

14th February 1939

**THE**  
**LEGISLATIVE ASSEMBLY DEBATES**

**(Official Report)**

---

**Volume I, 1939**

*(3rd February to 15th February, 1939)*

---

**NINTH SESSION**  
**OF THE**  
**FIFTH LEGISLATIVE ASSEMBLY,**  
**1939**



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

1939

M39LAD

1-2

▲

# Legislative Assembly.

*President :*

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

*Deputy President :*

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

*Panel of Chairmen :*

MR. S. SATYAMURTI, M.L.A.

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

SIR COWASJI JEHANGIR, BART., K.C.I.E., O.B.E., M.L.A.

MR. A. AIKMAN, C.I.E., M.L.A.

*Secretary :*

MIAN MULLA AHMAD RAFI, BAR.-AT-LAW.

*Assistants of the Secretary :*

MR. M. N. KAUL, BAR.-AT-LAW.

RAI BAHADUR D. DUTT (*Upto 31st March, 1939*).

KHAN SAHIB S. G. HASNAIN, B.A. (*From 10th April, 1939*).

*Marshal :*

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

*Committee on Petitions :*

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

MR. A. AIKMAN, C.I.E., M.L.A.

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

SYED GHULAM BHIK NAIRANG, M.L.A.

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

**CONTENTS**

**VOLUME I.—3rd February to 15th February, 1939.**

PAGES.	PAGES.
<b>FRIDAY, 3RD FEBRUARY, 1939—</b>	<b>FRIDAY, 3RD FEBRUARY, 1939—contd.</b>
Members Sworn . . . . . 1	The Indian Oaths (Amendment) Bill—Appointment of Mr. C. J. W. Lillie to the Select Committee . . . . . 82
Starred Questions and Answers . . . . . 1—37	Reports of the Public Accounts Committee . . . . . 83—111
Unstarred Questions and Answers . . . . . 37—41	
Statements laid on the Table . . . . . 41—76	<b>SATURDAY, 4TH FEBRUARY, 1939—</b>
Motions for Adjournment re—	Starred Questions and Answers . . . . . 127—69
Economic and Penal Blockade against the Ahmadzai Tribe of the Tribal Belt between Derajat and Waziristan—Sanction of the Governor General not obtained . . . . . 76—77	Motion for Adjournment re Anti-Indian Riots in Burma—Adopted . . . . . 169, 201—18
Indianization in the Indian Army—Disallowed by the Governor General . . . . . 77	Resolution re Withdrawal of India from the League of Nations—Discussion not concluded . . . . . 170—200
Continued detention of Messrs. Vaishampain, Bhawani Sahai and Jewala Prasad—Disallowed by the President . . . . . 77	<b>MONDAY, 6TH FEBRUARY, 1939—</b>
Derailment of the Dehra Dun Express—Adopted . . . . . 77—78	Member Sworn . . . . . 219
Statement re answering of questions . . . . . 78—79	Starred Questions and Answers . . . . . 219—43
Panel of Chairmen . . . . . 79	Motions for Adjournment . . . . . 263
Committee of Petitions . . . . . 79	Message from H. E. the Governor General . . . . . 264
H. E. The Governor General's assent to Bills . . . . . 79—80	The Commercial Documents Evidence Bill—Appointment of Mr. C. J. W. Lillie to the Select Committee . . . . . 264
Message from the Council of State . . . . . 80	The Indian Income-tax (Amendment) Bill—Amendments made by the Council of State agreed to, subject to further Amendments . . . . . 264—89
The Muslim Dissolution of Marriage Bill—Presentation of the Report of the Select Committee . . . . . 81	The Indian Merchant Shipping (Amendment) Bill—Passed . . . . . 289—95
Election of a Muslim Member to sit on the Standing Committee on Pilgrimage to the Hedjaz . . . . . 81	The Insurance (Amendment) Bill—Referred to Select Committee . . . . . 295—98
Election of a Member for the Central Advisory Board of Health . . . . . 81	The Repealing and Amending Bill—Referred to Select Committee . . . . . 299
The Insurance (Amendment) Bill—Introduced . . . . . 82	The Criminal Law Amendment Bill—Referred to Select Committee . . . . . 299—306
The Indian Naval Reserve Force (Discipline) Bill—Introduced . . . . . 82	

PAGES.		PAGES.	
<b>MONDAY, 6TH FEBRUARY, 1939—</b>		<b>WEDNESDAY, 8TH FEBRUARY, 1939—</b>	
<i>contd.</i>		<i>contd.</i>	
The Indian Naval Reserve Forces (Discipline) Bill—Discussion on the motion to consider not concluded . . . . .	307—22	The Employment of Children (Amendment) Bill—Introduced . . . . .	551
<b>TUESDAY, 7TH FEBRUARY, 1939—</b>		The Motor Vehicles Bill—Amendments made by the Council of State agreed to . . . . .	551—58
Member Sworn . . . . .	323	Reports of the Public Accounts Committee . . . . .	558—68
Starred Questions and Answers . . . . .	323—37	<b>THURSDAY, 9TH FEBRUARY, 1939—</b>	
Statements laid on the Table . . . . .	358—68	Member Sworn . . . . .	569
Motion for Adjournment re—Spending of Indian Revenues in the Military Training of Foreigners like the Afghans—Disallowed by the Governor General . . . . .	369	Starred Questions and Answers . . . . .	569—615
Government's refusal to consult the Legislative Assembly on the Recommendations of the Chatfield Committee's Report—Disallowed by the Governor General . . . . .	369	The Muslim Dissolution of Marriage Bill—Discussion on the consideration of clauses not concluded . . . . .	615—54
Indian Representation at the Palestine Conference—Disallowed by the Governor General . . . . .	369—71, 396	<b>FRIDAY, 10TH FEBRUARY, 1939—</b>	
Message from H. E. the Governor General . . . . .	371	Member Sworn . . . . .	655
The Indian Naval Reserve Forces (Discipline) Bill—Motion to consider negative . . . . .	371—93	Starred Questions and Answers . . . . .	655—87
Reports of the Public Accounts Committee . . . . .	394—412	Unstarred Question and Answer . . . . .	688
<b>WEDNESDAY, 8TH FEBRUARY, 1939—</b>		Resolution re—	
Member Sworn . . . . .	413	Withdrawal of India from the League of Nations—Adopted as amended . . . . .	688—90
Starred Questions and Answers . . . . .	413—549	Trade Agreement with Burma—Adopted . . . . .	901—709
Unstarred Question and Answer . . . . .	549—50	Cut on Salaries of Government Employees—Adopted as amended . . . . .	710—29
Election of a Member to the Standing Committee on Pilgrimage to the Hedjaz . . . . .	550	Statement of Business . . . . .	729—30
Election of a Member to the Central Advisory Board of Health . . . . .	550	<b>MONDAY, 13TH FEBRUARY, 1939—</b>	
The Standards of Weight Bill—Introduced . . . . .	551	Members Sworn . . . . .	731
The Coal Mines, (Stowing) Bill—Introduced . . . . .	551	Starred Questions and Answers . . . . .	731—69
		Unstarred Questions and Answers . . . . .	769—72
		Presentation of the Railway Budget for 1939-40 . . . . .	772—79
		The Indian Naval Reserve Forces (Discipline) Bill (As recommended)—Motion for leave to introduce negative . . . . .	780—81
		The Indian Merchant Shipping (Second Amendment) Bill—Introduced . . . . .	781
		The Indian Cotton Cess (Amendment) Bill—Amendment made by the Council of State agreed to . . . . .	781—82

	PAGES.		PAGES.
<b>MONDAY, 13TH FEBRUARY, 1939—</b> <i>contd.</i>		<b>TUESDAY, 14TH FEBRUARY, 1939</b> <i>—contd.</i>	
The Employment of Children (Amendment) Bill—Passed as amended . . . . .	782—814	The Code of Criminal Proce- dure (Amendment) Bill— (Amendment of section 205)—Discussion on the motion to refer to Select Committee not concluded .	900—04
The Coal Mines (Stowing) Bill—Referred to Select Committee . . . . .	814—19		
<b>TUESDAY, 14TH FEBRUARY, 1939—</b>		<b>WEDNESDAY, 15TH FEBRUARY, 1939—</b>	
Starred Questions and Answers	821—58	Member Sworn . . . . .	905
Statements laid on the Table	858—63	Starred Questions and Answers	905—51
The Muslim Dissolution of Marriage Bill—Passed as amended . . . . .	863—94	Ruling <i>re</i> Moving of Resolu- tions . . . . .	951
The Code of Criminal Proce- dure (Amendment) Bill— (Amendment of section 386)—Referred to Select Committee . . . . .	895—99	Resolution <i>re</i> — Hand-made Matches— Adopted . . . . .	951—82
		Position of Women under the existing laws—Dis- cussion not concluded .	983-96

# LEGISLATIVE ASSEMBLY.

Tuesday, 14th February, 1939.

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

## STARRED QUESTIONS AND ANSWERS.

### (a) ORAL ANSWERS.

#### MILITARY TRAINING IN PROVINCES.

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

- (a) whether Government have received any representations with regard to the giving of military training to people of all the Provinces and the giving of opportunities to people of all Provinces to join the army;
- (b) whether Government are aware of a resolution of the Tamil Nadu Conference held at Rajapalayam to the same effect; and
- (c) whether Government have considered the matter, and if so, to what effect?

**Mr. C. M. G. Ogilvie:** (a) No.

(b) No.

(c) I refer the Honourable Member to the reply I gave to parts (c) and (d) of starred question No. 129 asked by Mr. Satyamurti on the 6th instant.

**Mr. T. S. Avinashilingam Chettiar:** May I know, Sir, whether, in view of the fact that the question of giving equal opportunities for military training in all the provinces has been agitated quite often in this House, Government have considered that matter and come to any conclusion on it?

**Mr. C. M. G. Ogilvie:** Yes, the answers will be found in full in the information I have imparted in my answer to part (c) of this question.

**Mr. T. S. Avinashilingam Chettiar:** When was the matter last considered?

**Mr. C. M. G. Ogilvie:** I could not say when it was last considered, but the policy was laid down and the Honourable Member will find full information in part (c) of the question.

**Mr. T. S. Avinashilingam Chettiar:** May I know, Sir, when this policy was last considered?

**Mr. O. M. G. Ogilvie:** I could not say when exactly it was finally considered.

**Mr. Lalchand Navalrai:** May I know, Sir, now that the provinces enjoy autonomy, whether the Provincial Governments have been consulted as to whether they want that all people should be given military training?

**Mr. O. M. G. Ogilvie:** No, Government have not made any such suggestions.

**Mr. T. S. Avinashilingam Chettiar:** In view of the various suggestions made in this House on this subject, may I know, Sir, if Government will take this matter in hand and consult the Provincial Governments?

**Mr. O. M. G. Ogilvie:** Government, as I have repeatedly said, categorically replied to the suggestion made in this House, and a full statement of the policy will be found by the Honourable Member, if he comes to look at it, in the reference which I gave in my answer to Mr. Satyamurti's question on the 6th of this month.

#### ALLOCATION OF ECCLESIASTICAL EXPENDITURE.

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

- (a) whether Government have considered the recommendation of the Public Accounts Committee that the question of the allocation of Ecclesiastical expenditure be settled as early as possible;
- (b) for how long this question has been pending; and
- (c) whether any steps have been taken in the matter?

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

(b) and (c). The question was originally raised in 1928 but later on in 1931 the Public Accounts Committee agreed that in view of the pending constitutional changes it was not worth while to undertake the task of allocation at that juncture. In accordance with the recommendations of a departmental committee to which the question was referred in 1936, a census has been taken of persons entitled to ecclesiastical ministrations. It is hoped to complete the consideration of this question in the near future.

**Mr. S. Satyamurti:** May I know, Sir, whether the conclusions would be reached in order to provide for the allocation in the next year's Budget?

**The Honourable Sir James Grigg:** I am unable to answer that question, and the Honourable Member knows, that question is one with which I personally shall have no concern.

**Mr. S. Satyamurti:** May I know, Sir, what is meant by the phrase "entitled persons"?

**The Honourable Sir James Grigg:** I think the Honourable Member had better give notice. I understand that certain classes of officers serving in India are entitled to ministrations of clergymen of their own religion.

**Mr. S. Satyamurti:** Has any census been taken?

**The Honourable Sir James Grigg:** I understand a census has been taken.

**Mr. T. S. Avinashilingam Chettiar:** What is the amount of money involved in this matter?

**The Honourable Sir James Grigg:** I understand that under the Government of India Act or at any rate under some regulation laid down for the purpose, it is limited to 33 lakhs or some figure in that neighbourhood.

**Mr. Lalchand Navalrai:** May I know, Sir, if the Honourable Member will be pleased to lay on the table a copy of the last census?

**The Honourable Sir James Grigg:** I can't do that.

**Mr. Lalchand Navalrai:** Why not?

**Mr. President (The Honourable Sir Abdur Rahim):** The Honourable Member can't argue.

**Mr. T. S. Avinashilingam Chettiar:** May I know, Sir, whether they are entitled to this under any agreement with the Government of India?

**The Honourable Sir James Grigg:** They are entitled to it under a certain Statutory protection.

#### RECOVERY OF MONEY DUE FROM OFFICERS ON PENSION.

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

- (a) whether Government have amended the rules with respect to services under their control in the matter of recovery of money due from officers on pension;
- (b) whether legislation is necessary to give effect to these proposals; and
- (c) whether Government have considered the advisability of pressing upon the Secretary of State to make similar rules with regard to the services under his control?

**The Honourable Sir James Grigg:** (a) The matter is still under consideration.

(b) No.

(c) I would refer the Honourable Member to my reply to Mr. Satyamurti's question supplementary to No. 819 asked by Mr. Mudaliar on the 7th September, 1938.

**Mr. T. S. Avinashilingam Chettiar:** I understood last time, Sir, that the Secretary of State had turned down the proposal of the Government of India to make such amendments, but may I know whether the Government of India have considered the matter subsequently?

**The Honourable Sir James Grigg:** If the Honourable Member will read the answer, he will see that the present state of affairs is clearly set forth.

**Mr. S. Satyamurti:** Are not the Government of India considering the matter independently of the Secretary of State's action? When do they hope to come to a decision on this matter of making people entitled to pensions from public revenues liable for their misconduct?

**The Honourable Sir James Grigg:** I cannot tell the Honourable Member I am not qualified to be a prophet.

**Mr. S. Satyamurti:** I am not asking him to be a prophet, I am asking him to be a just Finance Member in view of the loss to public revenues by pensioners not being held liable. May I know if the Honourable the Finance Member can give any undertaking that this matter will be concluded as early as possible and sufficient safeguards would be provided to protect public revenues and avoid losses?

**The Honourable Sir James Grigg:** I don't think the loss to public revenues is a very serious matter. It seems to me to be much more a question of justice than loss of public revenue, and I can readily give the Honourable Member the undertaking that the examination will be concluded as soon as possible . . .

**Mr. T. S. Avinashilingam Chettiar:** Will it be before the Honourable Member leaves this country?

**The Honourable Sir James Grigg:** I cannot answer even that question.

#### EUROPEAN AND INDIAN INDIAN CIVIL SERVICE OFFICERS IN THE CENTRAL SECRETARIAT.

357. \***Mr. Abdul Qaiyum:** Will the Honourable the Home Member please state:

- (a) the number of European and Indian Indian Civil Service Officers in the Central Secretariat on the 1st February 1939; and
- (b) the reasons for the great predominance of non-Indians?

**The Honourable Mr. E. M. Maxwell:** (a) 84 Europeans and 17 Indians.

(b) It is hardly possible to deal with this matter fully within the scope of an answer to a question, and I would refer the Honourable Member to my speech in the Council of State on the 15th March, 1937, where he will find the question fully explained. The main reason why at present there are more European than Indian I. C. S. officers in the Central Secretariat is that, as the Indian Civil Service cadre stands at the moment, there are more Europeans than Indians of the seniority required to bring them into the field of selection for the higher posts of Secretary and Joint Secretary. The position will normally change as the effect of the 50:50 ratio of recruitment to the Indian Civil Service between Europeans and Indians is felt in the upper ranges of the Indian Civil Service cadre.

**Mr. Abdul Qaiyum:** May I know . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): Is the Honourable Member speaking from his place?

**Mr. Abdul Qaiyum:** Yes, Sir.

**Mr. President** (The Honourable Sir Abdur Rahim): Then the Honourable Member must stick to that place.

**Mr. Abdul Qaiyum:** Places were allotted only this morning, Sir. May I know, Sir, what was the number of Europeans in the Central Secretariat, I did not catch his answer?

**The Honourable Mr. E. M. Maxwell:** 34 Europeans and 17 Indians.

**Mr. Abdul Qaiyum:** May I know, Sir, if, owing to the introduction of Provincial Autonomy, Europeans prefer to be in the Central Secretariat rather than in the provinces?

**The Honourable Mr. E. M. Maxwell:** I am not so aware.

**Mr. S. Satyamurti:** May I know, Sir, if the consideration of seniority alone governs the recruitment of Europeans and Indians in the proportion of 34 and 17 for posts in the Central Secretariat or are there any other considerations?

**The Honourable Mr. E. M. Maxwell:** It is mainly due to the state of the cadre and relative seniority in the field for selection.

**Mr. S. Satyamurti:** May I know, Sir, if it is not due to a desire of certain Departments of the Government of India to have Europeans only in key positions in preference to Indians?

**The Honourable Mr. E. M. Maxwell:** There is no conscious desire of any such thing, but as the House is aware, arrangements for recruitment have now been somewhat altered since the new system came into force, and the gradual formation of a pool will ensure that various seniorities are properly represented in the Secretariat on both sides.

**Mr. S. Satyamurti:** May I know, Sir, if it is a fact that Secretaries and Deputy Secretaries who are once in the Central Secretariat never go back to their provinces thus blocking the promotion of people, especially Indians?

**The Honourable Mr. E. M. Maxwell:** No, Sir, that is not the case; on the contrary, the tenure of these appointments is now strictly enforced.

**Mr. S. Satyamurti:** May I know, Sir, if Government are consciously trying to approximate to the 50:50 ratio, and whether they will try to reach that level as soon as possible?

**The Honourable Mr. E. M. Maxwell:** That ratio, I think, will be reached automatically under the present arrangements.

**Mr. S. Satyamurti:** In about how much time, will that be reached? In how many number of years will it be reached?

**The Honourable Mr. E. M. Maxwell:** It is difficult to give an estimate off-hand, but it won't be very long. The process will be quite steady as far as I can see.

**Dr. Sir Ziauddin Ahmad:** When the Honourable Member said that there is a time limit, may I know, Sir, whether or not it is a fact that extensions are given more often than not.

**The Honourable Mr. E. M. Maxwell:** No, Sir.

#### RUPES OF THE QUEEN VICTORIA'S REIGN.

**358. \*Qari Muhammad Ahmad Kasmi:** (a) Will the Honourable the Finance Member please state whether it is or it is not a fact that in the silver rupee of the Queen Victoria's reign there used to be no dot on the lower-most flower on the reverse side of the coin?

(b) Is it a fact that coins having as many as 12 dots on the lowermost flower on the reverse side of the coin have been current in the market?

(c) Is it or is it not a fact that some person about the end of the last century gave publicity to the statement that he had been responsible for counterfeiting a large number of coins and to distinguish these counterfeits from the real ones he had put a dot on the lowermost flower of the coin for every lakh of the coins he had counterfeited?

(d) If the answer to part (c) be in the affirmative, when was the statement made?

(e) Are the coins that have dots on the lowermost flower on the reverse genuine or counterfeit; and, in the latter case, has their currency been legalised by Government?

**The Honourable Sir James Grigg:** The dots in question are mint marks and the story referred to in part (c) of the question is a complete canard. The correct facts are as follows. All rupees struck from the year 1862 to 1878 bear the date 1862. In order to distinguish these, the rupees struck in 1863 bore a small dot above the lowest flower on the reverse side of the coins and in each subsequent year an additional dot was added. Coins struck between 1863 and 1878 may, therefore, bear from one to eleven dots. Certain subsequent issues of Queen Victoria rupees which were struck at the Bombay mint also bear a dot as a mint mark to distinguish them from coins struck in Calcutta.

**Mr. Lalchand Navarai:** In view of the fact that there is no penalty attached for persons refusing to take current coins, will the Honourable Member take steps to see that some orders or some legislation are passed so that people may not be harassed?

**The Honourable Sir James Grigg:** That does not arise out of the question.

## STARTING OF AN ORDNANCE FACTORY AT JUBBULPORE.

359. \*Mr. Govind V. Deshmukh: Will the Defence Secretary be pleased to state:

- (a) whether a number of villages were acquired to start an Ordnance Factory at Jubbulpore by the Central Provinces and Berar Provincial Government;
- (b) whether the project of starting this Ordnance Factory has been given up; if so, why; and
- (c) what the Provincial Government propose to do, or have been advised to do, with the lands so acquired?

Mr. C. M. G. Ogilvie: (a) No.

(b) The project is still under consideration.

(c) Does not arise.

Mr. K. Santhanam: With reference to the answer to part (a) of the question, may I know whether any factory to manufacture any kind of ammunition has been started here?

Mr. C. M. G. Ogilvie: I have given an answer that a project is under consideration.

## TYPISTS AND STENOGRAPHERS IN THE DEFENCE DEPARTMENT.

360. \*Mr. K. Santhanam: Will the Secretary for Defence please state:

- (a) how many typists and stenographers are employed at his office;
- (b) how many of them are Anglo-Indians; and
- (c) how many of them are ladies?

Mr. C. M. G. Ogilvie: (a) Five typists and five stenographers.

(b) and (c). One typist and three stenographers of whom one typist and two stenographers are ladies.

## PROPOSAL FOR REDUCTION OF BRITISH BATTALIONS IN INDIA.

361. \*Mr. Manu Subedar: (a) Will the Defence Secretary please state whether Government have seen the report of an answer to a question in the British Parliament reported in the Indian papers on the 21st of December, 1938, as follows:

"Major-General Sir Alfred Knox (Con.) questioned Mr. Hore-Belisha, Secretary of State for War, regarding British battalions in India, and asked whether the establishment had been greatly reduced lately, Mr. Belisha said: 'I do not think it has been, but probably it will be.'"

