itself be supporting the Bill unless it was convinced that there is a clear majority unequivocally in support of this Bill among the communities affected by it. We find, Sir, that of all the Local Governments, only one out of eleven has declared itself definitely against the Bill. Some are certainly more lukewarm than others, but all of them with one exception support the Bill. As regards non-official opinion consulted, as far as we can estimate the weight of it, there is certainly a majority, as I have said, on the side of the Bill. The support is not confined to any particular community. I find Muhammadans as well as members of other communities expressing themselves in favour of the Bill, and I believe, as I said, that it is correct to say that so far as the people consulted have applied their minds to the provisions of this Bill a majority of all communities throughout India have given their support (Hear, hear), at any rate to the principle of the measure. I say the principle of the Bill, because there are parts of it which I think are susceptible of improvement and which have come in for a good deal of criticism from those who have been consulted. I have no doubt, however, that the suggestions made with regard to improvements will receive careful consideration from the Select Committee, and the Select Committee is the place in which the Bill could, and should, and I hope will, be improved.

At the same time, do not let us—when I say ‘us’, I mean all of us in this House who support this measure—deceive ourselves into thinking that there is no opposition to the Bill. The speech of the Honourable Member who has just sat down makes that perfectly clear that the more orthodox sections of his community do not like the Bill. Apart from the petitions presented to this House which are referred to in the printed Paper, I should mention that in my own Department I received something like 1,200 telegrams or messages of protest. Now, although those protests represent, in my opinion, or I should say in the opinion of Government, a minority, still it is a minority which counts and I do hope that in the Select Committee Members will keep that fact in mind and will not try and make the Bill—which as I have said we believe to be excellent in principle—too rigid a weapon, and so alienate the more orthodox sections of opinion from what we, who wish to see the Sadra Act improved, have as our object.

**Syed Ghulam Bhik Nairang** (East Punjab: Muhammadan): Sir, I have no desire to obstruct. I want to offer only a few remarks mainly by way of precaution. The Honourable the Mover of this Bill referred to me in the course of his speech today and wanted me to bless this measure. He did tell me some three days back

5 P.M.

[Syed Ghulam Bhik Nairang.]

in the lobby in his own inimitable manner that he wanted my "blessing" for what he appeared to call his "beel". I told him that he would have my blessings but that they would be qualified blessings. As I have said, Sir, I have no desire to obstruct but I must make clear what the Muslim point of view about this Bill is. As I said the other day in the course of the debate on Mr. Lalchand Navalrai's Bill which has now been passed, the Muslim community in the very course of the progress of the original Sarda Bill in this House made its attitude quite clear and left no doubt as to its being opposed to the measure, because it really had the effect of interfering with the rights which every Muslim under his personal law enjoys with regard to the discretion to marry his children or to marry himself at any age he likes. That is the position under Muslim law; and although it may be necessary at times to advise a man as to the age at which he should marry his children or as to the age at which he should himself marry, yet to exercise legal compulsion and to make the exercise by him of his own discretion under his personal law an offence under statutory law is going too far. One can, by carrying on propaganda, by trying to persuade others, ask them to marry their children as late as possible when they have sufficiently grown up and when they are not quite children. But, as I have said, it is a different thing and is taken in a different spirit when you tell a man, "You have done this, you say you are entitled to do it under your personal law but under the secular law it is an offence and therefore you are an offender and a criminal". That hurts his feelings and that he takes as an insult to his religion. Therefore, on that ground the Muslim community has all along been opposed to what is now the Sarda Act. And as the present Bill, like the Bill which the other day Mr. Lalchand Navalrai moved in this House, seeks to further consolidate the provisions of that Act and to supply its deficiencies and make it more comprehensive and more effective, we cannot afford, as representing the Muslim constituents in this House, to pass a silent vote upon it. To allow it to be referred silently to the Select Committee would be tantamount to accepting the principle of this Bill and by necessary implication to be an acquiescing party to the Sarda Act as well, while as a matter of fact even at the present moment there is a Bill pending before this House by Qazi Muhammad Ahmad Kazmi which seeks . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): I am afraid the debate on the motion cannot be finished today. The Honourable Member can continue his speech on the next day. This will be treated as unfinished business and will have priority.

## THE INDIAN TEA CONTROL BILL.

### PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

**Mr. H. Dow** (Commerce Secretary): Sir, I beg to present the Report of Select Committee on the Bill to provide for the control of the export of tea from, and for the control of the extension of the cultivation of tea in, British India.

The Assembly then adjourned till Eleven of the Clock on Monday, the 14th February, 1938.