(b) What is the proposal for the establishment of British battalions being "greatly reduced"?

(c) When was this proposal made?

(d) From which date does it take effect?

(e) What are the details of this proposal?

**Mr. C. M. G. Ogilvie:** (a) Yes.

(b), (c), (d) and (e). The War and Peace establishments of a British battalion in the United Kingdom have recently been reduced. This may involve a reduction in the establishments of British battalions in India, but as the question is now being examined I am unable to make any definite statement at present.

**Mr. Manu Subedar:** Does it involve merely the reduction of the battalions located in India, or does it involve the taking over of the financial responsibility for them?

**Mr. C. M. G. Ogilvie:** I presume from the question that the Honourable Member was referring to the speech of the Secretary of State for War and asking questions as to what that statement meant. I have told him clearly.

**Mr. Manu Subedar:** My question was whether it involved a physical reduction or whether it meant merely taking over the responsibility for the expense?

**Mr. C. M. G. Ogilvie:** My Honourable friend's question states: "What is the proposal (made by Mr. Hore-Belisha) for the establishment of British battalions being 'greatly reduced'." I have told him.

#### TROOPS SENT TO SINGAPORE FROM INDIA.

**362. \*Mr. Manu Subedar:** (a) Will the Defence Secretary please state whether any troops have been sent to Singapore from India since the 1st of January, 1987?

(b) If so, what are they?

(c) What is the arrangement regarding the cost of such troops sent out?

(d) What is the saving, if any, to the Indian exchequer expected to be made during 1988-89?

**Mr. C. M. G. Ogilvie:** (a) No.

(b), (c) and (d). Do not arise.

**Mr. K. Santhanam:** With reference to the answer to part (a) of the question, may I know whether the Government of India are under any obligation to defend Singapore?

**Mr. C. M. G. Ogilvie:** That, I submit, does not arise out of this question.

#### TREASURY BILLS.

**363. \*Mr. Manu Subedar:** (a) Will the Honourable the Finance Member please state whether it is a fact that Government were unable to renew the full amount of maturities of Treasury Bills during the month of December 1988?

(b) What was the lowest borrowing rate during the calendar year 1988 and what was the highest borrowing rate on Treasury Bills?

(c) Has the amount of floating debt of Government been reduced during the current year?

(d) Have Government considered the desirability of reducing the amount of the floating debt?

(e) How does the rate on Treasury Bills paid by Government of India compare with similar rate paid by the Government of the United Kingdom?

(f) Is it a fact that the Exchange Banks have been reluctant to bring over funds to India on account of their apprehension with regard to the depreciation of the rupee?

(g) If the answer to part (f) be in the affirmative, have Government any information as to the relative amount brought over this year in comparison with the amount brought last year?

**The Honourable Sir James Grigg:** (a) No. The bills were renewed to the extent considered necessary by Government.

(b) The highest rate was Rs. 2-8-10 per cent. per annum and the lowest rate Rs. 0-9-8.

(c) No.

(d) Government do not consider that the amount of floating debt is large.

(e) The rate in India is higher.

(f) and (g). Government have no information. In any case there can be no grounds for any such apprehension.

**Mr. Manu Subedar:** Is it a fact that the Provincial Governments are also coming into the market now with treasury bills, and have Government considered the desirability of reducing their own floating debt in order that the borrowing rates may not unduly rise?

**The Honourable Sir James Grigg:** There is plenty of room for both at present.

#### TENDERS FOR THE R. I. N. PROJECT AT MANORA, KARACHI.

**364. \*Mr. Manu Subedar:** Will the Defence Secretary please state:

- (a) when the tenders for the R. I. N. Project at Manora, Karachi, were called;
- (b) who the lowest tenderer was and to whom the contract was given;
- (c) whether after the tender was accepted, any changes in the conditions of work or any specifications were made; and
- (d) whether the financial arrangements with the contractor and the amount to be paid to him were modified in any respect on account of the changes in designs and specifications?

**Mr. C. M. G. Ogilvie:** (a) to (d). I am collecting the information and will lay it on the table in due course.

## INDIA'S STERLING INTEREST PAYING LIABILITIES.

335. \*Mr. Mann Subedar: (a) Will the Honourable the Finance Member please state whether according to the London Stock-Exchange Official Year-book, the total of India's sterling interest paying liabilities as on 31st March 1930 were £365,690,000 and on 31st March 1937 they are given as £358,800,000—a reduction of only about £7,000,000? Will Government state whether these figures are correct?

(b) In view of the statement of the Government of India that the volume of sterling debt repatriated to this country since the establishment of the Reserve Bank was Rs. 60 crores, will Government state the manner in which this information was compiled and the details of the figures totalling up to Rs. 60 crores?

(c) Is it the total volume of holding by non-resident holders in the United Kingdom, and is the information secured by Government from the Income-tax Department?

The Honourable Sir James Grigg: (a) The figures for the period 1930 to 1937 are approximately correct, that is, up to the 31st March, 1937.

(b) The repatriation of Rs. 60 crores of sterling debt has taken place from the date of the institution of the Reserve Bank, that is to say the 1st April, 1935, up till the end of November, 1938. A statement giving the details is laid on the table. The explanation of the apparent discrepancy is, that for the period from 1930 to 1935 there was an increase of about £19 millions in our sterling debt followed by a repatriation of £27 millions during 1935-36 and 1936-37 and a further reduction in our sterling debt of £18 millions since 1st April, 1937.

(c) The reduction is an actual reduction in the total amount of our sterling debt and no question of the domicile of holders arises.

	(In millions of £).				
	(Up to the end of November).				
	1935-36.	1936-37.	1937-38.	1938-39.	Total.
Railway annuities . . . . .	1.83	1.90	1.96	1.47	7.16
Railway Sinking Funds . . . . .	.17	.17	.18	.18	.70
Railway Debentures . . . . .	3.50	.88	1.47	3.06	8.91
Sterling loans . . . . .	1.95	16.86	2.99	..	21.80
Transfer of funds to Family Pension Fund Commissioners . . . . .	..	..	3.76	2.84	6.60
	7.45	19.81	10.36	7.55	45.17
					or 60.23
					crores of rupees.

Mr. Mann Subedar: I was anxious to know from the Honourable Member whether the reduction had anything to do with sterling assets of the Reserve Bank during that period?

The Honourable Sir James Grigg: How on earth can he make that inference?

**BAN ON THE RETURN OF RAJA MAHENDRA PRATAP AND OTHER POLITICAL EXILES TO INDIA.**

**366. \*Mr. S. Satyamurti** (on behalf of Seth Govind Das): Will the Honourable the Home Member be pleased to state:

- (a) whether the United Provinces Government have forwarded representations, with strong recommendations, on behalf of Raja Mahendra Pratap and other political exiles, for their return to India;
- (b) whether Government have considered the representations and recommendations; and
- (c) whether Government have decided to permit the United Provinces exiles to come to India from the foreign countries; if so, under what conditions; and if not, why not?

**The Honourable Mr. E. M. Maxwell:** With your permission, Sir, I will answer questions Nos. 366 and 372 together.

(a), (b) and (c). I would invite the Honourable Members' attention to the reply given by me on the 6th February, 1939, to Mr. Thirumala Rao's starred question No. 138 to which I have nothing to add.

**Mr. Badri Dutt Pande:** May I know when a decision about Raja Mahendra Pratap is likely to be arrived at?

**The Honourable Mr. E. M. Maxwell:** In the fairly near future.

**Mr. Badri Dutt Pande:** The other day the Honourable Member said in reply to my question, that they were under confidential correspondence with the U. P. Government. May I know if any reply has been sent to the U. P. Government?

**The Honourable Mr. E. M. Maxwell:** I did not say that correspondence was going on. I think I said probably that there had been correspondence.

**Mr. S. Satyamurti:** May I know whether there are any other exiles, and, if so, how many, besides Raja Mahendra Pratap, from the U. P. who are now residing outside India?

**The Honourable Mr. E. M. Maxwell:** As I was about to reply to the next question on the order paper, I do not admit that there are any persons who can be called exiles.

**Mr. S. Satyamurti:** In view of the fact that law and order are now the functions of the Provincial Governments, and the U. P. Government have strongly recommended the removal of the ban on the entry into India of Raja Mahendra Pratap, may I know what are the public considerations on which the Government of India are hesitating to accept the recommendation of the Provincial Government concerned?

**The Honourable Mr. E. M. Maxwell:** In cases like this it is generally not one province only that is concerned; more than one province are concerned.

**Mr. S. Satyamurti:** May I know if any other province or provinces have made any representation to the Government of India protesting against or not wanting the removal of the ban on Raja Mahendra Pratap's entry into this country?

**The Honourable Mr. R. M. Maxwell:** I think, as far as I remember, we have not corresponded with other provinces about it: we may have, but I cannot recollect. But, of course, we have our own information as to the past range of his activities.

**Mr. Badri Dutt Pande:** If Raja Mahendra Pratap flies in an aeroplane and lands in the U. P., what will the Central Government do?

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

**The Honourable Mr. R. M. Maxwell:** They will ask him for his passport.

**Mr. S. Satyamurti:** In view of the fact that Government have not been in consultation with other Provincial Governments, may I know whether the Government of India are considering only the recommendation of the U. P. Government, or they propose to consult other Provincial Governments with regard to the removal or non-removal of this ban, and, if so, why?

**The Honourable Mr. R. M. Maxwell:** On whom?

**Mr. S. Satyamurti:** On Raja Mahendra Pratap.

**The Honourable Mr. R. M. Maxwell:** It may be necessary to consult other Provincial Governments, but, as I say, I have not yet given full consideration to the case.

**Sardar Mangal Singh:** May I know whether the Punjab Government has sent any such representation to the Government of India asking for the return of exiles?

**The Honourable Mr. R. M. Maxwell:** No, not within my recollection.

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

#### BAN ON THE RETURN OF POLITICAL EXILES TO INDIA.

367. **\*Mr. S. Satyamurti** (on behalf of Seth Govind Das): Will the Honourable the Home Member please state:

- (a) the number of Indian political exiles abroad;
- (b) their names and whereabouts;
- (c) whether Government have received any direct representations from them for permitting them to come to their country;
- (d) whether Government consulted the Provincial Governments concerned on the matter in each case, during the last two years;

- (e) how many cases were decided in favour or against the exile petitioners;
- (f) whether Government have intelligence of their activities in the countries where they are at present; and
- (g) whether Government informed the Provincial Governments with regard to their life and activities abroad, while refusing or agreeing to a suggestion for their release by the Provincial Governments?

**The Honourable Mr. R. M. Maxwell:** (a) and (b). As I have explained before, there are no Indian political exiles. If the Honourable Member refers to persons who have voluntarily left India on account of their political activities Government have no complete list of such persons.

(c) to (g). In view of the reply to parts (a) and (b) the information cannot be given unless the Honourable Member will specify the individuals regarding whom he desires it.

**Mr. S. Satyamurti:** May I know whether the Government of India have any information with regard to persons against whose entry into this country there are bans now, passed by the Government of India?

**The Honourable Mr. R. M. Maxwell:** I do not know exactly what the Honourable Member means by a ban. There is no formal power in the Government of India to pass a ban on any person.

**Mr. S. Satyamurti:** Are there any cases in which the Government of India have represented to His Majesty's Government or other Governments for the refusal of passports to persons who desire to return to India?

**The Honourable Mr. R. M. Maxwell:** There have been such occasions in the past. Recently two persons against whom such disabilities existed have been permitted to return.

**Mr. Abdul Qaiyum:** May I know if the Provincial Government of the North-West Frontier Province have made representations about the return of Qazi Abdul Wali Khan and what is the attitude taken by Government about this exile who has been away from India for a number of years?

**The Honourable Mr. R. M. Maxwell:** Not so far as I am aware. If the Honourable gentleman will put down a question, I will try to find out.

**Mr. Badri Dutt Pande:** Is it a fact that the money sent to these exiles is liable to be confiscated in the Bombay post office?

**The Honourable Mr. R. M. Maxwell:** No, Sir.

**Mr. Abdul Qaiyum:** I have already put a series of questions about Abdul Wali Khan, and I am still waiting for an answer.

**The Honourable Mr. R. M. Maxwell:** So far as I recollect, no such question has been addressed to me. If the Honourable Member will put down a question I will endeavour to give him an answer.

**Mr. Abdul Qayum:** Surely Government must have a list of persons who are under ban?

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member cannot enter into argument.

**Mr. Abdul Qayum:** Is there any ban against this particular individual?

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member has already been asked to put down a question.

**Mr. S. Satyamurti:** With reference to part (g), may I know whether Government have any policy in this matter? In view of provincial autonomy, may I know whether in future they will accept the recommendations of Provincial Governments, or do they propose to decide each case on its own merits, even in cases where the Provincial Governments concerned recommend the removal of any ban?

**The Honourable Mr. E. M. Maxwell:** Naturally in considering each case, the Government of India attach very great weight to the opinions of Provincial Governments.

**Mr. S. Satyamurti:** Do they consult other Provincial Governments also and if so, why?

**The Honourable Mr. E. M. Maxwell:** Certainly we consult other Provincial Governments. Many of these persons who have exiled themselves have previously operated in more than one province.

**Sardar Mangal Singh:** Is there any ban on the entry of Sardar Ajit Singh?

**The Honourable Mr. E. M. Maxwell:** Sardar Ajit Singh is a Brazilian subject, and if he applies for a passport, it will be considered in accordance with the usual practice.

**Sardar Mangal Singh:** May I know whether there is a prosecution pending against him in this country?

**The Honourable Mr. E. M. Maxwell:** He fled to Persia in 1911 in order to escape prosecution.

**Sardar Mangal Singh:** May I know whether that prosecution is still pending or it has lapsed?

**The Honourable Mr. E. M. Maxwell:** That will be for the Government concerned to consider.

**QUESTIONNAIRE ISSUED BY THE ALL-INDIA NATIONAL PLANNING COMMITTEE.**

**368. \*Mr. S. Satyamurti:** Will the Defence Secretary be pleased to state:

- (a) whether his attention has been drawn to the questionnaire of the All-India National Planning Committee set up by the Congress, which proposes, *inter alia*, to examine the possibility of the development of industries relating to national defence, including provision of munitions, armaments, or guns for the use of the various defence services;

- (b) whether Government will lay on the table of the House a statement containing the latest information available in respect of this matter; and
- (c) whether Government propose to co-operate with the Committee in this behalf?

**Mr. C. M. G. Ogilvie:** (a), (b) and (c). Government have seen a copy of the questionnaire but do not propose to take any action on it.

**Mr. S. Satyamurti:** In view of the fact that a powerful organisation has organised this All-India National Planning Committee which will *inter alia* examine this question, in which the Defence Department is interested, relating to national defence, including provision of munitions, armaments or guns, may I know the reasons why the Defence Department propose to take no action?

**Mr. C. M. G. Ogilvie:** There is nothing before Government upon which any action under any circumstances could now be taken.

**Mr. S. Satyamurti:** May I know why Government refuse to co-operate?

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member is asking for a discussion.

**Mr. S. Satyamurti:** I want to know whether it is mere non-co-operation, or they have decided against it on the merits?

**Mr. President** (The Honourable Sir Abdur Rahim): The Chair does not think that the Honourable Member need refer to non-co-operation?

**Mr. S. Satyamurti:** We have all been non-co-operators. There is no reflection at all. I am paying him a compliment.

**Mr. President** (The Honourable Sir Abdur Rahim): (Addressing Mr. Chettiar) The Honourable Member is not in the seat allotted to him by his Party. The Honourable Member knows that he cannot address the Chair except from his seat.

#### RECEIPTS UNDER CUSTOMS REVENUE AND INCOME-TAX.

369. **\*Mr. S. Satyamurti:** Will the Honourable the Finance Member be pleased to state:

- (a) the latest figures of receipts under customs revenue and income-tax received by the Government of India;
- (b) what is the fall in these receipts during this period compared with the previous year's revenue;
- (c) what the estimate of the proposed deficit is in the next year's budget; and
- (d) whether, apart from any taxation proposals, Government have any proposal for producing a balanced budget?

**The Honourable Sir James Grigg:** (a) to (d). I can only refer the Honourable Member to my reply to his question No. 1266, on the 15th November, 1968.

**Mr. S. Satyamurti:** May I know whether there have been no figures since the last answer?

**The Honourable Sir James Grigg:** In so far as those figures are published, I assume that the Honourable Member has made himself acquainted with them.

**Mr. S. Satyamurti:** With regard to clause (c) of the question, I am not asking my Honourable friend to disclose the final figures which he will present in his budget statement in the course of a fortnight. I am asking on the figures available,—what is the deficit so far under these two heads of revenues?

**The Honourable Sir James Grigg:** The Honourable Member is extremely ingenious. He is really seeking to anticipate the budget statement in a very important particular.

**Mr. S. Satyamurti:** What are the figures now available?

**The Honourable Sir James Grigg:** I assume that the Honourable Member has familiarised himself with the published figures.

#### UNVEILING OF THE MUTINY MEMORIAL NEAR DELHI.

370. \***Mr. S. Satyamurti:** Will the Defence Secretary be pleased to state:

- (a) whether Government have considered the recent adjournment motion carried by this House *nem con* over the unveiling of the "Mutiny" memorial near Delhi;
- (b) whether Government have accepted the resolution and propose to obliterate the offensive words in the memorial; and
- (c) whether Government are prepared to take further action and see that all these "mutiny" memorials are obliterated as early as possible, and, if not, why not?

**Mr. C. M. G. Oglvie:** (a) Yes.

(b) No.

(c) No, Sir. Government are not prepared to falsify history.

**Mr. S. Satyamurti:** With reference to clauses (b) and (c) of the question, may I know whether Government have considered the verdict of this House, and may I know the reasons why they have come to the conclusion that they will be falsifying history if the offensive word 'mutiny' is removed, to which the House objected?

**Mr. C. M. G. Oglvie:** I would refer the Honourable Member to the speech made by me on the occasion of the adjournment motion.

**Mr. S. Satyamurti:** That was made before the adjournment motion was passed. I am asking what has happened after the passing of the adjournment motion.

**Mr. C. M. G. Ogilvie:** Government are still of the opinion I indicated in my speech.

**Mr. S. Satyamurti:** Do they not realise that, in the interests of honourable understanding between them and this House, it is worth their while to accept the verdict of the House on a matter of this kind?

**Mr. C. M. G. Ogilvie:** No, Sir. Government have decided in this case that it is not worth while to accept the verdict of the House.

**Mr. Sham Lal:** May I ask to whom the site of the memorial belongs?

**Mr. C. M. G. Ogilvie:** The site of the memorial has been made over by the village to the Government of India.

**Mr. Sham Lal:** Has any compensation been made to the proprietors of the village.

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

**Mr. Abdul Qaiyum:** Who gave that verdict of history on which the writing on the memorial is based. What is that history. There are histories and histories.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member has answered it.

**Mr. S. Satyamurti:** What is that "history" which he does not want to falsify?

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member knows that.

**Mr. S. Satyamurti:** I am asking—what is the "history" to which they refer? Do they refer to Edward Thompson's "The other side of the medal"?

**Mr. C. M. G. Ogilvie:** The history to which they refer was that there was a mutiny—a mutiny of the old Bengal Army.

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

#### CUT ON THE SALARIES OF GOVERNMENT SERVANTS.

371. \***Mr. S. Satyamurti:** Will the Honourable the Finance Member be pleased to state:

- (a) whether there has been or there is any proposal for a cut in the salaries of Government servants;
- (b) what was the total saving of the Government of India on the last occasion when there was a ten per cent. cut in salaries; and

(c) whether Government have given up this means of retrenchment altogether for the present, and, if so, why?

**The Honourable Sir James Grigg:** (a) and (c). I would refer the Honourable Member to the reply that I gave on the 9th February, 1939, to Sardar Mangal Singh's starred questions Nos. 241 and 257.

(b) The savings were estimated to amount, for the Central Government civil services, including the Posts and Telegraphs Department but excluding the Railways, to Rs. 122 lakhs and for the Army to Rs. 114 lakhs.

**Mr. S. Satyamurti:** May I know whether the decision of the Railway Board not to impose a cut in salaries, as revealed by the Railway Budget presented yesterday, means that there will be no cut in salaries in any other Department?

**The Honourable Sir James Grigg:** I would ask the Honourable Member either to draw his own conclusions or to await the Budget statement.

**Mr. S. Satyamurti:** May I know what are the reasons for which Government refuse to accept the recommendation of the House which was carried *nem con* recommending a salary cut of ten per cent. on salaries above the minimum of Rs. 200?

**The Honourable Sir James Grigg:** I think that subject is one for debate rather than for being dealt with by question and answer.

**Mr. S. Satyamurti:** Sir, the Railway Budget was presented yesterday, and the Budget does not disclose any cut on salaries. May I know why Government have turned down the recommendation of this House and did not impose a cut in salaries?

**The Honourable Sir James Grigg:** I think the Honourable Member had better wait and see the general picture of the finances of the Government of India.

**Mr. K. Santhanam:** May I know what would be the saving in the Railway Budget if the cut were imposed?

**The Honourable Sir James Grigg:** I cannot give that, but to the best of my recollection the saving which was made during the previous cut, which was one of ten per cent. in the case of the higher salaries and graded in its lower reaches, was of the order of something under two crores.

#### BAN ON THE RETURN OF POLITICAL EXILES TO INDIA.

†372. **Mr. S. Satyamurti:** Will the Honourable the Home Member be pleased to state:

(a) whether his attention has been drawn to the answer of the premier of the Government of the United Provinces in the United Provinces Assembly that he had made all representations on behalf of political exiles from India with strong recommendations for their acceptance;

---

†For answer to this question, see answer to question No. 366.

- (b) whether the Central Government had not acceded to any of these representations; and  
 (c) if so, for what reasons?

#### BAN ON THE RETURN OF RAJA MAHENDRA PRATAP TO INDIA.

**373. \*Mr. Mohan Lal Saksena:** (a) Will the Honourable the Home Member be pleased to state if Government have received any recommendation from the United Provinces Government to withdraw the ban from Raja Mahendra Pratap Singh and to permit him to return to India? If so, have they come to any decision in the matter?

(b) Are Government aware that Raja Mahendra Pratap Singh is in great financial trouble these days?

**The Honourable Mr. R. M. Maxwell:** (a) I would refer the Honourable Member to the reply which I have just given to Seth Govind Das and Mr. Satyamurti's starred questions Nos. 366 and 372.

(b) Government have no reliable information.

#### PROSCRIPTION OF BOOKS AND PUBLICATIONS.

**374. \*Mr. Mohan Lal Saksena:** (a) Will the Honourable the Home Member be pleased to state the names of the books and publications which have been proscribed, or whose entry has been banned into India under the Sea Customs Act?

(b) Have Government received any representation from the Local Governments regarding any of the banned books, particularly the book written by Srijut Subhash Bose, the Congress President?

(c) Are Government prepared to consider the feasibility of removing the ban on Mr. Bose's book?

**The Honourable Mr. R. M. Maxwell:** (a) All notifications issued under the Sea Customs Act are published in the Gazette of India and Government do not consider it necessary to give a list of such books or publications.

(b) A communication was received from the Government of the United Provinces regarding Mr. Bose's book; no representation has been received from any other Provincial Government.

(c) Government have decided to cancel the notification in respect of Mr. Bose's book.

**Mr. T. S. Avinashilingam Chettiar:** This comes into effect from when?

(No answer.)

**Shrimati K. Radha Bai Subbarayan:** Have Government considered the advisability of revising this list in view of the fact that it now contains books which will be useful as text-books for students of economics, history and politics?

**The Honourable Mr. R. M. Maxwell:** I did not say that there was any definite list; I said that a series of notifications was published.

**Mr. S. Satyamurti:** With reference to the answer to clause (a) of the question, may I know whether these notifications are re-examined from time to time, with a view to seeing whether the continuance of the ban on these books and publications is justifiable, and if so, how often and by whom?

**The Honourable Mr. R. M. Maxwell:** If any case comes particularly to notice, of course the reasons are re-examined, as they were in the case of the book referred to in the question.

**Mr. S. Satyamurti:** *Suo motu* do the Government of India have any machinery by which they examine periodically the books and publications that are proscribed, and decide whether to continue the ban or not?

**The Honourable Mr. R. M. Maxwell:** There is no such regular periodical revision.

**Mr. S. Satyamurti:** So that a book once banned is always banned?

**The Honourable Mr. R. M. Maxwell:** Yes, because its contents remain the same.

**Mr. S. Satyamurti:** Do not Government see the need for revision of these books, in view of the rapid development of thought in these days in the political and economic fields, and the fact that doctrines once held as heterogeneous become very orthodox in several countries?

**The Honourable Mr. R. M. Maxwell:** That is a matter of opinion.

**Mr. T. S. Avinashilingam Chettiar:** In view of the fact that a book once banned continues to be banned, will Government consider the desirability of revising their orders over these matters?

**The Honourable Mr. R. M. Maxwell:** Government have not so far found any necessity to do so, except in individual cases particularly brought to their notice.

**Mr. Mohan Lal Saksena:** Am I to take it that Government do not maintain any list of banned books?

**The Honourable Mr. R. M. Maxwell:** They can be found by a search of the various notifications.

#### EMPLOYMENT OF FOREIGNERS IN SERVICES OF THE GOVERNMENT OF INDIA.

375. \***Mr. Govind V. Deshmukh** (on behalf of Mr. M. S. Aney): Will the Honourable the Home Member be pleased to say:

- (a) whether his attention is drawn to the following reply given by the Right Honourable Sir Samuel Hoare in the British House of Commons to a question put by Lieutenant Commander Fletcher on the 15th December, 1938 :

“He (the Right Honourable Sir Samuel Hoare) could, however, give an assurance that permission would not be given for importation by any firm in Britain of any foreigner to fill a post which would be filled by a person resident in Britain and possessing the necessary qualifications”; and

- (b) whether the Government of India propose to make a similar announcement of their policy in the matter of the employment of foreigners, including residents of the United Kingdom, Ireland and the Dominions and the Crown Colonies in the British Empire, in the civil, military and technical services of the Government of India; if so, when, and if not, why not?

**The Honourable Mr. R. M. Maxwell:** (a) I have seen a newspaper report.

(b) British subject are not foreigners under the law, and any such declaration in respect of service under the Crown in India would, in any case, as far as British subjects domiciled in the United Kingdom are concerned, be barred by section 111 of the Government of India Act, 1935. The extent of the employment under the Crown of British subjects domiciled elsewhere, outside India, is so small that the matter is of hardly more than academic interest, and Government do not consider it necessary to take any action. The employment of foreigners under the Crown is governed by section 262 of the Government of India Act which permits only temporary employment.

#### MILITARY TRAINING IN SCHOOLS AND COLLEGES STARTED BY PROVINCIAL GOVERNMENTS.

**376. \*Sardar Mangal Singh:** Will the Defence Secretary please state :

- (a) whether he is aware that Provincial Governments have started military training in schools and colleges; and
- (b) whether the Defence Department is co-operating with them, and in what form the army authorities have rendered assistance to this movement?

**Mr. C. M. G. Ogilvie:** (a) No.

(b) Does not arise.

#### LOANS ADVANCED TO INDIAN STATES.

**377. \*Sardar Mangal Singh:** Will the Honourable the Finance Member please state :

- (a) whether any loan has been advanced to any State during the current financial year, and, if so, to which State;
- (b) whether Government have satisfied themselves that the loan will be used for productive purposes only; and
- (c) how far the loans to the Bahawalpur and Patiala States have been liquidated?

**The Honourable Sir James Grigg:** (a) and (b). The only advance made during the current year to an Indian State was a sum of Rs. 5 lakhs to the Bundi State in silver rupees and small coin to enable them to convert the State currency into British Indian currency. The advance is repayable within six months.

(c) The Bahawalpur State have been repaying the annual instalments regularly and have in fact made advance repayments also. No loan is outstanding against the Patiala State.

## INDIAN TROOPS SERVING ABROAD.

**378. \*Sardar Mangal Singh:** Will the Defence Secretary please state :

- (a) the number of Indian troops serving abroad and the places where they are stationed; and  
 (b) what is the saving to the Defence Department as a result of the Indian troops being stationed abroad?

**Mr. C. M. G. Ogilvie:** (a) Hong Kong ..... 1,592.  
 Taiping ..... 777.  
 Burma ..... 799.

(b) Rs. 17½ lakhs per annum.

**Mr. S. Satyamurti:** May I know what are the purposes for which the Indian troops are now stationed in Hong Kong?

**Mr. C. M. G. Ogilvie:** I submit that does not arise from this question.

**Mr. S. Satyamurti:** May I know how long they have been stationed?

**Mr. C. M. G. Ogilvie:** I suggest that the Honourable Member might put down a question.

**Mr. S. Satyamurti:** May I know whether they are staying there for Indian defence purposes or Imperial defence purposes?

**Mr. C. M. G. Ogilvie:** Again I must request the Honourable Member to put down a question. Clearly it does not arise from this one.

**Mr. K. Santhanam:** May I know whether any non-effective charges are recovered for these troops serving abroad?

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

**379. \*Mr. Abdul Qayum:** I am not putting this question, Sir.

## EMPLOYMENT OF SERVANTS FOR BRITISH TROOPS THROUGH CONTRACTORS.

**380. \*Mr. Mohan Lal Saxena:** (a) Will the Defence Secretary be pleased to state whether it is a fact that for British troops servants like boot-boys, runners, washermen, tailors, mochiees and barbers are employed through a contractor by the Officer Commanding of the troops?

(b) Is it a fact that, on account of employment through the contractor, all these servants have to pay monthly profits to the Army contractor of the British Regiment?

(c) Is it also a fact that out of the profits thus collected by the Army contractor, he has to pay a certain amount to the regimental fund?

(d) Is it a fact that the Army contractors carry all these servants from one cantonment to another on the transfer of the Regiment and do not employ local men?

(e) Is it a fact that recently the Army Servants Association of Lucknow, Cantonment sent a representation to the Quartermaster General in India complaining against this practice and demanding employment of local people residing in Lucknow Cantonment?

(f) What reply, if any, was given to this Association on their representation?

(g) What steps do Government propose to take in the matter?

**Mr. C. M. G. Ogilvie:** (a) With the exception of boot-boys and runners about which Government have no information, the answer is in the affirmative.

(b) Government have no information.

(c) A rebate is paid by a contractor at a rate settled between the Commanding Officer of a unit and the contractor.

(d) This is usually the practice but contractors do employ local men on occasions.

(e) Yes.

(f) The association was informed that Officers Commanding British units are at liberty to engage contractors and/or others with a view to ensuring that the best arrangements possible are made in the interests of the troops under their command and that employment of individuals within a station is entirely a matter for their discretion.

(g) Institute contractors at Lucknow are being instructed to fill vacancies by employing local men as far as possible, provided they are willing to proceed on active service if necessary.

**POWERS OF COMMAND OF BRITISH WARRANT OFFICERS, ETC., VIS-A-VIS INDIAN WARRANT OFFICERS, ETC.**

**381. \*Mr. M. Asaf Ali:** Will the Defence Secretary please state:

(a) whether certain orders were passed last year, according to which the powers of command of British Warrant Officers and Non-Commissioned Officers *vis-a-vis* Viceroy's Commissioned Officers and Indian Warrant Officers have been so defined that the latter have been placed under the command of junior British ranks; and

(b) whether he will place that order on the table of the House and state its actual effect?

**Mr. C. M. G. Ogilvie:** (a) and (b). I refer the Honourable Member to India Army Order No. 649, dated the 13th July, 1938, a copy of which is in the Library, and also to my reply to starred question No. 915 asked by Mr. Satyamurti on the 12th September, 1938.

**Mr. M. Asaf Ali:** May I know whether Government are aware of the fact that this discrimination is causing a great deal of heart-burning among Indian officers holding these ranks?

**Mr. C. M. G. Ogilvie:** No, Sir. Government are not aware that there is any such heart-burning and, in fact, does not see how there can be in the circumstances.

**Mr. M. Asaf Ali:** I am not quite certain of the circumstances because it is quite obvious that junior British officers have been invested with powers of command over senior Indian officers.

**Mr. C. M. G. Ogilvie:** The facts are not that one is senior and another is junior. It is a question of qualifications only in certain technical departments. That is to say, where no British officers with the requisite qualifications are available and where no Viceroy's commissioned officers have the necessary qualifications, it is necessary in certain technical units to use British warrant officers. That is all.

**Mr. M. Asaf Ali:** I was referring more or less to cases of British warrant officers and the N. C. O.'s of the same rank. The British warrant officers seem to have powers of command over officers holding the same rank.

**Mr. C. M. G. Ogilvie:** It is only in order that they may be able to impart necessary technical instructions to persons who have not got the technical knowledge.

#### ASSISTANCE TO INDIANS FOR TRAINING AS PILOTS IN GREAT BRITAIN.

**382. \*Mr. K. Santhanam:** Will the Defence Secretary please state ;

- (a) whether his attention has been drawn to the statement of the Right Honourable Sir Kingsley Wood, the Air Minister of Great Britain, in the House of Commons regarding 'the assistance received in the personnel from the Dominions' for the British Air Force;
- (b) whether it is a fact, as he stated, that hundreds of young men from the Dominions had gone to Britain to be trained as pilots;
- (c) whether any similar assistance was asked for from India;
- (d) whether it is open to Indian young men to join the Royal Air Force on the same terms as the young men from the Dominions; and
- (e) if the answer to part (d) above be in the negative, what is the discrimination based on?

**Mr. C. M. G. Ogilvie:** (a) Yes.

(b) Government have no information beyond that contained in the Air Minister's speech.

(c) No.

(d) No.

(e) Recruitment to the Royal Air Force is limited to persons of pure European descent.

**Mr. K. Santhanam:** May I know whether there is any similar restriction placed on people coming to India to serve in the Air Force?

**Mr. C. M. G. Ogilvie:** The recruitment to the Indian Air Force is restricted to persons of Indian descent.

**Mr. K. Santhanam:** May I ask if any Royal Air Force squadrons are stationed in India?

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

**Mr. K. Santhanam:** Why, then, the Government of India permit this discrimination?

**Mr. C. M. G. Ogilvie:** There is no difference between the Royal Air Force and the British army. They are both British services and the same restrictions as regards the recruitment apply to both of them.

**Mr. K. Santhanam:** Why, then, India is considered to form part of the British Empire?

**Mr. President** (The Honourable Sir Abdur Rahim): Such questions cannot be allowed.

**Mr. M. Ghasuddin:** In view of the fact that certain Dominions debar the entry of Indians into their boundaries, will the Government of India consider that the Royal Air Force personnel belonging to those Dominions should not be allowed to come to India?

**Mr. C. M. G. Ogilvie:** I have no knowledge of the allegation made by the Honourable Member.

**Mr. S. Satyamurti:** May I ask why the Government of India permit the employment or the stationing of the Royal Air Force in India which makes entry to it purely confined to men of European descent, and whether they will not develop their own force by confining its recruitment to Indians?

**Mr. C. M. G. Ogilvie:** The Indian Air Force has already made a promising beginning and is purely confined to Indians.

**Mr. S. Satyamurti:** I am asking why the Government of India permit the Royal Air Force which discriminates against Indians to be stationed or to be used in this country.

**Mr. C. M. G. Ogilvie:** It obviously must be.

**Mr. S. Satyamurti:** What is this "must be" about it? Can we not defend ourselves without the help of this Royal Air Force?

**Mr. C. M. G. Ogilvie:** Certainly not.

**Mr. Sri Prakasa:** May I know in what manner is the purity of blood examined by Government and for how many generations do they do so?

**Mr. C. M. G. Ogilvie:** I shall require notice of that.

#### CONTRACTS FOR THE CARRIAGE OF MILITARY AND MARINE PASSENGERS BETWEEN CERTAIN PORTS.

**383. \*Mr. K. Santhanam:** (a) Will the Defence Secretary be pleased to state whether Government have a contract for the carriage of military and marine passengers:

(i) between the ports of India, Burma and Ceylon, and

(ii) between Indian ports and other foreign ports, with shipping companies?

(b) If the answer to the above be in the affirmative, will Government be pleased to state :

- (i) the names of all the shipping companies with which they have entered into such contract; and
- (ii) the amount of fares paid to each of the shipping companies for the carriage of such passengers during the last five years, giving separately the amounts paid as well as the total number of passengers carried (1) between India, Burma and Ceylon, and (2) between Indian ports and other foreign ports?

(c) Will Government be pleased to lay on the table a copy of the contract or contracts made with them?

(d) Will Government be pleased to state when these contracts would expire?

(e) Will Government be pleased to state :

- (i) whether they have recently invited any tenders for the carriage of such passengers and if so, whether any opportunity was given to Indian shipping companies to tender for the same, or
- (ii) whether negotiations for the renewal of such contracts are now pending with the existing shipping companies, or
- (iii) whether it is their intention to renew the existing contracts without giving an opportunity to the Indian shipping companies to carry such passengers and enter into the necessary contract for that purpose?

(f) Will Government be pleased to state whether, in entering into such contracts with shipping companies in future, they will give preference to Indian shipping companies owned, controlled and managed by Indians wherever they operate?

**Mr. C. M. G. Ogilvie:** (a) (i) Yes.

(ii) The Government of India are party (with His Majesty's Government in the United Kingdom) to certain agreements with shipping companies for the conveyance of military passengers between India and other ports.

(b) (i). A contract for carriage of military personnel exists with the British India Steam Navigation Company between India, Ceylon and Burma.

(ii) Information is not available as regards the number of passengers carried and the amount of fares paid between India and other foreign ports. Between India, Burma and Ceylon the amount paid between the 1st June, 1937, and the 31st May, 1938, was approximately Rs. 88,700 and the number of passengers carried was approximately 5,000 of all classes. This may be taken as a fair yearly average.

(c) No.

(d) The contract with the British India Steam Navigation Company is terminable at one year's notice.

(e) (i). No. The second part of the question does not arise.

(ii) No.

(iii) Does not arise.

(f) The position of Indian companies will certainly be given full consideration in the event of it being necessary to enter into a new contract, but no assurance that they will receive preference can be given.

**Mr. K. Santhanam:** The Honourable Member said that the contract with the British India Steam Navigation Company is terminable at one year's notice. Will the Government of India give that notice so that they may be able to re-consider the matter whether they should ask for any tenders from the Indian shipping companies?

**Mr. C. M. G. Ogilvie:** No, Sir. Government of India are at present well-satisfied with the service received.

**Mr. K. Santhanam:** May I ask when the opportunity for the Government of India to reconsider the matter will come?

**Mr. C. M. G. Ogilvie:** I cannot possibly say that.

**Mr. K. Santhanam:** Are we to understand that they have no intention of re-considering this matter?

**Mr. C. M. G. Ogilvie:** That, I must say, cannot be taken as a legitimate assumption. It depends upon what happens. The Honourable Member's question is entirely hypothetical.

**Mr. Manu Subedar:** In view of the fact that the Honourable Member refuses to place the contract on the table as he said in reply to part (c) of the question, may I inquire whether the rates fixed for the passages are cheaper than the rates charged to ordinary civilians or whether the Defence Department is paying excessive rates?

**Mr. C. M. G. Ogilvie:** All I can say is that the rates are not excessive.

**Mr. Manu Subedar:** I am asking whether they are cheaper than what is charged to the civilian passage?

**Mr. C. M. G. Ogilvie:** I should require notice of that.

**Mr. S. Satyamurti:** My Honourable friend said in answer to clause (e)(i) of the question, that they did not invite tenders. Without inviting tenders, may I know how they came to the conclusion that the interests of Government have been protected by entering into this contract?

**Mr. C. M. G. Ogilvie:** I am afraid the Honourable Member did not read the question. It says whether the Government of India have any tenders and the answer is 'No'.

**Mr. S. Satyamurti:** Before this contract was entered into with the British India Steam Navigation Company, may I ask whether any tenders were invited and whether the rates showed that they were comparatively the best?

**Mr. C. M. G. Ogilvie:** I must ask for notice of that question.

**Mr. S. Satyamurti:** With regard to clause (f) of the question, may I know whether the Government will consider the question of giving notice or not giving notice from the point of view of giving encouragement to the Indian shipping interests?

**Mr. C. M. G. Ogilvie:** No, Sir. There is no question at present of giving notice.

**Mr. S. Satyamurti:** I want to know whether in coming to a decision on the question of giving further contract Government will pay paramount consideration to the fact that in spending the Indian tax-payer's money, the interests of Indian shipping should be borne prominently in mind.

**Mr. C. M. G. Ogilvie:** In a question like the transport of troops the only question which will weigh with the Government is efficiency combined with economy.

**Mr. S. Satyamurti:** Have the Government come to the conclusion that the Indian shipping is not economic or efficient?

**Mr. C. M. G. Ogilvie:** It does not arise at present.

#### WINGSLOT INVENTION OF MR. PHIROZE NAZIR.

**384. \*Mr. S. Satyamurti** (on behalf of Seth Govind Das): Will the Defence Secretary be pleased to state:

- (a) whether it is a fact that Mr. Phiroze Nazir, a young Indian inventor working in London, published details of a wingslot invention which was described by experts as of the utmost importance to flying;
- (b) whether it is a fact that Government thought so highly of the invention that they met the original cost of patents;
- (c) whether it is a fact that Mr. Nazir has been trying to persuade the British Air Ministry in England to give his invention a proper trial in a wind tunnel and that he was informed to the effect that they cannot begin to test his invention until the rush of rearmament is over; and
- (d) whether Government in the interest of Imperial defence in this country, or in India's defence interest, tried to influence the decision of the authorities in Great Britain to expedite the trial of Mr. Nazir's inventions?

**Mr. C. M. G. Ogilvie:** (a)—(d). This question should have been addressed to the Honourable the Communications Member.

#### COMMITTEE APPOINTED ON THE INDIANISATION OF THE ARMY.

**385. \*Mr. S. Satyamurti** (on behalf of Seth Govind Das): Will the Defence Secretary please state:

- (a) whether a committee has been appointed by Government on the question of Nationalisation (Indianisation) of the Army in India and for the future methods of recruitment;
- (b) whether this committee has been appointed in response to the Resolution adopted by this House in last year's Simla Session on the subject, or whether it has been appointed in conformity with the unanimous recommendations of the Indian Sandhurst Committee in 1926;

- (c) whether Government propose giving full effect to the Resolution passed in the last Simla Session of the Assembly by appointing majority of its members from the elected Members of the Legislature; and
- (d) if not, whether he will state his reasons therefor?

**Mr. C. M. G. Ogilvie:** (a) Yes.

- (b) For both the reasons mentioned by the Honourable Member.
- (c) No.
- (d) Because Government's freedom of choice would be unduly restricted.

**Mr. S. Satyamurti:** May I know what is this "freedom of choice" exercised for?

**Mr. C. M. G. Ogilvie:** In order that Government may get what appears to it to be the source from which the best advice is likely to be obtained.

**Mr. S. Satyamurti:** Have the Government come to the conclusion that the best advice is not likely to be obtained by a committee with a majority of its members from the elected Members of this House?

**Mr. C. M. G. Ogilvie:** That will seem to be on this subject a natural inference.

**Mr. S. Satyamurti:** May I know the reason why Government have come to this "natural inference" that a majority of elected Members of this House on a Committee of this kind will not give the best advice to Government on a matter which is of vital interest to this House, as it has shown on more than one occasion?

**Mr. C. M. G. Ogilvie:** Because a great deal of experience of various kinds is required and though the opinions of elected Members as such are of political value, this is a practical problem of great difficulty in which certain types of experience and qualifications are necessary.

**Mr. S. Satyamurti:** Have Government examined the list of elected Members of this House and come to the conclusion that they cannot get six or seven Members from the whole list of elected Members—Europeans and Indians—who will have the requisite experience, knowledge and practical statesmanship to give them the best advice on a matter of this kind?

**Mr. C. M. G. Ogilvie:** The Committee which Government sought to appoint was the one which it thought would give it the best advice.

#### COMMITTEE APPOINTED ON THE INDIANISATION OF THE ARMY.

**386. \*Mr. S. Satyamurti** (on behalf of Seth Govind Das): Will the Defence Secretary please state:

- (a) whether he is aware of, or his attention has been drawn to the opinions expressed in the press of the country to the effect that the terms of reference for the committee appointed on the Indianisation of the Army is unsatisfactory;
- (b) the number of members of the committee;

- (c) the number of elected members of the Central Legislature appointed to the committee and whether they constitute a majority of the committee; and
- (d) whether he is aware that he, in the course of his speech in the debate on the Resolution, said that "he did not find any particular fault with the demand of the Congress that the majority of the committee should consist of elected members of the Central Assembly ..... that the presence of the elected members of the Legislature would be not only welcome but would be regarded as absolutely essential"?

**Mr. C. M. G. Ogilvie:** (a) Yes.

(b) and (c). I refer the Honourable Member to the press note dated the 11th January, 1939, on the subject.

(d) The Honourable Member has not quoted the relevant extract of my speech in full. I refer him to the printed proceedings of this House for the 2nd September, 1938.

**Mr. S. Satyamurti:** With reference to the answer to part (a), may I know whether Government propose to persist in their terms of reference which include *inter alia* that the Committee may recommend a going back even on the present system?

**Mr. C. M. G. Ogilvie:** I do not think that the Honourable Member need understand it includes a going back on the present system. It only includes the possibility of going back upon the present system of recruitment.

#### COMMITTEE APPOINTED ON THE INDIANISATION OF THE ARMY.

†327. \***Seth Govind Das:** Will the Defence Secretary please state:

- (a) whether he proposes influencing the decision of Government to change the constitution of the committee and to appoint more elected members of the Legislature to the committee appointed to examine and report on the question of Indianisation of the Army;
- (b) whether he proposes defining the terms of reference by explicitly putting forth the objects as embodied in the Resolution passed by this House on the subject; and
- (c) if not, whether he will please explain his reasons therefor?

**Mr. C. M. G. Ogilvie:** (a) and (b). No.

(c) The terms of reference are already sufficiently explicit.

#### RECORDING OF CORRECT CENSUS.

328. \***Mr. Brojendra Narayan Chaudhury:** Will the Honourable the Home Member please state:

- (a) whether any complaint has been made, or doubt expressed, by any section of the public, or by any official engaged in the last census, that the communal partiality of enumerators has sometimes been responsible for incorrect or careless recording of religion, particularly amongst the backward and hill tribes;

---

†Answer to this question laid on the table, the questioner having exhausted his quota.

- (b) whether the attention of Government has been drawn to the following resolution of the Bengal Hindu United Association at its Working Committee's meeting of the 27th January, 1939, in the presence of Raja Kshitindra Chandra Deb Roy Mahasaya, Srijut Mrinal Kanti Ghosh, Editor, *Amrita Bazar Patrika*, and other leading Hindus of Bengal; "The association draws the attention of the Government to the necessity of appointing a Hindu enumerator with a Muhammadan enumerator in order to ensure correct recording of census"; and
- (c) whether Government have considered or propose to consider the above suggestion?

**The Honourable Mr. R. M. Maxwell:** (a) Yes. I refer the Honourable Member to paragraph 164 of part I of the first volume of the 1931 Census Report.

- (b) I have seen a press report of the resolution.  
 (c) The answer to both parts is in the negative.

**RELEASE OF MR. DHANWANTRI SENTENCED IN THE DELHI CONSPIRACY CASE.**

†389. \***Prof. N. G. Ranga:** Will the Honourable the Home Member be pleased to state:

- (a) if Mr. Dhanwantri, sentenced in the Delhi conspiracy case, is in the charge of the Government of India;  
 (b) where is he now located;  
 (c) who is responsible for his release;  
 (d) when he is due to be released; and  
 (e) whether Government are prepared to order his release immediately?

**The Honourable Mr. R. M. Maxwell:** (a) and (b). Mr. Dhanwantri is in charge of the Superintendent, Lahore Central Jail, where he is serving his sentence of imprisonment.

(c) The Superintendent, Lahore Central Jail, for his release on the expiry of his sentence; the Government of India for any earlier release.

(d) The information has been asked for and will be laid on the table in due course.

(e) No.

**FENCING OF THE BOUNDARY BETWEEN BRITISH INDIA AND PONDICHERRY WITH BARBED WIRE.**

390. \***Mr. K. Santhanam:** Will the Honourable the Finance Member please state:

- (a) whether it is proposed to fence the boundary between British India and Pondicherry with barbed wire;  
 (b) the total cost of such fencing;  
 (c) the estimated increase in customs revenues as a result of such fencing; and

---

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

(d) whether similar fencing is contemplated in the case of other customs boundaries?

**The Honourable Sir James Grigg:** (a) Sanction has been given to the fencing with barbed wire of portions of the Pondicherry and Karikal frontiers.

(b) For the portions so far sanctioned the estimate is Rs. 3.21 lakhs.

(c) The fencing has been sanctioned as being the most effective and economical method of avoiding the loss of revenue which would otherwise result and which is estimated to amount annually to very much more than the capital cost of the fencing. The amount of such loss cannot however be estimated accurately.

(d) Fencing of different types, suitable to the nature of the country, is adopted on other customs boundaries.

**Mr. K. Santhanam:** With reference to part (c) may I know if there will be any reduction in the customs staff as a result of this barbed fencing?

**The Honourable Sir James Grigg:** If the barrier of barbed wire fencing has been completed and is in effective operation, I imagine it will be possible to reduce the number of human obstructions to smuggling.

**Mr. K. Santhanam:** Before the Honourable Member sanctioned the estimates, did he calculate the possible reduction in staff thus saving in expenditure?

**The Honourable Sir James Grigg:** No, Sir, the main consideration was the reduction in smuggling and therefore increased revenue which is vastly more important than the actual cost of staff.

**Mr. K. Santhanam:** Was any financial justification presented to the Finance Department before this scheme was sanctioned?

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

#### SPECIAL PAY ATTACHED TO POSTS UNDER THE GOVERNMENT OF INDIA.

391. **Mr. K. Santhanam:** Will the Honourable the Home Member please state:

- (a) the number of posts under the Government of India to which special pay has been sanctioned since 1st April, 1937;
- (b) the number of officials under the Government of India to whom special pay has been sanctioned in their personal capacity since 1st April, 1937;
- (c) the total annual recurring cost of all special pays attached to all posts and officers under the Government of India; and
- (d) whether Government have considered the desirability of putting an end to this system of special pay as a measure of economy and purity of administration?

**The Honourable Sir James Grigg:** (a) and (c). The information asked for is not readily available and cannot be collected without labour and expense which would not be commensurate with the results obtained.

(b) The number of these is extremely small, less than half a dozen, as the strictest orders have been passed against them, and each case requires my personal concurrence.

(d) In so far as special pay is attached to a post as a matter of administrative convenience in preference to raising the pay of the post, or in so far as it represents remuneration for extra duties which would otherwise require an additional post, it is both economical and administratively sound, and there are no grounds for abandoning the system.

**Mr. S. Satyamurti:** With reference to part (d), may I know whether Government realise that there is a danger of favouritism in this grant of special pay especially in their personal capacity to Government servants, and whether the Honourable the Finance Member will stop this as a source of abuse?

**The Honourable Sir James Grigg:** Certainly; that is the reason why strict orders have been passed against them. There are, of course, certain rights for the granting of special pay which have acquired statutory protection.

**Mr. S. Satyamurti:** Apart from these special pays which are statutorily protected, is it the present policy of Government not to grant special pays in personal capacity to any Government servant?

**The Honourable Sir James Grigg:** Except on very clear justification, that is so.

**Mr. S. Satyamurti:** With regard to this "very clear justification", may I know whether it is the department concerned which alone makes up its mind on this matter, or whether the matter is brought up before the Finance Department first, and then before the Government of India as a whole before such pays are sanctioned?

**The Honourable Sir James Grigg:** I do not think the Honourable Member could have listened to my answer to part (b):

"Strictest orders have been passed against them and each case requires my personal concurrence."

**Mr. K. Santhanam:** With reference to part (b) may I know the officials to whom that pay was given after 1st April 1937?

**The Honourable Sir James Grigg:** No, Sir.

**Mr. S. Satyamurti:** It is only about half a dozen cases. In order to enable the House and the public to judge on the justice or otherwise of this special concession, will the Honourable Member give those names to the House?

**The Honourable Sir James Grigg:** I cannot give the names. They cover not only Government servants at the headquarters, but they are spread over the whole of the Customs and Income-tax services and the railway service and it would take a considerable time to hunt them out.

**Mr. K. Santhanam:** If they are spread over such a vast number of the services, how did the Honourable Member inform the House that the number of these cases is only about half a dozen?

**The Honourable Sir James Grigg:** That is based on the recollection of the Branch. It is not the precise figure. It is the recollection of the Branch of the Finance Department which deals with these cases.

**SALARY OF THE PRIVATE SECRETARY TO HIS EXCELLENCY THE GOVERNOR GENERAL.**

†392. \***Mr. K. Santhanam:** Will the Honourable the Home Member please state:

- (a) the usual salary for the post of Private Secretary to His Excellency the Governor General;
- (b) what is the salary of the present Private Secretary; and
- (c) the reasons, if any, for any variation in the salary of the present incumbent?

**The Honourable Mr. R. M. Maxwell:** The question should have been addressed to the Honourable the Leader of the House.

**CHANGES IN THE DEPARTMENTS UNDER THE CONTROL OF HIS EXCELLENCY THE VICEROY AND THE CROWN REPRESENTATIVE.**

†393. \***Mr. K. Santhanam:** Will the Honourable the Home Member please state:

- (a) the changes that have been made in the last year in the constitution of departments under the direct control of His Excellency the Viceroy and the Crown Representative;
- (b) the changes, if any, in the salaries of the Secretaries and other principal officers of those Departments; and
- (c) the increased annual cost of the reorganisation?

**The Honourable Mr. R. M. Maxwell:** The question should have been addressed to the Honourable the Leader of the House.

**EXTERMENT OF PANDIT CHANDER GUPTA VEDALANKAR FROM DELHI PROVINCE.**

394. \***Bhai Parma Nand:** (a) Will the Honourable the Home Member be pleased to state whether it is a fact that Pandit Chander Gupta Vedalankar has been externed from Delhi Province for a period of one year?

(b) If the answer to part (a) be in the affirmative, what is the cause and circumstances under which the Government have resorted to such a drastic step?

(c) Is it a fact that a case under section 188/109, Indian Penal Code, was brought against him by the Delhi Police, in which he was honourably acquitted by the Court?

(d) Are Government prepared to reconsider the case and remove the ban?

**The Honourable Mr. R. M. Maxwell:** (a) Yes.

---

†Answer to this question laid on the table, the questioner having exhausted his quota.

(b) Pandit Chander Gupta Vedalankar was externed from the Delhi Province by the Chief Commissioner because his conduct and public utterances were likely to cause further communal rioting.

(c) He was prosecuted under section 188/109 of the Indian Penal Code, and the Magistrate acquitted him holding that the case was not proved.

(d) No.

**Mr. Lalchand Navalrai:** May I know if this ban order was made after the acquittal under section 188, Indian Penal Code, or before?

**The Honourable Mr. R. M. Maxwell:** Yes, Sir. It is *post hoc* but not *propter hoc*.

**Mr. Lalchand Navalrai:** Was there any adverse report against him before he was prosecuted under section 188?

**The Honourable Mr. R. M. Maxwell:** He would not have been prosecuted if there had not been something against him.

**Mr. Lalchand Navalrai:** The prosecution was for opposing some Government servants under section 188. My question is when this ban order was made, was there any complaint against him before he was prosecuted for that particular case?

**The Honourable Mr. R. M. Maxwell:** I want notice.

#### STATEMENT OF THE WEALTH OF INDIVIDUALS OR FIRMS DEMANDED BY INCOME-TAX COMMISSIONERS.

**395. \*Mr. Sri Prakasa:** Will the Honourable the Finance Member state:

- (a) if Income-tax Commissioners are authorised to call for a statement of the total wealth of individuals or firms and take a declaration from persons concerned that the same is correct and complete;
- (b) the law under which they are so authorised;
- (c) the purpose for which such a statement is demanded; and
- (d) the penalty, if any, for not supplying the same?

**The Honourable Sir James Grigg:** (a) and (b). The Honourable Member is referred to sections 22(4), 23(3) and 37 of the Indian Income-tax Act.

(c) For purposes of assessment.

(d) There is no penalty under the Income-tax Act; but the Income-tax Officer has the powers of a Civil Court under section 37.

#### KEEPING OF BALANCE SHEETS, LEDGERS, ETC., OF ASSESSEES IN THE INCOME-TAX OFFICES.

**396. \*Mr. Sri Prakasa:** Will the Honourable the Finance Member state:

- (a) if it is a fact that Income-tax Officers require assesseees to leave their balance sheets, ledgers, etc., in the Income-tax Office if the examination of the same is not completed at a single sitting; and

- (b) if Government are prepared to consider the desirability of issuing instructions to the effect that ordinarily the books should be allowed to be taken away and the assessee concerned required to bring them again; and when this is deemed undesirable for any reason, that the same are carefully packed and sealed before the assessee with authority to the assessee themselves to put their seals also if they so like?

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

(b) Government have already issued instructions to the Income-tax Officers to examine accounts expeditiously and have no objection to amplifying them in the direction suggested by the Honourable Member.

**PROPOSAL TO CONSTITUTE MADRAS CITY INTO AN ENCLAVE UNDER A CHIEF COMMISSIONER.**

**397. \*Mr. O. N. Muthuranga Mudaliar:** (a) Will the Honourable the Home Member please state whether it is a fact that a proposal is under the consideration of the competent authorities to constitute Madras City into an enclave under a Chief Commissioner, so as to make it serve as a capital of the Andhra and Tamil Provinces when the Andhra Province has been constituted?

(b) Are Government aware that it will not be in consonance with public opinion in the Province?

(c) Have Government received any communication to that effect either from the Madras Government or the Governor?

(d) What action do Government propose to take thereon?

**The Honourable Mr. E. M. Maxwell:** The question should have been addressed to the Honourable the Leader of the House.

**(b) WRITTEN ANSWERS.**

**LATE INTIMATION GIVEN TO CANDIDATES BY THE FEDERAL PUBLIC SERVICE COMMISSION REGARDING THEIR ADMISSION TO EXAMINATIONS.**

**398. \*Mr. O. N. Muthuranga Mudaliar:** Will the Honourable the Home Member please state whether Government are aware of the great discontent which exists among candidates for the examinations conducted by the Federal Public Service Commission, especially the examinations for the superior services, on account of the very late intimation that they receive regarding their admission to the examinations, and whether suitable steps are proposed to be taken in this regard?

**The Honourable Mr. E. M. Maxwell:** Government are not aware of any discontent among candidates for the examinations conducted by the Federal Public Service Commission. The Commission have not received any complaints which would justify the assertion of the Honourable Member. On the other hand, the Commission make every endeavour to dispose of all applications with the utmost despatch and Government are assured that generally the candidates get from four to six weeks notice of their admission to the examinations conducted by the Commission.

**ENQUIRY INTO THE ANTECEDENTS OF CANDIDATES FOR THE INDIAN CIVIL SERVICE EXAMINATION.**

**399. \*Mr. O. N. Muthuranga Mudaliar:** Will the Honourable the Home Member please state:

- (a) whether it is a fact that the antecedents of a candidate for the Indian Civil Service examination, especially his political antecedents, are invariably enquired into before his admission to the examination, or as probationer, is decided on;
- (b) the number of candidates and their names in India during the last nine years, who have been refused admission to the examination on account of their political antecedents; and
- (c) the number and names of Indian candidates who have been similarly refused admission in England during the same period?

**The Honourable Mr. R. M. Maxwell:** (a) The Federal Public Service Commission in India and the Civil Service Commissioners in England make preliminary enquiries under rule 7 of the Rules for the examinations for the Indian Civil Service held in India and England, to satisfy themselves that a candidate's character is such as to qualify him for employment in the Indian Civil Service.

(b) In the nine years 1931-1939 out of 3,569 applicants eleven were rejected for undesirable political antecedents; during the last five years of this period the number has been three.

(c) I regret I have no information.

**RECRUITMENT TO POSTS UNDER THE GOVERNMENT OF INDIA.**

**400. \*Mr. O. N. Muthuranga Mudaliar:** Will the Honourable the Home Member please state:

- (a) the posts under the Central Government to which recruitment is made through the Public Service Commission; and
- (b) the posts to which recruitment is not so made, together with the reasons therefor?

**The Honourable Mr. R. M. Maxwell:** (a) and (b). Sub-section (3) of section 266 of the Government of India Act, 1935, requires that, subject to regulations made by the Governor General in his discretion specifying matters on which it shall not be necessary for the Federal Public Service Commission to be consulted, the Commission shall be consulted in making recruitment to civil services and civil posts. The regulations specifying the services and posts for which it is not necessary to make recruitment through the Commission were published with the Government of India, Home Department Notification, No. F. 322/II/35—Ests., dated the 1st April, 1937, a copy of which has been placed in the Library.

The posts to which recruitment is not made through the Commission are those which the Commission have agreed are of such a special or technical nature that Departments of the Central Government are in a better position to recruit than the Commission.

**MODIFICATION IN THE EXISTING REGIME IN THE CHIEF COMMISSIONERS' PROVINCES.**

**401. \*Mr. O. N. Muthuranga Mudaliar:** Will the Honourable the Home Member please state whether Government have under consideration, or whether they propose to consider, the question of the desirability of modifying the existing regime in the Chief Commissioners' Provinces so as to bring them into line with other Provinces in India? If not, why not?

**The Honourable Mr. E. M. Maxwell:** The question should have been addressed to the Honourable the Leader of the House.

**STATEMENTS LAID ON THE TABLE.**

*Information promised in reply to parts (d) and (e) of starred question No. 38 asked by Mr. Badri Dutt Pande on the 8th August, 1938.*

**RAILWAY COLLISION AT HARDWAR DURING THE KUMBH MELA.**

(d) and (e). Seventeen claims have been received so far and compensation in two cases has been granted as follows :

Serial No.	Persons killed or injured in the Accident.	Particulars of the claimant.	Persons to whom compensation paid.	Relationship with the deceased.	Amount of Compensation paid.	
					Rs.	A. P.
1	Mst. Suraj Mani Devi & Ambika Devi (killed).	Mr. Biswanath Rajguru (Son of the deceased) Bahmahl, Puri.	(1) Mr. Biswanath Rajguru.	Son	886	8 0
			(2) Mr. Keshab Chandra Rajguru.	Son	886	8 0
2	Mst. Apnara Devi & Achhra Devi (killed).	Mr. Madhusudan Mishra (Son of the deceased) Brahmagiri, Puri.	(1) Mr. Madhusudan Mishra.	Son	796	0 0
			(2) Mr. Keshra Mohan Mishra.	Son	796	0 0
Total					3,265	0 0

The other fifteen cases are under investigation : of these seven claims were received in September and seven in December.

*Information promised in reply to part (c) of unstarred question No. 71 asked by Mr. B. B. Varma on the 10th November 1938.*

**SPEED EXEMPTION GIVEN TO THE SHAHDARA-SAHARANPUR LIGHT RAILWAY.**

(c) Exemption from section 62 of the Indian Railways Act, 1890, has been given for all or certain trains on the following Class II Railways (in addition to the Shabdara-Saharanpur Railway) :

1. Barsi Light.
2. Bengal Dooars.
3. Bhavnagar State.
4. Darjeeling Himalayan.
5. Dibru Sadiya.
6. Gaekwar's Baroda State.
7. Gondal.
8. Jaipur State.
9. Jamnagar and Dwarka.
10. Junagadh State.
11. Morvi.

Information promised in reply to starred question No. 1388 asked by Syed Ghulam Bhik Nairang on the 22nd November, 1938.

INADEQUATE REPRESENTATION OF MUSLIMS IN THE OFFICES SUBORDINATE TO THE DEPARTMENT OF EDUCATION, HEALTH AND LANDS.

Serial No.	Name of offices.	Name of officer.	Date of appointment.	Remarks.
1	2	3	4	5
1	Director-General, Indian Medical Service.	(1) Mr. Mohd. Mohiuddfn Khan, Clerk	24-4-33	Still in service.
		(2) Mr. Ahmed Din Sheikh Assistant	18-12-34	Do.
		(3) Mr. Ahmad Said, Clerk	30-8-35	Do.
		(4) Mr. G. N. M. Ellam, Clerk	21-8-36	Do.
2	Director, Imperial Agricultural Research Institute.	(5) Mr. Abdul Hamid, Computer	1-6-37	Do.
		(6) Mr. Nasiruddin, Engine Driver	27-11-36	Do.
		(7) Mr. Amir Mohd. Khan, Clerk	17-6-37	Do.
		(8) Mr. Habibur Rahman, Fieldman.	1-8-36	Do.
		(9) Mr. Gulam Ullah, Assistant	10-12-36	Do.
		(10) Mr. Sher Khan, Fieldman	13-5-35	Do.
		(11) Mr. Manzur Ahmad, Assistant Setter	21-11-36	Do.
		(12) Mr. A. Gulam Daasthagir, Store Clerk	26-4-35	Do.
		(13) Mr. Abdul Rashid, Plant Collector	7-8-36	Do.
		(14) Mr. Manzoor Ahmad, Fieldman	15-8-36	Do.
		(15) Mr. M. S. Anwar, Fieldman	1-3-37	Do.
		(16) Mr. Shikh Mohd. Umar, Assistant	1-8-36	Do.
		(17) Mr. Syed Wali Ahmad, Clerk	1-6-33	Do.
3	Director, Imperial Veterinary Research Institute.	(18) Mr. Tufail Ahmad, Veterinary Inspector	3-8-33	Remained in service till 21-11-37.
		(19) Mr. Ahmad Bakhsh, Artist	16-7-34	Still in service.
		(20) Mr. Sans Ullah Shah, Power House Clerk	4-7-34	Do.
		(21) B. Saulat Hussain, Dresser	24-6-35	Do.
		(22) B. Barkat Ali Khan, Sub-Overseer	23-7-36	Do.
		(23) B. Mustaq Hussain, Assistant Fitter	1-6-36	Do.
4	Imperial Dairy Expert, Bangalore.	(24) Mr. Abdul Hye, Blacksmith	25-9-37	Do.
		(25) Syed Abdul Gaffar, Clerk	20-2-38	Do.
5	Inspector General of Forests.	(26) Sh. Mohd. Tamizul Haq, Assistant Clerk.	24-6-33	Do.
		(27) M. Saghir Ahmad Khan, Assistant Clerk.	16-1-35	Do.
		(28) S. Ibne Hasan Zaidi, Machine Operator	17-4-35	Do.
		(29) B. Mohd. Ibrahim, Fitter	22-7-35	Do.
		(30) S. Murtaza Laboratory Assistant	12-8-35	Do.
		(31) B. Ashaq Husain, Carpenter	2-10-35	Do.
		(32) M. Abdul Rahim Nagi, Engineer Mechanic	4-11-35	Do.

Serial No.	Name of offices.	Name of officer.	Date of appointment.	Remarks.
1	2	3	4	5
6	Surveyor General of India.	(33) Saiyid Saghir Hasan, Sub-Assistant Superintendent . . . . .	25-11-35	Still in service.
		(34) Motaqid Hyder Kadri, Clerk . . . . .	1-6-33	Do.
		(35) Mr. Amir Ahmad Ansari, Clerk . . . . .	9-11-35	Do.
		(36) Syed Zahurul Hasan Zaidi, Store Keeper . . . . .	29-6-36	Do.
		(37) Mr. Ahsan-ur-Rahim, Store Keeper . . . . .	26-6-36	Do.
		(38) Mr. Nasiruddin Hyder, Draftsman . . . . .	24-3-33	Do.
		(39) Munshi Nur Ahmad, Draftsman . . . . .	1-4-33	Do.
		(40) Munshi Shah Jamahuddin, Draftsman . . . . .	1-4-33	Do.
		(41) Mr. Abdul Wassey, Surveyor . . . . .	11-4-33	Discharged on 10-5-37.
		(42) Mr. Mohd. Ishak Khan, Draftsman . . . . .	20-4-33	Still in service.
		(43) Mr. Fahimuddin, Surveyor . . . . .	26-4-33	Do.
		(44) Mr. Gunner Sarwar Khan, Soldier Surveyor . . . . .	1-5-33	Do.
		(45) Mr. Habibulla Khan, Surveyor . . . . .	25-5-33	Do.
		(46) Mr. Md. Abdul Quddus Khan, Draftsman . . . . .	3-7-33	Do.
		(47) Mr. Rasai Hasanain, Surveyor . . . . .	1-1-35	Do.
		(48) Mr. Shahadat Hussain, Engraver . . . . .	2-4-35	Do.
		(49) L/Naik Inayat Khan, Soldier Surveyor . . . . .	1-5-35	Do.
		(50) L/Naik Ali Hassan, Soldier Surveyor . . . . .	1-5-35	Do.
		(51) Naik Abdul Rahman, Soldier Surveyor . . . . .	1-5-35	Do.
		(52) Mr. Wilayat Hossain, Draftsman . . . . .	1-9-35	Do.
		(53) L/Naik Maqbool Hussain, Soldier Surveyor . . . . .	1-5-36	Do.
		(54) Sepoy Md. Alam, Soldier Surveyor . . . . .	1-5-36	Do.
		(55) Mr. Md. Ayub, Pupil Draftsman . . . . .	15-6-36	Do.
		(56) Syed Samin Hussain Naqvi, Pupil Draftsman . . . . .	11-8-36	Do.
		(57) Mr. Akbar Ali, Zinc Corrector . . . . .	7-7-33	Do.
		(58) Syed Asmat Ali, Litho Draftsman . . . . .	10-7-33	Do.
		(59) Mr. Masur Rahman, Colourist . . . . .	3-4-34	Do.
		(60) Kasi Rafiuddin Ahmad, Negative Retoucher . . . . .	12-11-34	Do.
		(61) Mr. Goolam Mustafa, Negative Retoucher . . . . .	2-1-35	Do.
		(62) Mr. Ahmed Hossain, Negative Retoucher . . . . .	2-4-35	Do.
		(63) Mr. Abdulla Khan, Book binder . . . . .	1-5-35	Do.
		(64) Shaikh Ghulam Mawla, Workshop Apprentice . . . . .	25-1-36	Do.
		(65) Mr. Islam Ali, Workshop Apprentice . . . . .	25-1-36	Do.

Serial No.	Name of offices.	Name of officer.	Date of appointment.	Remarks.
1	2	3	4	5
6	Surveyor General of India— <i>contd.</i>	(66) Mr. Panchuruddin Kayal, Workshop Apprentice	29-1-36	Still in service.
		(67) Mr. Shaikh Md. Hanif, Workshop Apprentice	29-1-36	Do.
		(68) Mr. Muzaffar Hussain, Carpenter	28-2-36	Do.
		(69) Mr. Ferzand Ali, Type Printer	1-7-36	Do.
		(70) Mr. Abdul Sadek, Compositor	21-7-36	Do.
		(71) Mr. Shaikh Mainuddin, Apprentice	6-8-36	Do.
		(72) Mr. Shaikh Gyasuddin, Apprentice	6-8-36	Do.
		(73) Mr. Ahmad Hasan, Head Mistri	2-10-36	Do.
7	Director, Zoological Survey of India.	(74) Mr. S. N. Zaman, Compositor	2-11-36	Do.
		(75) Mr. Abul Bazar Khan, Compositor	15-2-35	Do.
		(76) Mr. Mohsin Ali, Gallery Assistant	27-5-35	Do.
8	Imperial Record Department.	(77) Mr. Mohd. Boyetulla, Record Clerk	7-4-36	Do.
		(78) Mr. H. R. Mohsini, Clerk.	1-10-35	Do.
9	Imperial Library, Calcutta.	(79) Mr. S. M. Elias, Clerk	19-2-34	Do.
		(80) Mr. A. R. Siddiqui, Clerk.	1-3-35	Do.

*Information promised in reply to part (d) of starred question No. 1573 asked by Mr. Manu Subedar on the 29th November, 1938.*

#### USE OF SLEEPERS ON STATE RAILWAYS.

*Statement showing the percentages of Canadian pine, Indian wood cast iron and steel sleepers, based on numbers purchased by the State-managed Railways during the years 1933-34 to 1937-38.*

Years.	Indian wood.	Broad Gauge.		Canadian pine.	Indian wood.	Metre Gauge.		Canadian pine.
		Cast iron.	Steel.			Cast iron.	Steel.	
1933-34	67.4	30.3	2.3	...	100.0	...	...	...
1934-35	58.3	41.7	...	...	100.0	...	...	...
1935-36	44.3	47.6	8.1	...	100.0	...	...	...
1936-37	54.0	33.7	12.3	...	100.0	...	...	...
1937-38	58.5	40.3	1.2	...	100.0	...	...	...

*Information promised in reply to starred question No. 1576 asked by Sardar Sant Singh on the 29th November, 1938.*

#### GUARDS ON THE NORTH WESTERN RAILWAY.

(a) The reply to the first part is in the negative and the other parts do not, therefore, arise.

(b) As regards the first part, the conditions of service of guards appointed in either grade II or grade III do not limit their utilisation on any particular category

of trains. As regards the latter part of the question, grades and duties of guards are as follows :

Scales of pay of guards appointed up to 15th July, 1931.

Grade I.—Rs. 30—1—35.  
(2nd Guard)

Grade II—Rs. 40—3—52—4—60—8—68.

Grade III—Rs. 75—5—105—10—115.

Grade IV—Rs. 125—10—185—200—210.

Scales of pay of guards appointed after 15th July 1931 :

2nd Guard—Rs. 30—1—35.

Class I, Grade I—Rs. 30—5—50—5/2—60.

Class I, Grade II—Rs. 65—5/2—85.

Class II, Grade I—Rs. 100—10/2—120.

The duties of guards in each grade are :—

Deal with articles, etc., carried "on railway service" and assist the guard in shunting, in seating passengers and taking up line clears to the driver.

As detailed in Chapter III of the General Rules notified in the Railway Department's Notification No. 1078-T., dated the 9th March, 1929, and such subsidiary rules as are notified from time to time by the railway administration.

(c) There are guards of all grades and several communities blocked on the maximum of the scale for varying periods in some cases over 12 years. This is due to want of vacancies in, and in certain cases unfitness for promotion to, higher grades. In some cases, promotion to higher grades was refused by the men themselves.

(d) The reply to the first part is in the affirmative except that the letter referred to is dated the 8th November, 1935 (not 1936). The number of guards, on 8th November, 1938, in grade III, was 238 and in grade IV, 94. The number now in grade III is 219. There has been no increase in the number in the latter grade as the requirements of work, on which the strength in each grade is based, does not justify a larger number.

---

*Information promised in reply to parts (d) and (e) of starred question No. 1932 asked by Mr. M. Ananthasayanam Ayyangar on the 7th December, 1938.*

#### ILL-TREATMENT METED OUT TO INDIANS IN PARIS.

Representations were made by His Britannic Majesty's Ambassador in Paris regarding the expulsion of Mr. Intiaz Ali Khan. The French Government however, were not prepared to alter their decision in the matter.

His Britannic Majesty's Ambassador in Paris has no information about the case of Mr. Iqbal Shaidi.

---

*Information promised in reply to starred question No. 2013 asked by Maulvi Muhammad Abdul Ghani on the 9th December, 1938.*

#### EXTENSION OF THE MUSSALMAN WAKF ACT TO DELHI AND OTHER CENTRALLY ADMINISTERED AREAS.

Sections 2—13 of the Mussalman Wakf Act, 1923, have not been brought into force in British Baluchistan and Coorg. Muslim opinion in British Baluchistan was against the measure even before the Act was passed and the extent of Wakf property in Coorg is negligible. The Chief Commissioners of these provinces have therefore not found it necessary to bring the sections into force.

Information promised in reply to starred question No. 2949 asked by Mr. H. M. Abdullah on the 12th December, 1938.

PAUCITY OF MUSLIMS IN THE CATEGORY OF BLOCK SIGNAL INSPECTORS ON CERTAIN STATE RAILWAYS.

(a) and (b). The following statement embodies the information asked for :

Railway.	Category of staff.	Hindus.	Muslim.	Sikhs.	Europeans & Anglo-Indians.	Indian Christians.	Others.	Total.
East Indian Do.	Block Signal Inspectors	2	...	1	10	...	...	13
	Assistant Block Signal Inspectors	12	1	1	6	2	...	22
Great Indian Peninsula.	*Maintenance Telegraph Inspectors	12	1	...	5	3	2	23
North Western Do.	Block Inspectors	4	3	...	4	...	...	11
	Assistant Block Inspectors	0	4	1	1	1	...	16

(c) and (d). The paucity of Muslims in these categories is due to Muslims with the requisite qualifications not having been available in the past in the lower posts from which promotion to these categories is made. The deficiency will be made up as and when qualified Muslims become available.

Information promised in reply to parts (b) and (c) of starred question No. 175 asked by Mr. Abdul Qaiyum on the 7th February, 1939.

TRAINS HELD UP DUE TO OVERCROWDING NEAR BOMBAY ON THE GREAT INDIAN PENINSULA RAILWAY.

(b) Satyagarha was resorted to on 11th January, 1938.

(c) The traffic was held up for about four hours and two persons were arrested.

THE MUSLIM DISSOLUTION OF MARRIAGE BILL—*concl'd.*

**Mr. President** (The Honourable Sir Abdur Rahim): The question is: 12 Noon. "That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

Clause 6 was added to the Bill.

**Maulvi Muhammad Abdul Ghani** (Tirhut Division: Muhammadan): Sir, I beg to move:

"That after clause 6 of the Bill, the following new clause be inserted:

'7. All suits for the dissolution of marriages will be exempted from the operation of the Indian Court Fees Act, VII of 1870.'

Dissolution of marriages under the Muslim Personal Law (Shariat) Act has been exempted by the various Provincial Governments from the operation of the Court Fees Act and I, therefore, think this amendment should be accepted. The principle has been accepted and to my knowledge the Bihar Government has already legislated on this point exempting from the operation of the Court Fees Act, all these petitions filed for the dissolution of marriages. I, therefore, hope the House will support this motion. I move.

\*On the Great Indian Peninsula Railway there is no staff designated "Block Signal Inspectors" or "Assistant Block Signal Inspectors". Block signal instruments are attended to by the Maintenance Telegraph Inspectors.

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

"That after clause 6 of the Bill, the following new clause be inserted:

'7. All suits for the dissolution of marriages will be exempted from the operation of the Indian Court Fees Act, VII of 1870.'

The motion was negatived.

**Maulvi Syed Murtaza Sahib Bahadur** (South Madras: Muhammadan): Sir, I beg to move:

"That after clause 6 of the Bill, the following new clause be added:

'7. A Muslim Judge alone shall take cognizance of cases under this Act, and, in respect of cases arising in a District where there is no Muslim Judge, the case shall be tried by a Muslim Judge to be specially empowered by the Provincial Government to tour about and try such cases.'

In moving this amendment, I am fortified by several facts. So far as the French protectorates are concerned, namely, Morocco, Algeria, Tunis and other places, where there are Muslims, Muslim judges and Qazis have been appointed to go into all such cases. Even in British India, there was a time when there were Qazis and Muftis who were attending to these functions and your Capital, Calcutta, Sir, formed the headquarters where Muslims had their own Qazis. Hindus had their own Pandits, and other communities had their own Gurus to attend to marriage functions.

In this connection, Sir, I have to dispel the erroneous opinion that Muslim marriages are only social functions and are merely contracts. It is quite wrong; I say, it is a socio-religious function which has got much of religion in it. Therefore, we insist on Muslim Qazis or judges being appointed. Moreover, when formerly we had Muslim Qazis, Muftis and Pandits,—I have already said that Calcutta was the headquarters,—the Qaziul Quzzat was there, and each province had its Qazis. There were Qazis and Naibs of Qazis for each district and Sadrus Sadr was the other name given to Qaziul Quzzat. Now, all these things have been replaced by the English laws which are against, and detrimental to, the interests of our Indian communities. I am not speaking of Muslims alone; my non-Muslim friends will bear me out when I make this statement. It is not based on any communal considerations; it is a purely religious matter to which much importance is attached by each and every Indian community. So it is that we want Muslim Qazis or Muslim judges. Moreover, it is through Muslim Qazis and judges that marriage ties are tied, and he who ties the knot should untie it. That is why we are very particular regarding the Muslim judge. It is not a case, as Mr. Abdul Qaiyum said, of Muslims reposing their confidence in non-Muslim judges. We do repose that confidence, and we condemn those who do not do so. But here the case is quite otherwise. A Muslim judge should necessarily be appointed to attend to these things for various reasons. I, therefore, hope the House will support me in regard to this motion.

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

"That after clause 6 of the Bill, the following new clause be added:

'7. A Muslim Judge alone shall take cognizance of cases under this Act, and in respect of cases arising in a District where there is no Muslim Judge the case shall be tried by a Muslim Judge to be specially empowered by the Provincial Government to tour about and try such cases.'

**The Honourable Sir Nripendra Sircar** (Law Member): Sir, Government will oppose this amendment and oppose it at every stage. In fact, they are so much opposed to this particular provision that, if this is carried, they will not like the Bill to be passed at all, if it is within their power.

Now, the reason given is that the Muslim marriage is not a contract, it is a sacrament. I am not going into any question of Muslim law. Let us assume that it is not a contract, although it may be dissolved like any other contract—I am not going into that. Is that the reason advanced why no Parsi judge or a Hindu judge should take up the case? I hope not. Now, let us see—again not raising the communal issue—what would be the effect if this amendment is passed? A Muslim judge will try this case. Then, as there are no special provisions for appeal in this Bill, it will go up to the High Court. What then? Are we going to have a bench of Muslim judges of the High Court necessarily for trying this appeal? Let us proceed a step further, and suppose the case has come up before the Judicial Committee of the Privy Council. At the present moment, there are not enough Muslim Judges in the Judicial Committee to form a bench of three or four for hearing this appeal. Therefore, the position is this: the original case must be tried by a Muslim on purely religious grounds, but when it goes on appeal, the bench which can upset the lower court's judgment cannot be a Muslim bench. Therefore, I submit, my friend's point will not be gained by this. But we cannot accept this principle that a case of a particular community must be judged by a judge of that community. What is happening to the cases of the Hindus? We have got most learned judgments on Hindu law by the late Justice Mahmood: he has gone into Sanskrit texts, he has considered them and we consider them to be as binding on us and as just and as fair as any judgment given by a Hindu judge. Therefore, this is really casting an aspersion on the judicial honesty of the judges . . . .

**Maulvi Syed Murtaza Sahib Bahadur:** No, no.

**The Honourable Sir Nripendra Sircar:** . . . . or on their knowledge of law. That is to say, the Muslim law is such that a Hindu judge or a European judge can understand every other branch of law, beginning from maritime and ending with defamation, but Muslim law is the one law which nothing but a Muslim brain can capture. We cannot for one moment accede to this position.

Then, it is almost a fantastic suggestion that there should be a touring Muslim judge whose sole business will be to dissolve, not contracts, but the sacraments—the Muslim marriages. A Muslim judge alone shall take cognisance of cases under this Act; and in respect of cases arising in a district, where there is no Muslim judge, the case shall be tried by a Muslim judge who is specially empowered by the Provincial Government to tour about to try such cases. I hope, if this amendment is pressed, some one will tell me what will happen when the case goes up before the Judicial Committee. Is it suggested that the Judicial Committee should be packed with Muslim judges to enable them to do justice to this Bill? If not, then what happens? What remains of the point that none but a Muslim can hear the laws of the Muslims? Apart from all questions of administrative inconvenience and other objections, I submit, this is introducing a principle that we cannot possibly accept. I oppose the amendment.

**Mr. M. S. Aney** (Berar: Non-Muhammadan): Sir, I thought I would get no opportunity at all to speak on certain clauses of this Bill to which I was opposed from the very beginning. I am, therefore, glad that I am present today and an unexpected amendment has come up for discussion. now . . . .

**Maulvi Syed Murtaza Sahib Bahadur:** We welcome your arrival.

**Mr. M. S. Aney:** And I welcome this amendment also because it gives me an opportunity of saying that I am opposed to certain clauses of the Bill even in the modified form as it has emerged now. But I do not want to go beyond the point raised by the present amendment. If I mistake not, when this Bill was referred to the Select Committee, the Government made their position perfectly clear, that they could accept the Bill provided the old clause of the Bill which dealt with the question of the appointment of judges to try the cases was altogether dropped and no demand for an exclusive appointment of Muslim judges for trial of cases of divorce under this law was made. That was one of the understandings on which the Government were prepared to consider this Bill and allow it to go to Select Committee. In the Select Committee, also, I find that the demand contained in the original Bill was dropped; but here, like the phoenix, the dead thing has come to life again at the fag end . . . .

**Maulvi Syed Murtaza Sahib Bahadur:** The full House has got such an authority, I hope.

**Mr. M. S. Aney:** I have not questioned the authority of the House: I am only narrating the events that took place, and I am mentioning the facts as they have occurred. The House has got every authority to undo everything that has been done by the Select Committee: it can even enact a new Bill if it likes; but I also think that the House can take into consideration the various stages through which the Bill has gone, the various considerations which have weighed with the Members in giving their consent to the various stages of the Bill before it can make up its mind on the particular amendment before the House. Thus far there was a sort of understanding that, at least, the demand for the exclusive appointment of Muslim judges for the trial of cases arising out of this Bill for the dissolution of marriages was a matter not to be seriously pressed and considered. However, the House has a right to consider that question if some Member thinks it necessary to press it. As regards the merits of it, we have listened to what the Honourable the Law Member has just told us, the difficulties in which the litigant will find himself if this amendment be passed. Assuming the question of dissolution of marriage is a matter of a religious nature and, therefore, none but a Muslim can be a proper judge to hear it, it has been made abundantly clear that the benefit of a Muslim judge cannot be had through all the stages through which the litigation is likely to go under certain circumstances . . . .

**An Honourable Member:** Why?

**Mr. M. S. Aney:** If you can secure a Muslim judge in the first court, there is the High Court where you may not necessarily have a Muslim judge; then, there is the Judicial Committee where there may not a Muslim judge at all; and, so, at one stage or another, the litigant will have to get a decision from a non-Muslim judge; or, in order to avoid that, an arrangement will have to be made to retain at least one Muslim Judge or even two or three Muslim judges to form a bench or full bench in all the High Courts and the Privy Council in anticipation of a contingency of this kind arising later on. This is, from an administrative point of view, and, also, from the point of view of the purity of justice, in my opinion absurd. What is really the point? My learned friend wants to say that the Muslim

marriage is not merely a contract: it is of a religious nature: probably he meant to say that it is a sacrament also under the Muhammadan law. That is probably what he wanted to convey. The correctness of this proposition itself I deny, because all the Muhammadan jurists whose opinion is recognised as an authority in this country have been very explicit on this point, that so far as a Muhammadan marriage is concerned it is not a sacrament at all. It has been conceded by the Muhammadan jurists. In fact they take that as one of the distinguishing features of Muhammadan marriage from the system of marriages prevailing among other people. Even if it be a religious sacrament or anything of the sort, the question arises whether the issue relating to its dissolution will have to be decided according to the religious law of the people. The point is whether it is not possible for any person other than a Muhammadan to interpret the Muhammadan law and particularly this law which we are making. What are we to decide in this case? Is it a question of Muhammadan law that has to be decided? We have taken out from the Muhammadan law all the principles on which a dissolution of marriage can be demanded. . . .

**Sir Syed Raza Ali** (Cities of the United Provinces: Muhammadan Urban): Not all.

**Mr. M. S. Aney:** Yes, "any other ground" mentioned in the omnibus clause is there. But the provision is there in that vague form because nobody could think of any other ground: even with the best of industry they could not possibly find any other ground, but it is a provision made to provide against a very remote possibility that perchance something might have escaped their notice for the present but might be discovered later and hence they said "any other ground." . . . .

**Sir Syed Raza Ali:** There are other grounds, but you cannot put everything down in the Bill.

**Mr. M. S. Aney:** If there are any other grounds, I think they ought to be mentioned here and an amendment should be moved. It is not fair to this House that the grounds which are known and ascertainable should still be deliberately left out to lurk behind. I can only understand it if, perchance, something has been left out through ignorance. It cannot be said that my learned friends know the grounds that exist but they have not mentioned them here or they don't want to mention them here. Anyhow, the very principles on which we want the marriage to be dissolved have been categorically stated in so many sub-sections from 1 to 18 or 19, I think, and those principles have been clearly defined. Now, is it difficult for anybody to interpret this Act as it is? Does it require any special or deep knowledge of Muslim culture and Muslim law on the part of a Judge to interpret this law. . . . .

**Maulana Zafar Ali Khan** (East Central Punjab: Muhammadan): Under the Shariat a non-Muslim Judge cannot be appointed to try such cases.

**Mr. M. S. Aney:** You have taken the matter out of the purview of Muslim personal law, and my Honourable friends have failed to observe it. My point is this, if you really want to be governed by the Muslim personal law, then leave the matter where it was under the Shariat law. If the matter had rested there, the matter would have been very much simpler; in that case, it would have been only a question of Muslim personal law which the Judge had to take into consideration. But now the

[Mr. M. S. Aney.]

question before the House is this, whether it comes under one of the principles stated in this law or not. You, as devout Muhammadans, have accepted those principles, and you are bound by those principles, even though some of these principles may be against the principles of Muslim personal law, still you are bound by those principles. Nothing in this world can alter that position. My Muslim friends have created a Statute-law for the purpose of divorce to replace and supersede their personal law which was in existence. It is a situation which has been created by those who are most devout Muslims and who, hitherto, regarded interference by legislation in matters of religion as something profane and unthinkable; but these are the gentlemen who have come forward with a legislation of this nature, and having succeeded in taking this matter out of the purview of the Muslim personal law, they still labour under the hallucination that this Bill before the House is a religious Bill. Are we really making a religious law for you gentlemen? Do my friends think that this House is competent to make a religious law for them here? Their religion has been founded for them by that great Prophet who was born in Arabia and who has left for them a rich legacy in the form of the Holy Koran, and my friends here must only rely upon it for drawing their religious inspiration. But if they think that the law in the Holy book is inadequate and that something more is required, and they approach a purely secular body, like this Legislature, the majority of the Members of which care but little for religion and the other world they must also be prepared for the consequences that follow as a matter of course. Having submitted themselves to the jurisdiction and sanction of a body like that, they have to obtain the text of the law from such a body. But I can assure my Honourable friends here that if we as Members of this House are competent to make the law here, any one of us is competent to interpret it in the best and most equitable way, and there is nothing in it to justify the invoking the assistance of a Qazi or a Muslim judge to interpret this law and administer justice. I, therefore, think, Sir, that the amendment is redundant and it should be rejected.

**Syed Ghulam Bhik Nairang** (East Punjab: Muhammadan): Mr. President, it appears to me that there is a good deal of misconception about the reason for moving this amendment which my Honourable friend, Syed Murtuza Sahib Bahadur, has moved, and, in the discussion which has so far taken place, a number of things have been said, about which I feel constrained to make a few observations. I was also in the Select Committee which decided that the original clause relating to the jurisdiction to hear suits should be abandoned, but, as a matter of fact, I joined the meeting of the Select Committee a few minutes later than I ought to have joined owing to a misconception as to the time of the meeting. . . .

**The Honourable Sir Nripendra Sircar**: On a point of order, Sir. Is my friend entitled to tell the House as to what he did in the Select Committee and why?

**Syed Ghulam Bhik Nairang**: I am not telling the House what was done there. I am merely anticipating an objection that I should not speak in favour of this amendment against the Report of the Select Committee. I simply want to point out that I happened to be absent at that time, otherwise I might have placed the true point of view before the Select Committee, a point of view which I am going to place before the House now,

whatever the decision of the Select Committee might have been. This matter had been decided before I joined the meeting and of course I had no right in the Select Committee to ask them to go back upon their decision or to revise it or to come to some other decision. The matter was left there. Even now I feel that I am bound as one of the Members of the Select Committee to stick to the recommendations of the Select Committee, but I only want to explain a few things which, I am afraid, are being misunderstood.

The first occasion when I came to notice that there was a curious objection to that part of the Bill which required that these suits should be heard by a Muslim Judge was when the opinions on the Bill, after its circulation, had been obtained, because I found that certain bodies and certain people had raised this point and said that this would imply a distrust of non-Muslim judiciary. That came to me as a great surprise. I thought this was a misconception, an unconscious misconception it may be, of the reason for putting in that section there. My Honourable friend, Syed Murtuza Sahib Bahadur, has already most emphatically declared that it does not in the least imply any distrust whatsoever of non-Muslim Judges, and I repeat it. The Honourable the Law Member in his speech today said that while non-Muslim Judges or non-Muslim lawyers are capable of understanding all other systems of law, those who press for the appointment of Muslim Judges for the purpose of hearing such suits appeared to imply that this particular branch of Muslim law was above their comprehension and they were incapable of understanding it. That is not the idea at all. We know that the Muslim law, as a system of law, can be understood by any human being, in fact all rational systems of law which are meant to be understood by men have always been understood and applied by men. That is not the point here at all. The question whether a Muslim marriage is a sacrament or a contract is, to my mind, irrelevant to the point which is being discussed. Let it be a sacrament or let it be a contract. Even if it is treated as a sacrament, we know that the Christian marriage is all along held to be a sacrament, and yet christian marriages are also dissolved by Judges under certain circumstances under some system of law. So, a dissolution of a sacrament by a court is not a new thing or an unheard of thing. In fact, I do not understand what my Honourable friend, the Law Member, means when he says—why should not a contract of marriage like all other contracts be dissolved by a Court? To my mind, a court never dissolves a contract, it only rescinds a contract, if at all, and its action is termed a rescission not a dissolution of a contract. We all know of dissolution of partnership by a court but that is a different thing. However, we need not quarrel about words. Let us clearly understand what the meaning is. If we want to understand the true position of a Muslim in this matter, it is this. The Muslim law holds that a Judge or Qazi when pronouncing decrees for separation of married people acts under a delegated authority. That is to say, when the husband does not pronounce the formula of *talak* and the Judge, in certain circumstances under the provisions of the Muslim law, pronounces it, he acts as a delegate of the husband. That power of the husband is delegated to him not by any act of the husband, but by operation of law—the power to pronounce the formula of *talak* is delegated to the Court. It is in this sense that the Muslim law lays down that that power to pronounce *talak* in such cases will be looked upon as delegated to the Judge and that power can be delegated only to a Muslim. That is the real point and let nobody understand that

[Syed Ghulam Bhik Nairang.]

we, in any way, suspect that any injustice will be done by non-Muslim Judges in these cases. We do not want to assert for a minute that non-Muslims are mentally incapable, intellectually incapable, of understanding the provisions of the Muslim law. Let us not put into the mouth of those who put forward this amendment or support it what they never say or never think. Of course, if we cannot have such a provision on account of its being impracticable, as pointed out by the Honourable the Law Member, that is another matter. I do admit the force of his argument that the amendment as it stands is, at least, defective because it appears to contemplate only the court of original jurisdiction, the trial court, appears to contemplate that only the trial court shall be presided over by a Muslim, and it does not take into consideration the fact that an appeal may lie to the High Court, or perhaps in certain cases an appeal may even go up to the Judicial Committee of the Privy Council. I feel that from that point of view the amendment before this House is defective and for that reason I may not be in a position to support it. But I want to make it clear that to attribute to us the idea that we suspect non-Muslim Judges or we distrust them or we consider them mentally and intellectually incapable of understanding the Muslim law is far from the fact and let that be clearly understood.

**Mr. M. Asaf Ali** (Delhi: General): I welcome the statement which my Honourable friend, Syed Ghulam Bhik Nairang, has made, because it clears the atmosphere so far as the question of any suspicion is concerned. I am very glad that he has made it clear that no Muslim who is supporting this particular amendment entertains any distrust of non-Muslim Judges, and that disposes of one point. If I may recall my original speech on the Bill when it was first considered, I made it clear at that time, that so far as my Party was concerned, we were not in a position to support the demand that is made in this amendment now. In fact, this amendment is only an attempt at restoring what was decided by the Select Committee to drop altogether. (Interruption.) The same idea is introduced now with certain modifications. The reason why our Party at that time was not prepared to support the original provision that was sought to be introduced into this Bill was partly the implication which such a principle would, unfortunately, bring into existence, namely, the distrust of non-Muslim judges and partly the administrative difficulties pointed out in almost every opinion, at any rate, in a majority of the opinions which had been received from the various provinces. Muslim Judges, Muslim associations, and various other organisations had considered that part of the Bill and had come to the conclusion that it would entail a number of difficulties. Then, we were also assured at that time that if this particular provision in the original Bill was dropped there would be no very great objection. As far as I can see, my Honourable friend, Syed Murtuza Sahib Bahadur, has introduced this amendment today with a view to asserting a certain principle which he thinks he must. In so far as that object is concerned, I have every sympathy with him, but, unfortunately, this amendment is not likely to receive either the support of Government or the support of my Party, in which case it is quite obvious that it would not be worthwhile pressing it to a division. My Party, unfortunately, cannot support the amendment.

**Sir Syed Raza Ali:** Sir, let me repeat, and let me repeat as emphatically as I can, that there is no desire on the part of any one of us that a provision should find place in the Statute Book which would imply a distrust of non-Muslim judges. I am sure that every Member of the House, whatever his political complexion may be, reposes perfect confidence in the integrity of the Indian judiciary, irrespective of the faith to which the Judges might belong. Does my Honourable friend, Syed Murtuza Sahib Bahadur's amendment seek to create any invidious distinctions between judges and judges on the ground of the faith which they profess or to which they belong? If I may go a step further than what my Honourable friend, Syed Ghulam Bhik Nairang, has done, I would take this House into our confidence and place our difficulties before them. It is not a capricious amendment that has been moved by Syed Murtuza Sahib Bahadur in a non-responsible manner. We have our own difficulties and some of those difficulties are very great. Let me place before this House the main difficulty with which we are confronted, and if the Congress Party think that that difficulty is a real one and is of such a nature that they should help us to minimise the effect of it, may I hope that they will extend to us a helping hand? The principle on which the Bill is framed is this. There is nothing in the Bill which goes against any express or implied text of the Koran. No Muslim can, of course, be a party to a measure of that character. We have taken very great care to see that none of the texts of the Koran are contravened, but the second difficulty which we had to face was this.

The Muslims are divided into a number of, what for the absence of a better term I might say, either sects or sections of a sect who follow the authority of eminent Muslim jurists. Muslim jurists, especially the four well-known Imams and their disciples, have taken different views on certain questions relating to divorce. We have taken care to see that in enacting the provisions of this Bill we should not be defying the authority of all the Imams. What we have done is this. In the case of a conflict of opinion between certain Imams, we have followed the particular opinion of the Imam whose views are in consonance with the opinion of modern society. That is what we have done and I think I can safely say that there is no provision of the Bill for which authority cannot be quoted from one or other of the illustrious Imams. Nobody can say that the clauses of this Bill go against the provisions of Muslim law. But we are having our own difficulties. Our learned men (Maulvis) have visited most of the Muslim Members of this House in very large numbers and they have expounded the Muslim law in their own way, as is the way with the Maulvis. Already objection has been taken to this, that or the other provision of the Bill. In fact, the advice that has been so freely showered upon us is so profuse and is of such a conflicting character that, if we had listened to all those who have given this advice, I am afraid there would be absolutely nothing left of this Bill. So, we have taken very great care to exercise our own judgment and to see that no clear provision of the Muslim law is contravened; but there is one difficulty and that is the difficulty which my friend, Syed Murtuza Sahib Bahadur, is trying to remove. It is this—that for the reasons briefly summarised by my Honourable friend, Syed Ghulam Bhik, the unanimous view of the Muslim jurists is that the court which tries a divorce case must be presided over by a Muslim judge. It may be fortunate for us or it may be unfortunate for us but the fact remains that

[Sir Syed Raza Ali.]

that is the unanimous view of all sections and all sects of the Muslim faith. I am sure my Congress friends will realise our difficulty. There is absolutely no desire on the part of any one to make any distinction between judge and judge on the ground of his faith. We have implicit confidence in non-Muslim judges exactly in the same manner as we have confidence in judges belonging to the Muslim religion but how are we to get over this difficulty? The Leader of the House mentioned certain difficulties. He said: assuming that the trial judge is a Muslim, the main difficulty will not be removed because, in any case, it may be that the judges of the appellate court will be non-Muslim. We quite realise this and we have waived the point. We say nothing about the need of the judges of the appellate court being Muslim but so far as the trial court is concerned, our difficulty is that all Muslim jurists are agreed that they should be Muslim. I will appeal to the Congress Benches as also to the Government to see . . .

**Mr. M. Asaf Ali:** You might appeal to the Government.

**Sir Syed Raza Ali:** I put the Congress first and then the Government. Nobody need take any offence so far as that goes. I appeal to both.

**Mr. M. Asaf Ali:** The difficulty is that Government would not support the Bill in case this amendment is pressed. Therefore, you might appeal to them.

**Sir Syed Raza Ali:** Government say all sorts of things from time to time, but I do not think my learned friend takes any serious notice of what the Government say. If that is so, let him come over to us. It is said that if this amendment is carried, it will give rise to administrative difficulties. Surely this Bill is not like the law of the Medes and Persians. It may have to be amended in a year or two. Judging from some of the provisions of the Bill, it will I think have to be amended. Therefore I appeal to the Treasury Benches and also the Congress Benches to help us and see whether without sacrificing any principle they cannot help us in this matter. If they do help us I am sure we can find a way out of the difficulty and those practical difficulties which are likely to arise can be got over in course of time. I support the amendment.

**Mr. Abdul Qayyum (North-West Frontier Province: General):** Sir Syed Raza Ali has asked the Congress to support this amendment. I am sure, he knew from the very beginning that the Congress Benches did not approve of this particular amendment. We have to judge every amendment on its own merits. If the amendment had been a right and a proper one, we would certainly have accepted it and supported it. When we find that an amendment is inherently wrong, surely we cannot support it. It has been argued that it is not the intention of the Honourable the Mover to make any invidious distinction against non-Muslim judges. I have no grounds for disagreeing with that assertion but, at the same time, we have to see the effect of this amendment. If this amendment is brought on the Statute-book it will certainly mean an invidious and uncalled-for distinction between Muslim and non-Muslim judges. There is no denying that fact. I very patiently heard the arguments of the Mover of this amendment and

its supporters. Beyond merely saying that that was the opinion of Muslim jurists, they did not cite any Qoranic texts or any principle of Muhammadan law which is binding on Mussalmans, whereby every Muslim is bound to vote in support of such an amendment. Now, Sir, Muslim law is a very simple law, and it has been made even more simple by this Bill. It has been so clearly codified in this short and concise Bill that I do not think any difficulty can arise, if non-Muslim judges have to interpret questions of Muslim law. After all we have so many divisions in this country. We have carried these divisions even to the extent of the food we eat and the water we drink. On Railway platforms we hear the invidious and heart breaking cries of Muslim water and Hindu water and Muslim food and Hindu food. I think it would not be proper to import this distinction into the realm of legislation, not even in such a question as to whether a suit can be tried by a Muslim judge or by a Hindu judge. I think, Sir, that, so far, Muslim judges have given a very good account of themselves in interpreting intricate questions of Hindu law, and likewise Hindu judges have given able judgments upon Muhammadan law which can be of great help in the interpretation of Muhammadan law. Therefore, I think that my Honourable friend, Maulvi Syed Murtuza Sahib Bahadur, would do well not to press this amendment to the vote. I fail to see any force in the arguments which have been advanced in support of this amendment, and I hope that since we have come to an agreement on many other clauses of the Bill, we shall not wrangle over this amendment. Sir, I oppose this amendment.

**Mr. M. Ghiasuddin** (Punjab: Landholders): Mr. President, at the outset, I wish to make it clear that, as far as my own personal feelings are concerned, I think we should not press this amendment to a division. But that is because we know that the whole Bill will be damned, and it is a very useful Bill, and in order to get this Bill through, I think we should not press this amendment to a division, but, at the same time, I would like to put before the House the point of view of those Mussalmans who are supporting this amendment. Sir, I would ask the House to judge of the question simply as a question of conscience. Now, we are legislating for the benefit of Muslim woman. Supposing there is a Muslim woman and her husband is a brute. She wants to get rid of him. She comes before the court and the presiding officer of the court happens to be a Hindu. It will be said that he knows Muslim law and all that and this woman tells her story and he grants a decree in her favour and the marriage is dissolved. But, at the same time, this woman may feel that she is not properly divorced and she will be having a quarrel within herself and she will say, although in the eyes of the law she is a free woman but she is not a free woman in the eyes of God and so at the time of re-marriage her conscience will stand in the way. That is the point of view of conscience from which I want the Honourable Members to look at this matter. I know there are administrative difficulties, I know there are legislative difficulties, but we are not making an invidious distinction against non-Muslim judges: it is because we are giving this relief to these women, well, let them take this relief with a clear conscience and that is the point of view I wish to put before the House. Otherwise, I am not opposed to the point of view of my Honourable friends on the other side. I do not think that we should press this amendment to a bitter end, but I do hope other Honourable Members will appreciate our point of view.

**Maulana Zafar Ali Khan:** Sir, I am sorry I will have to speak out my mind. What pained me most was the speech made by my Honourable

[Maulana Zafar Ali Khan.]

friend, Mr. Abdul Qaiyum. Speaking on behalf of the Congress, he might have indulged in all sorts of eloquent sophistries, but this is a purely Islamic question, it is purely a question in which the traditions of Islam are concerned. Sir, my friend went so far as to say that my Honourable friend, Syed Murtuza Sahib Bahadur, and those of his way of thinking had not adduced a single argument which had the sanction of the Koran. Well, let me point out . . . . .

**Mr. Abdul Qaiyum:** On a point of personal explanation . . . . .

(The Honourable Member did not give way.)

**Maulana Zafar Ali Khan:** Let me point out what the Koran says:

*"Fala wa Rabbika la Yomenoona hatta Yuhakkemuka fwa Shajara bainuhun."*

"O Muhammad! Verily those Mussalmans are not faithful who do not submit their disputes to Thee and then abide by Thy judgment."

(Interruption.) Sir, this is a matter of divorce. It is purely a family affair governed by personal law. My Honourable friend, Sir Nripendra Sircar, was cut to the quick when he said that Syed Murtuza Sahib Bahadur was casting aspersions upon the honesty and integrity of non-Muslim judges. I feel, Sir, that that is not so. Sir, a non-Muslim judge is not expected to be initiated into the intricacies of the personal law of Mussalmans. All I wanted to point out was that a non-Muslim judge may have the capacity to understand everything, but naturally he does not take an interest in a matter such as this to the extent to which a Muslim takes that interest. For instance, Sir Nripendra Sircar does not know how many genuflexions are there in two *rakats* of the Muslim prayer and so on and so forth, but this is not casting any aspersions on his honesty and integrity. A Muslim judge knows all that and he can feel sympathy with the situation in a way in which a non-Muslim cannot. My friend, Syed Murtuza Sahib, says that in these matters a Muslim judge alone can really say what is right and proper and he is a naturally fit person. There is, however, no question of casting an aspersion upon a non-Muslim judge.

Sir, unfortunately, in this country, we are placed in such a predicament that we have not the power over the overwhelming majority of adverse votes but it is not a question of votes merely. The real difficulty is this. The Congress people think that in India there is only one nation, one *jat*, but the Mussalmans think that there are two nations, the Mussalmans and the Hindus. Now these two nations cannot coalesce but may co-operate with each other. We Mussalmans are out to create an environment in this country in which we shall live the life of a true Mussalman under the laws of the Koran, and if you do not acknowledge that right, then of course there will be a struggle. With these few words, I would point out that Syed Murtuza Sahib's amendment is a very simple one. It does not want to tax your generosity and your magnanimity and your sympathy with us. It demands what is due to us. I support it but if you do not lend your support to us then you will have to go to a division and certainly we will fight to the bitter end.

**Honourable Members:** The question may now be put.

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

"That the question be now put."

The motion was adopted.

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

"That after clause 6 of the Bill, the following new clause be added:

1 P.M. 7. A Muslim Judge alone shall take cognizance of cases under this Act, and in respect of cases arising in a District where there is no Muslim Judge the case shall be tried by a Muslim Judge to be specifically empowered by the Provincial Government to tour about and try such cases."

The Assembly divided:

AYES—16.

Abdul Ghani, Maulvi Muhammad.  
Abdullah, Mr. H. M.  
Azhar Ali, Mr. Muhammad.  
Bhutto, Mr. Nabi Baksh Illahi Baksh.  
Essak Sait, Mr. H. A. Sathar H.  
Fazl-i-Haq Piracha, Khan Bahadur  
Shajkh.  
Ghiasuddin, Mr. M.  
Ghulam Bhik Nairang, Syed.

Murtuza Sahib Bahadur, Maulvi Syed  
Nauman, Mr. Muhammad.  
Rafuddin Ahmad Siddiquee, Shajkh.  
Raza Ali, Sir Syed.  
Siddique Ali Khan, Khan Bahadur  
Nawab.  
Umar Aly Shah, Mr.  
Yaman Khan, Sir Muhammad.  
Zafar Ali Khan, Maulana.

NOES—82.

Abdul Hamid, Khan Bahadur Sir.  
Abdul Qayyum, Mr.  
Abdur Rasheed Chaudhury, Maulvi.  
Aikman, Mr. A.  
Ancy, Mr. M. S.  
Asaf Ali, Mr. M.  
Ayyangar, Mr. M. Ananthasayanam.  
Ayyar, Mr. N. M.  
Bajoria, Babu Baijnath.  
Bajpai, Sir Girja Shankar.  
Banerjee, Dr. P. N.  
Basu, Mr. R. N.  
Bewoor, Mr. G. V.  
Boyle, Mr. J. D.  
Buse, Mr. L. C.  
Chanda, Mr. A. K.  
Chapman-Mortimer, Mr. T.  
Chaudhury, Mr. Brojendra Narayan.  
Chettiar, Mr. T. S. Avinashilingam.  
Dalal, Dr. R. D.  
Dalpat Singh, Sardar Bahadur Captain.  
Das, Mr. B.  
Das, Pandit Nilakantha.  
Datta, Mr. Akhil Chandra.  
Desai, Mr. Bhulabhai J.  
Deshmukh, Mr. Govind V.  
DeSouza, Dr. F. X.  
D'Souza, Mr. F.  
Gadgil, Mr. N. V.  
Gidney, Lieut.-Colonel Sir Henry.  
Gorwala, Mr. A. D.  
Griffiths, Mr. P. J.  
Gupta, Mr. K. S.  
Hans Raj, Raizada.  
Hardman, Mr. J. S.  
Jawahar Singh, Sardar Bahadur Sardar  
Sir.  
Joshi, Mr. N. M.  
Kailash Behari Lal, Babu.  
Kamaluddin Ahmed, Shams-ul-Ulema.  
Kushalpal Singh, Raja Bahadur.  
Lalchand Navalrai, Mr.  
Lillie, Mr. C. J. W.

Mackeown, Mr. J. A.  
Maitra, Pandit Lakshmi Kanta.  
Malaviya, Pandit Krishna Kant.  
Mangal Singh, Sardar.  
Manu Subedar, Mr.  
Maxwell, The Honourable Mr. R. M.  
Menon, Mr. P. A.  
Menon, Mr. P. M.  
Metcalf, Sir Aubrey.  
Miller, Mr. C. C.  
Mudaliar, Mr. C. N. Muthuranga.  
Muhammad Ahmad Kazmi, Qazi.  
Mukerji, Mr. Basanta Kumar.  
Nur Muhammad, Khan Bahadur Shaikh.  
Paliwal, Pandit Sri Krishna Dutta.  
Pande, Mr. Badri Dutt.  
Raghubir Narayan Singh, Choudhri.  
Ramayan Prasad, Mr.  
Rao, Mr. M. Thirumala.  
Row, Mr. K. Sanjiva.  
Saksena, Mr. Mohan Lal.  
Sant Singh, Sardar.  
Santhanam, Mr. K.  
Satyamurti, Mr. S.  
Scott, Mr. J. Ramsay.  
Sham Lal, Mr.  
Singh, Mr. Ram Narayan.  
Sinha, Mr. Satya Narayan.  
Sircar, The Honourable Sir Nripendra.  
Sivara; Rao Sahib N.  
Spence, Mr. G. H.  
Sri Prakasa, Mr.  
Staig, Mr. B. M.  
Stewart, The Honourable Sir Thomas.  
Subbarayan, Shrimati K. Radha Bai.  
Sukthankar, Mr. Y. N.  
Sundaram, Mr. V. S.  
Thomas, Mr. J. H.  
Varma, Mr. B. B.  
Zafrullah Khan, The Honourable Sir  
Muhammad.

The motion was negatived.

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

"That clause 1 stand part of the Bill."

The motion was adopted.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

**Qazi Muhammad Ahmad Kasmi** (Meerut Division: Muhammadan Rural): Sir, I move:

"That the Bill, as amended, be passed."

Sir, while moving for the consideration of this Bill, I gave expression to my feelings of gratitude to the Honourable Members of this House, and specially to the Leader of my Party, the Leader of the Opposition and I want now to say a few words about the help that we have received from the Government Members and Bhai Parma Nand. The Honourable the Law Member has been very accommodating and helped us with his legal talents and accumen. The Honourable the Home Member reposed full confidence in our proposals and had no hesitation in accepting the agreed propositions. The Honourable Sir Muhammad Zafrullah Khan has helped us very considerably in improving the Bill and making it a satisfactory measure. My Honourable friend, Bhai Parma Nand, is to be thanked for the liberal-mindedness and toleration with which he acted at the time of the motion for reference of the Bill to the Select Committee. He was the first who welcomed my suggestion to the amendment of the old clause 5 which has made it acceptable to the House. He gave a lead in the matter and is responsible for rendering the passage of the Bill easy in the House. Whatever may be his later attitude, I have always felt that his genuine attitude was the one which he exhibited on the 26th August, 1938, and here we never attached much weight to the half-hearted protests that he has made to some clauses of the Bill later on. Placed as he is,—I appreciate his difficulties—his protest was only natural.

**Mr. President** (The Honourable Sir Abdur Rahim): The House will now adjourn for Lunch and the Honourable Member can continue his speech after Lunch.

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

---

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

---

**Qazi Muhammad Ahmad Kasmi**: Sir, when we adjourned I was giving expression to my feelings about the attitude of Bhai Parma Nand. Now that Mr. Bajoria is here I have got to thank him for his blessed absence during the course of the discussions on the first and second reading of this Bill. I feel that we have been deprived of the pleasure of hearing something novel and reactionary which he is in the habit of saying against every progressive measure which comes before the House. But now that he has come, I think we will not be sorry for his exposition of Muhammadan law and opposition to this measure. In the end, Sir, I have to thank the Honourable Members of this House through whose co-operation and indulgence,—indulgence specially of the Leader of the Congress Nationalist

Party,—we have succeeded in producing a measure which will apply to all Mussalmans. This is probably the first attempt to consolidate the law for all sects in at least one of the departments of Muslim law. Sir, I move.

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

“That the Bill, as amended, be passed.”

**The Honourable Sir Muhammad Zafrullah Khan** (Member for Commerce and Labour): Sir, this is probably the first occasion on which I am going to trouble the House with a speech on the third reading of a Bill, but I feel I ought to make some observations at this stage of this Bill not for any formal reason but because this Bill does mark an important stage in the development of Anglo-Muhammadian law; that is to say, the system of Muslim law which is applied to Muslims in certain matters in this country. Sir, it is unfortunate that the development of Muslim law in this country has been arrested by the courts firmly laying down that they will accept no interpretation of any part of Muslim law which has not been recognised in the ancient text-books on Islamic jurisprudence. Now, as a broad general proposition, there may be no objection to this. According to Muslim ideas it should not be open to everybody to suggest fresh interpretations and then to invite the courts to enforce those interpretations. But even where research has disclosed that the interpretation at one time accepted by the British Courts in India is not the correct interpretation and that there is a good deal to be said in support of a different interpretation, the courts have steadily refused to accept any such interpretation. It is due largely to that attitude of the courts that a Bill of this kind became necessary.

Sir, I am very much gratified that it has been found possible to consider this measure expeditiously in this House and to pass it in a form in which it is acceptable generally to the Muslim community. There are one or two features of this Bill which the Muslims desired to see improved. But nobody can hope to achieve perfection in these matters at the first attempt.

Sir, the outstanding merit of this Bill is that it puts down, in the space of one printed page, the various grounds on which divorce may be obtained by a woman married under the Muslim law. This is a matter the lack of which has, in the past, caused a great deal of distress and misery and suffering in India. Whereas, in Muslim countries, the various grounds for *khula* are freely recognised and *khula* is freely granted,—*khula* means divorce obtained at the instance of the wife,—this doctrine was practically unknown in British India and was here confined to the narrowest possible limits. As I have said, this Bill defines the grounds on which *khula* may be obtained by a married woman under the Muslim law in very definite, clear and precise terms and I cannot imagine that any judge, whether he is a Muslim or a non-Muslim, could have much room left for doubt with regard to them. There may be a dispute with regard to the facts in any particular case,—that is inherent in every litigation,—but I do not think there can now be much doubt with regard to the grounds upon which divorce is permissible under the Muslim law. That is the chief merit of this Bill.

Another satisfactory feature of the Bill is that it clearly defines the limits of *khyarul Bulugh*, viz., the option of puberty. I will not enter into the question whether those were right who thought that the option of puberty should not be permissible in cases where a minor has been given

[Sir Muhammad Zafarullah Khan.]

away in marriage by her father or paternal grandfather, or whether those were right who thought that the option ought to apply to all cases where a minor has been given away in marriage by her guardian, be that guardian be the father or paternal grandfather or any other relation. At any rate the courts now have a sure guide on this aspect of the doctrine also. But my satisfaction relates more to that part of the clause which puts this matter on the ground of age rather than on the ground of minority or puberty with regard to which I said the other day that if the clause had been cast in that form it would have necessitated evidence in court of a character which, to say the least of it, would have been inmodest. Therefore, I think, that the clause is a great advance on the definition of the doctrine as recognised at present in the British Courts.

Then, the clause which deals with the effect of apostasy on marriage, the main clause at any rate, gives great satisfaction to the Muslims. They have, throughout, felt that the doctrine of the Muslim law applicable to quite a different set of circumstances, that is to say, to treason as such against the state, had, through misinterpretation and misapplication, been applied in this country to marriage; and we are indeed gratified that that has been set right. Some objection has been taken to the proviso added to the clause, but then that has been done by agreement between different sections of this House and, therefore, that should be no reason for dissatisfaction.

I now come to the clause which was dropped in the Select Committee but was sought to be made part of the Bill again this morning. I do wish that such Muslim Members of the House who were keen on that clause should not leave the House today after this Bill is passed by the House, as we hope it will be, with any sense of frustration or irritation over that matter. So far as I am personally concerned, I venture to think, in regard to the principle of the clause, that there is not much ground for objection to it. Let me state my own attitude towards it in this way. I look upon—and I think generally every one looks upon—a Muslim marriage as a contract, but a contract of a religious kind. I do not think it was alleged by anybody that it was a sacrament in the sense in which that expression is ordinarily understood; and being a contract of a religious kind, considerations of a religious kind enter into its celebration as well as into its dissolution. When it is asserted that a Muslim marriage should be celebrated only by a Muslim, could it be said that Muslims are giving expression to some kind of doubt or suspicion of non-Muslims? I am sure nobody will urge that. The celebration of a marriage among the Muslims is a very simple matter, all that has to be done is to ascertain the consent of the parties and to declare that they have consented to the marriage and it is most desirable that this should be done by a Muslim, preferably by somebody who is well versed in Muslim religious lore. I do not think anybody could take objection to that, though it is only the announcement of the contract at the time that it is entered into. So far as the principle is concerned, I think it is equally desirable, that if it were possible and feasible and practicable, the desire of Muslim Members that where the question of dissolution arises the dissolution also should be pronounced by a Muslim Qazi should be met. Who will deny that in determining these matters, if it were possible that the matter should be determined by somebody who has been trained in the principles of Muslim jurisprudence—who can deny that if that were possible

in each case, it would be a desirable state of affairs? And to the extent to which Honourable Members urge that it would be desirable that that should be so and that that would be an ideal state of affairs, one has every sympathy with them; but the trouble is that the matter does not stop there. The question is whether in practice it is possible to accept this principle and to give effect to it: and situated as we are I am afraid it is not at all practicable to give effect to this desire. I do not think there was any kind of hostility displayed towards the mere desire that these matters should be determined in each case by people who have been trained in the principles of the particular system of law which may be applicable to a particular case.

**Mr. S. Satyamurti** (Madras City: Non-Muhammadan Urban): All judges are trained in all jurisprudence: at least that is the assumption.

**The Honourable Sir Muhammad Zafrullah Khan:** I was about to point out that if the desire was merely that suits of this description should be tried by Muslim munsiffs and subordinate judges and district judges, I do not think that in itself would have been any particular gain: For this reason: as has been pointed out by Mr. Satyamurti, all judges in this country are trained upto a certain point in the principles of the systems of law which they are called upon to administer. No doubt it is desirable that these matters arising out of a personal law should be administered by people who are well versed in the principles of that personal law; and, therefore, it may be that there was some confusion between a Muslim judge as such, that is to say a Subordinate Judge or a District Judge appointed under the present system who happens to be a Muslim and a Qazi who has been trained in the principles of Muslim law and who would ordinarily possess a much deeper knowledge of Muslim law than British Indian judges whether Muslims or Hindus or Europeans ordinarily possess. If that was the feeling, then I beg to point out that there should be no disappointment that the clause which was sought to be put into the Bill did not become part of the Bill, because from that point of view there would really not have been very much of an advance in the matter. Even if the clause had been accepted a case of this description might well go to a Muslim judge who is not as deeply conversant with the principles of Muslim law as a non-Muslim judge to whose court the case might otherwise have gone if there had not been this condition laid down in the Bill; and, therefore, if it was only a question that it is desirable that these matters, ordinarily, should be determined by judges who are well versed in the principles of these systems of law, I have every sympathy with that desire; though in practice, it would become impossible to give effect to it. But if it was sought to be argued that it was essential under the Muslim law that a decree of divorce should be pronounced only by a Muslim judge, then I am afraid the position would become very difficult and a strict enforcement of this doctrine might lead to most undesirable consequences. Let us look at the past. As I have said, grounds for divorce at the instance of the wife have been recognised in Anglo-Muhammadan law, though on a very narrow basis. Nevertheless some have been recognised and decrees of divorce have been pronounced on the basis of those grounds and they have, in the past, been pronounced in many cases by non-Muslim judges. If we say that a decree of divorce pronounced by a non-Muslim judge is not a valid decree in the eyes of Muslim law, then we are faced with this difficulty, that during the course of almost a century decrees of divorce pronounced by non-Muslim judges

[Sir Muhammad Zafrullah Khan.]

have been accepted as valid and the lady who has obtained a decree pronouncing dissolution of her marriage has been at liberty to remarry and she has remarried in many cases and there has been issue of these subsequent marriages. If we say today "No, the decrees pronounced by non-Muslim judges cannot be recognised as valid under the Muslim law", we shall be casting stigma of illegitimacy upon innocent people and may be laying the foundations of widespread and complicated litigation. That is only one of the difficulties to which one might draw attention.

As I have said, if it were a question of Qazis being appointed to administer certain parts of the Muslim personal law or Pundits being appointed to administer certain parts of the Hindu law, that would have been a different matter; but I do hope that Muslim Members who may have felt some disappointment this morning on account of this amendment being lost will try to re-assure themselves that the adoption of this clause would not have carried the matter any further from their point of view. The practical difficulties in the way of its being given effect to were pointed out clearly this morning by the Honourable the Law Member. Sir, let us hope the general feeling will be that the House has helped in placing on the Statute-book a measure which is a great advance upon the Anglo-Muhammadan law as interpreted by the courts of this country, and that the Muslims will feel particular satisfaction at the fact that this Bill brings the practice of the Muslim law in this country into conformity with what has been recognised throughout as the correct interpretation of that law on the subject dealt with in this Bill.

Lastly, Sir, it is a matter for particular gratification that, so far as at least I am aware, and as has been pointed out by the Honourable Member to whom the largest part of the credit for this measure must go, I mean Mr. Kazmi,—this is perhaps the only piece of legislation and the only section of Muslim law which will apply to all Muslims alike, irrespective of the School of Jurisprudence for which they may profess a preference. Sir, there is no distinction here between Hanafi and Shafai, between Maliki and Hambli, there is no mention even of Shia or Sunni.

**Mr. Muhammad Ashar Ali** (Lucknow and Fyzabad Divisions: Muhammadan Rural): Sir, there is an amendment.

**Mr. Deputy President** (Mr. Akhil Chandra Datta): That seems to be a consequential amendment, and it is quite permissible. The Honourable Member can move it.

**Mr. Muhammad Ashar Ali**: Sir, I move:

"That in clause (c) of the proviso to clause 2 of the Bill, for the brackets and figure '(c)' the brackets and figure '(r)' be substituted."

This is a consequential amendment, and I hope the House will accept it.

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

"That in clause (c) of the proviso to clause 2 of the Bill, for the brackets and figure '(c)' the brackets and figure '(r)' be substituted."

The motion was adopted.

**Shrimati K. Radha Bai Subbarayan** (Madura and Ramnad *cum* Tinnevely: Non-Muhammadan Rural): Mr. Deputy President, I rise with pleasure to support the motion moved by my Honourable friend, Mr. Kazmi, as I feel that this Bill recognises the principle of equality between men and women with regard to marital rights. It has been stated here and outside that though the Islamic law lays down this principle, in actual practice, in several parts of our country, it is ignored to the disadvantage of women. It was heartening, most heartening, to me, Sir, to hear my Muslim colleagues condemn this state of affairs and advocate that justice should be done to women and that women should have the right to claim divorce on the same terms as men. May I express the hope, Sir, that my Honourable friends on my left will continue to be guided by this sense of justice and fairness with regard to all matters affecting women that may come before this House.

**Mr. Sri Prakasa** (Allahabad and Jhansi Divisions: Non-Muhammadan Rural): Bring forward a Purdah Bill for men now.

**Shrimati K. Radha Bai Subbarayan**: Sir, this Bill in its original form rather perturbed me, because I felt that some of its sections were liable to be interpreted in a manner unfavourable to women, but I am glad that the Select Committee have made vast improvements in the Bill, and I congratulate the Honourable Members of that Committee on the result of their labours. Here, I feel I must express my regret, that certain alterations were made in clause 2, particularly in sub-section (ix) of clause 2 relating to the age of the girls. My Honourable friends on my left will pardon me if I say that, as a woman who can understand and appreciate the feelings of all women, no matter to what community or class they belong, I feel that these changes are definitely reactionary, and I sincerely regret that they have been introduced, but I do not want to labour this point now.

I too, Sir, should have liked to see some further improvement in this Bill. I would mention that Clause 4 of this Bill rather worried me, but I did not send in any amendments, as I did not wish to give rise to any controversy which would endanger the passage of the Bill. I felt that I should not in any way obstruct this useful measure from being placed on the Statute-book as early as possible, particularly because I hope it will be a beginning for all progressive measures with regard to women.

**Mr. N. V. Gadgil** (Bombay Central Division: Non-Muhammadan Rural): Mr. Bajoria should please mark this; his days are numbered!

**Shrimati K. Radha Bai Subbarayan**: I think it is my duty to mention in this connection that certain fears and doubts have been expressed to me by women, Muslim and non-Muslim, with regard to this clause, but I earnestly hope,—and I am sure the House will share my hope,—that in practice these fears and doubts will be found to be needless and that no hardship or suffering will befall any Muslim wife who wants to change her faith.

Sir, the Bill, on the whole, is a very useful measure as has been pointed out by the Honourable the Mover and also by the Honourable Sir Muhammad Zafrullah Khan. It definitely raises the status of women and

[Shrimati K. Radha Bai Subbarayan.]

recognises their individuality, and what my friend, Dr. Deshmukh, would call, human personality. I am sorry he is not here today, and if he were present here I think he would have found encouragement in this atmosphere. I congratulate my Honourable friend, Mr. Kazmi, on introducing this Bill, and, what is more important on getting it passed in its present improved form. This Bill, as I said before, has made a good beginning in the matter of reform of marriage rights, and I trust this will be followed by other measures on similar lines. Personally, Sir, I wish most sincerely and earnestly that we had one common national law with regard to personal affairs. After all, marriage is a common matter which concerns all people alike, men and women, of all communities and classes, and it is a pity that we should have different laws for different communities about it. But, under the present circumstances in India, I am afraid, Sir, this is a dream of individuals like me, but I hope better times will come. . . .

**An Honourable Member:** They will come soon.

**Shrimati K. Radha Bai Subbarayan:** However, I am glad, Sir, that this Bill recognises the urgency of the need to amend our existing laws to meet modern conditions. As Honourable Members are aware, there are certain measures based on similar lines awaiting the consideration of this House, and I do hope they will receive the same friendly and cordial co-operation and support as this measure has received from the House. I trust the day will come soon when this House with great pride and pleasure will place them on the Statute-book. In this connection, Sir, I feel I must say that we do a grievous wrong to the religion that we profess if we deny justice and equality to any section of our society in the name of religion. If marriage is a sacrament, it is a sacrament to all, to both parties; it must be binding on both parties, as I believe is the case with Roman Catholics. I hold that human life itself is sacred, and if both parties, the husband and the wife, recognise that human life is sacred, there would be no need for such legislation as this. But human life has its own failings, and unfortunately, these failings seem to grow stronger with the advance of time. When such is the case, it is absolutely necessary to introduce legislation to combat the harm that these failings cause among society. It is because of this that I urge the House to give its sympathetic consideration to and set its seal of approval on, the measures that will be brought forward in the near future. Sir, I support the motion of my Honourable friend, Mr. Kazmi, on this Bill.

**The Honourable Sir Nripendra Sircar:** Sir, I offer my congratulations to my Honourable friend, Mr. Kazmi, on his success in getting this Bill through. Now, there was a certain amount of interruption, but not knowing the trend of it, I cannot reply to it, but may I venture to point out to Mrs. Subbarayan the dangerous ground which she has been treading, and possibly, in spite of the equality between man and woman, she will not mind a mere man pointing out the danger? The Honourable Member's position was this. "You have done a good thing. You have given the right of divorce to Muslim women. Kindly remember that when I bring forward my Bill for divorce for Hindu women. You

have done justice to the women of the Muslim community. I am a protagonist of the Hindu women, and may I have your support?" That is the argument, and it is a very dangerous argument for this reason. What has this Bill done? This Bill has cleared up the mistakes and the misinterpretations which had gathered round the Muslim law. They have not tried to advance from the seventh century, but they are trying to show what was the law in the seventh century. I do not know how Mrs. Subbarayan would like if I took my stand on the Hindu Sastras and said: "Don't move. We were there four thousand years ago, and we must not move. We have only got to find out what was laid down four thousand years ago." That will be the logical conclusion of the argument which has found favour with Mrs. Subbarayan. I think there is a very short way out of the difficulty of Hindu women. Surely, if they become Muslims, they can enjoy the benefit of this law (Laughter), and in order that there may be an even handed measure, and to get the full benefit of this law, I should advise the lady to see that her beloved spouse is also converted.

I will not take more time of the House, especially as I found when I got up to offer my congratulations to my Honourable friend, Mr. Kazmi, that there was a certain amount of good humoured interruption which, unfortunately, was inaudible to me.

**Bhai Parma Nand** (West Punjab: Non-Muhammadan): I shall not take much time of the House in explaining my attitude with regard to this Bill. My Honourable friend, Mr. Kazmi, has showered compliments on me with regard to the share that I took in the success of this Bill. I thought that this shower was rather too heavy a burden for me to carry, but as those compliments have been paid in all sincerity by my Honourable friend, I am bound to feel grateful to him.

As regards my view of this Bill, I have to say that my position was that the Muslims have a perfect right to make any change or reform in their religious or social practices just as the Hindus have done in the case of the Sarda Act, and as even now we have Dr. Deshmukh bringing forward a Bill to deal with the right of divorce of Hindu women. The Muslim Members have full liberty and we Hindus have no right to interfere in their freedom except on one condition that this does not interfere with the religious freedom of the Hindus. The only condition that I laid down was that if this Bill did not interfere in the rights of Hindus then I should have no objection to the passing of this Bill.

When I moved my amendment I explained that formerly I had spoken as a Hindu. My Honourable friend, Mr. Kazmi, has however referred to me saying that I changed my attitude later on for certain reasons. I wish to convey to him that I did not in any way change my attitude towards the Bill. I stand on the same principle as that on which I stood in my first speech. But I was speaking as a Member of this House when I moved that amendment. The question before me even now is the same, whether apostasy or abjuration of Islam can be a real ground for dissolution of marriage of a married Muslim woman or not; I was greatly astonished to see that my Honourable friends up there and also the Government Members did not appreciate my point of view. I did not want to oppose the Bill in any way, but my amendment arose only from another reason that, as this Bill has provided some 19 grounds giving the right to

[Bhai Parma Nand.]

Muslim women to seek divorce—whether apostasy or abjuration of Islam can be one other ground or not. I was surprised to see that nobody else supported this amendment except my Honourable friend, Mr. Lalchand Nayalrai. I am still at a loss to understand how that question can be solved. I would again put it to my Honourable friend, Sir Muhammad Zafrullah Khan, who was contesting that point. The question is, if a married Muslim woman gives up her religion, whether in that case her marriage remains valid or not. In another form, the question will be whether the marriage of a Muslim to a non-Muslim will be a valid marriage under Muhammadan Law. I pointed out, and this was contested by Sir Muhammad Zafrullah Khan, that according to Sir Syed Ameer Ali and others all sections of Muslims are agreed that on the abjuration of Islam by a married Muslim woman her marriage became null and void. One of the arguments advanced by the Honourable Sir Muhammad Zafrullah himself was that these conversions were not genuine and that the real object was to get rid of undesirable husbands and the conversion was simply made a pretext for that purpose, and, therefore, this should not be taken as the real ground for dissolution of marriage. The point, however, is, that even pretended conversion was taken to be a sufficient reason. It may be that the Muslims do not want it now. My point of view at that time and even now is that this law has been in operation for all this time in India and that the Muhammadans and the courts had accepted this as an established usage. The question is why this should be altogether ruled out now and apostasy should not even be considered as one of the grounds for seeking dissolution of marriage. When this question comes up before the court and the woman says that she has been converted to some other religion, the point for decision would be whether her marriage remains valid or not. 19 remedies have been provided for the woman to seek divorce and why should this one remedy, which has been recognised by the courts and Muhammadan society all these years, be excluded altogether.

**An Honourable Member:** I do not think it has been excluded.

**Bhai Parma Nand:** Yes, in one clause it is said 'for some other cause recognised in Muslim law', but I say why not say plainly that apostasy is one of the causes for the dissolution of marriage.

My Honourable friend, Sir Muhammad Zafrullah, said that according to old Muhammadan jurists, a woman who abjured Islam was charged with treason, she was put in prison or put to death. If the abjuration of Islam, amounted to treason, how could she remain married to her Muslim husband? When Islam came to India, the judges did not see any other course but this for Muhammadan woman to get divorce. Nobody then suggested any other ground on which the Muslim woman could get divorce. They took this as one great reason for divorce and, therefore, all cases of divorce were decided on this ground. Now, it is argued that this view of Muslim law was not correct. Right and wrong are relative terms. Dr. Deshmukh is going to propose his Bill for the divorce of Hindu women. He is quoting his authority just as Sir Muhammad Zafrullah Khan quoted authorities from old Muhammadan law. He also says that in Parasara Smriti there are three or four grounds on which a Hindu woman could get divorce. It may be an old religious view or it may not be. The point is what has been the practice and usage all these thousands of years. The

usage has been that Hindu society does not allow divorce. Now the question will be discussed on its merits, irrespective of what the Smritis say. Similarly, in the case of Muslim married women, no other ground was taken or followed with regard to divorce. The woman could not exercise that right at all. Only men could do it. Now, my friends want to take quite another course. I have no objection. It is their look out and they are welcome to take it. But I cannot understand why this old custom which has all along been accepted by Courts and Muhammadan society which is termed Anglo-Muslim Law by Sir Muhammad, should be set aside.

My friends leave apostasy a moot question. The question will again come before the courts, whether the abjuration of Islam is a sufficient cause for dissolution of marriage or not? My friend, Sir Syed Raza Ali, said that besides Islam there are certain sects which are unitarians and marriage with persons belonging to them is permitted. But suppose the Muslim woman is converted to a faith where she begins to worship an idol. The question will be for the courts to determine whether in that case she can be the valid wife of the Muslim husband or not. I wanted the position to be clarified. I am surprised to see that this ground of apostasy had been altogether left out. I was charged with having changed my attitude. The fact is that I have not changed it. I still maintain the same attitude. If my friend, Mr. Kazmi, thinks I have changed my attitude. I cannot help it. I hold that it is the business of Mussalmans themselves to make any change in their religion they like. We do not want to oppose them and in the same way I expect Muslims to remain neutral when purely Hindu questions are discussed. And now that the matter is practically over. I have only to congratulate my friend, Mr. Kazmi, on the success of his Bill and also express my gratitude for the kind words that he has used towards me.

**Sir Muhammad Yamin Khan** (Agra Division: Muhammadan Rural): I should like to start my observations by referring first to what Bhai Parma Nand has said, because it is fresh in my memory and I may forget it afterwards. My friend has misunderstood this Bill. The law, as far as the Muslim man is concerned, is quite obvious. There was no necessity to legislate regarding a Muslim man divorcing his wife. It was only that doubts were expressed in certain quarters that the law as administered in British India is not in strict conformity with the Islamic law as far as women are concerned. The provisions of this Bill are the result of Muslim law being consolidated into one Bill embodying all grounds on which women can seek divorce under certain conditions and they have been laid down. My friend, Bhai Parma Nand, says that the woman must seek a divorce on account of her own action. Here, what the Bill says, is that she can seek a divorce on account of the actions of her husband. There is the difference of principle. The whole Bill lays down that if the husband fails to do certain things in a particular manner, then the wife has got the right to seek a divorce; while Bhai Parma Nand says that, without any fault of the husband, without any action of the husband, if the wife changes her religion, therefore, she also should have the option to get a divorce. That means placing a power in the hands of the wife on account of her own action to punish the husband; though the husband is still loving her, though the husband still wants to treat her very well, she can give no other cause but simply says, "I have changed my religion, therefore, I will leave you", . . .

**Bhai Parma Nand:** The point is whether you permit her to change her views. Whether you give that power, that religious freedom, to women, or not, I want that to be made clear in this Bill.

**Sir Muhammad Yamin Khan:** Sir, the law is quite clear on this point. The law has said that a mere change of religion will not *ipso facto* dissolve the marriage. Mr. Santhanam's amendment has made it quite clear that in spite of her having changed her religion, and no longer being a Muslim woman, because after the change of faith she cannot call herself a Muslim woman, she could, in spite of that fact, seek for divorce on one of the grounds that have been mentioned in this Bill. Therefore, that law, as far as this point is concerned, is perfectly clear and there will be no doubt in the minds of the courts who will administer this law. Well, I leave that point there.

Sir, I thank Mrs. Subbarayan for the very nice speech which she made in support of this Bill, and I am sure that Mrs. Subbarayan will not be deterred in her anxiety to improve the Hindu law in spite of the speech which has been made by the Honourable the Law Member on this point. Sir, my friend tried to show that some other evil consequences might follow according to the arguments which he adopted but I hope she will meet all those other consequences too when she brings legislation for the emancipation of Hindu women in this respect. I think, as in fact my Honourable friend, Mrs. Subbarayan says, this law which is now consolidated into one law is behind no other country's law. This law is as much advanced as you will find in any other advanced and progressive country. Therefore, I think that there will come a time when it will become not only a Muslim law but it will be called the law of this country. This will be applicable to the Muslims, to the Hindus, and to the Christians also who choose to make India their home. Sir, this law certainly is consolidated into one law—the real Muslim law which is now distributed into so many different books, and that was called sectarian law up to now, but this law is the Muslim law and not of any sect; this law will be applicable to all sects of Mussalmans and no provision of this Bill goes against the provisions of the Koran or of any Hadis, and as I made a remark the other day, we will be quite prepared to make any change or bring any amendment in this law if ever we find that any provision is contrary to the provisions of the Koran. This explanation will repel any suspicion which might be lurking in the minds of the people outside this House. One point on which we had some controversy was about the jurisdiction and as to who should administer this law. I quite see the great difficulties which have been pointed out by the Honourable the Leader of the House that though the amendment which had been sought by my Honourable friend, Syed Murtuza Sahib Bahadur, went only as far as the original jurisdiction, there was no provision in that amendment about appeals. This difficulty is really a very intricate difficulty. My friend, Syed Ghulam Bhik Nairang, pointed out that really what the Islamic law wants is that the divorce must be pronounced by the husband, and if the divorce is to be pronounced by the husband, he can delegate this power of pronouncing the divorce to a person who is also a Muslim, and, therefore, the court which comes to decide whether the divorce should be pronounced or not or whether it should pronounce the divorce on behalf of the husband, that must be a Muslim himself, as the person who had brought about this tie of marriage was also a Muslim. This difficulty alone could have been very easily met; and even if we did

not make any provision in this Bill about the trial being conducted by Muslim judges, of course the Provincial Governments could easily be asked by the Mussalmans to appoint some persons and vest them with the powers of honorary Munsifs in each district. Certainly it will be very difficult in places like the Central Provinces or Madras or Orissa where the Muslim population is very, very small and the number of Muslim Munsifs will be so small that it cannot be expected in the interest of the woman herself that she should be running after a man who is transferred from place to place to get the case decided. That is a real difficulty but this difficulty could be easily met by delegating honorary Munsifs' powers to some people in every district who could try only divorce cases. If there are no Qazis and the Government thought that the power should be delegated to some senior members of the Muslim bar, that could easily be done.

**The Honourable Sir Nripendra Sircar:** On a point of information, Sir. Under what provisions of law will the Provincial Governments appoint Honorary Munsifs for trying cases under this Act?

**Sir Muhammad Yamin Khan:** I said that if we could make such provisions, the administration of the law would have become very easy.

**The Honourable Sir Nripendra Sircar:** This could be done by another Bill.

**Sir Muhammad Yamin Khan:** Yes, and not through this Bill. I said that that difficulty could be got over by means of some other measure. It is not an insurmountable difficulty.

**Mr. Sri Prakasa:** What will happen if more than one woman is running after the same Munsif?

**Sir Muhammad Yamin Khan:** My friend knows that very well. The real difficulty is as to what will happen about the appellate jurisdiction.

**Mr. Deputy President (Mr. Akhil Chandra Datta):** Is it open to us during the third reading to have a detailed discussion on individual clauses?

**Sir Muhammad Yamin Khan:** I am referring to this point, because it has been brought in by two Honourable Members of this House on the third reading. So, I had to point out what the difficulties are and how they can be got over.

**Mr. Deputy President (Mr. Akhil Chandra Datta):** Two wrongs do not make a right.

**Sir Muhammad Yamin Khan:** I am only saying that this is not very difficult. This difficulty of the appellate jurisdiction requires a thought and we are not very clear as to how we can meet this point. Before we can express any opinion, we will have to discuss the matter amongst ourselves as to what measure can be brought forward or adopted.

As far as the provisions of this Bill are concerned, I think two great improvements have been made in this law. First of all, the woman has the option of puberty if the marriage is contracted below a particular age. Up till now the Muhammadan law as it is administered in British India has left that point very vague. A woman could choose this option

[Sir Muhammad Yamin Khan.]

as soon as she had the first signs of puberty, but that did not define any age and it was a very difficult question for any judge to have given a decision on that point. Therefore, it was necessary that a certain age should be prescribed. I am sorry that the age has been reduced from 17 to 15 and I quite appreciate the view-point of Mrs. Subbarayan when she said that the age should not have been reduced. My views are similar to those held by her. Any girl who is married below the age of 17 does not understand anything about the marriage nor will she be able to understand as to what her future life will be and whether it is in her interests to remain as a wife of a particular man or not. But as there has been a consensus of opinion of the Muslim jurists and they are all unanimous that the age of 15 should be considered as the age of puberty in so far as the matrimonial questions are concerned, we have to bow to their verdict and accept the age-limit to be 15.

Sir, I will make one observation about the period which has been increased in sub-clause (ii) of clause 2 to four years in cases where the husband's whereabouts are not known. This period has been taken from the Malaki law. The Select Committee thought that two years were quite sufficient. When the Malaki law was in force, there were no such communications existing as they exist today. There were no telegraphs, no railways, no steamers, no aeroplanes and no radios and in those days four years was not considered to be a small period in which a man's whereabouts could be found. If a man in those days had gone on a tour of Asia or some other country, he might not be able to return in four years. But nowadays the period of two years is quite a long period and the period of four years that has been accepted in this House on account of the Malaki law is simply in order to satisfy those people who really think that the Islamic law should not be interfered with even if it had been interpreted in a particular manner years ago. These are the salient provisions of this Bill. The other interpretations are the ordinary ones. I do think this Bill is a great improvement on the existing law.

**Mr. M. S. Aney:** Sir, I heartily congratulate my friend, Mr. Kazmi, on the success he has achieved in carrying his Bill through, but I do not know whether I should congratulate the House at the same time. Mr. Kazmi has really done a great service to the Muslim women in pointing to them clear avenues for seeking a relief in cases where it was urgently needed. In cases where matters were more or less of a dubious nature, this measure, no doubt, makes the position perfectly clear and the way is now really open to them, in deserving cases, to apply for a divorce and get themselves freed from an intolerable position where unfortunate conditions in married life sometimes may land a woman. To that extent, he has done a service to them. But when I find my Honourable friends in this House congratulating each other and calling it as a progressive measure, sometimes I wonder as to what the word 'progress' really means. It is considered to be a progressive marriage law.

As far as I understand the progressive marriage law, it should be a law which would make the married life of the couple happier, longer and lasting to the end of the lives of both. Whenever we find a newly married couple approaching us, at least the Hindu way of giving them blessings is this:

'May you always live a married life and may you be happy with each other as husband and wife to the end of your life'. But it appears now that no marriage can be good or happy unless facilities are given to the couple at the same time to put an end to it in their life as many times as they choose. So, the creation of opportunities for ending the marriage is a *sine qua non* for looking upon it as a happy or progressive marriage.

These are the ways or the directions in which the ideas of people are moving and judged by that this House must congratulate itself upon having produced a very progressive measure. Sir, this is one thing. The second thing, which is in my opinion of great importance, is this. So far as the facilities for divorce for Muslim women are concerned, I had already made it perfectly clear in my very first speech which I made on the Bill that I was not opposed to it. There were only two clauses to which I took strong exception, about one of which there is no need to make any reference now. My main objection to this Bill now is confined to what is now clause 4 which is in a modified form and it is that it contravenes the principle of liberty which every individual male or female should have as regards changing his own religion whenever he wants to change it, that there should be no clog put on that liberty. That is one of the rights which has been recognised by the Government and it is the policy to which the Government is pledged. There have been Statute laws which decidedly recognise this principle. What this Bill even in its modified form does is this. This right of a woman to change her religion to a great extent, if not in letter or so many words, at least in spirit, has been virtually destroyed by denying her an independent status immediately as the change of religion takes place. Now, she cannot have a status independent of her husband immediately she changes her religion. It is the independent status which in my opinion she must get to preserve her liberty in this matter. That alone could give her freedom to change a religion as soon as she thinks that there is need for her to make a change of that religion. That was the position before this law came into existence. Apostasy was accepted as a proper cause for ending marital relation. Two can live together happily when they both belong to the same religion. But if one says 'my soul cannot be satisfied hereafter by owing allegiance to a particular religion or faith and I must embrace another religion' and if any conversion was brought about, it was considered that that in itself was a proper ground for declaring the marriage tie dissolved. My Honourable friend, Qazi Muhammad Ahmad Kazmi, was trying to find out some specific grounds for divorce but he was anxious to see that the one ground which was already existing was altogether done away with. He was not satisfied with the ground that existed. In his zeal to make the Bill progressive, as he calls it, he did away with the one ground which existed all along for divorce. After all, even amongst Muslims, it has been repeatedly said—I am generally prepared to accept what my Muslim friends say because I know very little of Muslim law and still less of Muslim usage—I believe my Muslim friends when they say that although marriage in form may be of a contractual nature, at the same time there is something of religious feeling in the marriage. It means that though marriage may be of a contractual nature yet really it is done with a view to lead a pious religious life. That is the idea of marriage. A man and a woman come together as husband and wife not merely for the secular happiness as such, but they do so in

[Mr. M. S. Aney.]

fulfilment of certain religious obligations and duties to be performed by them together.

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

It is impossible to conceive that a married couple could jointly fulfil these obligations while each of them belongs to a different religion—the tenets of the one conflicting with those of the other. Each one can pursue his or her own religion, it is true. But there cannot be a married couple living together and fulfilling and discharging the religious obligations which it is said are the primary objects of a married life. If that is so, the ground of apostasy which was there was in conformity with this established idea of married life and the ideals which the married life was expected to fulfil. I am sure you are doing away with that ideal altogether. Now, I want the House to consider whether this idea of living a combined and joint life with a view to fulfil certain joint combined obligations towards God or towards your religion, whether the destruction of an ideal like that is a progressive thing or a retrograde thing. I want you to consider whether the absence of the spiritual ideal altogether from married life, whether the taking away altogether of that ideal from married life, is really making progress towards the betterment of society or humanity or whether you are making humanity more sordid and more worldly. The other-worldly-outlook of marriage which was present there, even according to the ideas of my Muslim friends, is being altogether destroyed by the present Bill. That is why it was stated that while the husband follows one religion and the wife follows another religion, both of them cannot follow one and the same ideal of marriage and that was why divorce was allowed on the ground of apostasy. When that religious aspect is destroyed I wonder whether the society can be credited to be moving spiritually and progressively. The present ideal which is incorporated in the Bill is no doubt important to the sordid interests of the world. I want to put this question to my Honourable friends, particularly to those who take a serious view of human life and who take a spiritual outlook on life and who insist upon spiritualising even the most sordid activities of mankind like politics, are they justified in taking such a light-hearted view on the matter and in ignoring what some believe rightly to be a better ideal of married life and to which we have all been owing allegiance all this time. From this point of view, I feel that although my heart is full of admiration for the admirable tact shown by my Honourable friend, Qazi Muhammad Ahmad Kazmi, I do not know whether I should congratulate the House as a whole in giving their consent to that nasty provision which still remains there, in clause 4. Of course, we have now incorporated some exceptions there by which what was formerly a pure evil has been to some extent mitigated or diluted. I congratulate the Members of the Select Committee for, at least, having brought about that little reform and taken away some of the evil aspects of the original clause as it stood there.

I should like to touch upon another point. I look upon the attitude of Government in regard to social legislation as one of great importance not only to this House but to the country as a whole. The Government

of India, even now, in my opinion, are committed to a policy of non-interference with religious usages. It is true that the whole procedure of the Governor General's sanction with regard to the initiation of such pieces of legislation has no doubt been dispensed with and the introduction of such measures made very easy under the present Government of India Act, but that does not mean that the policy to which the Government of India are committed with regard to religious and social usages has been altogether abandoned and that a new policy has been taken up by the Government of India. I do not know of the enunciation of any new policy like that by the Government of India after the pronouncement that was made on the floor of the House when the Sarda Act was passed. At that time, in the name of the Government of India, a clear enunciation of policy was made and, I believe, the Government of India stand committed to that even today. Here what I find is this. One of the principles on which great emphasis is laid was this, that in regard to matters, religious and social, they would normally remain neutral and leaving it entirely to the communities concerned to see what is best for them. But, if they find that there is a usage or custom which is opposed to elementary principles of morality or to public policy as such then the policy of non-interference or neutrality to which they were pledged need not be adhered to. That was the kind of exception accepted by them. In all social legislation hitherto, I believe their policy of interference or non-interference would have been justified by the test which is propounded in the statement of policy which I have just referred to. But, so far as this Bill is concerned, I have really failed to see as to what was the principle of elementary justice or anything that was opposed to public policy in allowing apostasy to be recognised as a proper ground of divorce between husband and wife. Along with giving other grounds for divorce, this Bill was intended to remove that one ground of divorce—namely, apostasy—which was existing there. When a statement was made by my Honourable friend, Sir Muhammad Zafrullah Khan, on this Bill, the one thing that was inexplicable to me was that so far as Government are concerned why it was thought necessary by them to depart from and not to preserve their attitude of neutrality, unless they were convinced that the retention of the ground of apostasy in the case of a Muhammadan woman as a proper ground of divorce was opposed to the elementary principles of morality or of public policy as such. I submit that is a ground which concerns the rights of people belonging to other religions also in this matter. If any people belonging to a particular religion want to change their religion or usages in a way in which people of other religions are not concerned, I can understand Government allowing them to do that and giving their support also. But where such innovation is likely to interfere with the recognised ideas of religion held by other people it becomes a matter for the Government of India to consider seriously. I suppose the ground of apostasy was of this nature because if somebody takes to another religion he or she becomes a member of a different community holding on to different sets of principles and usages; and whether you wish it or not, the rights of that community are directly or indirectly affected by anything that may be done with regard to the changing of that particular position. Therefore, it was a question on which more light should have been thrown by Government to convince us that the position which they had taken up with regard to this Bill was proper and consistent with the policy which the Government of India had hitherto pursued in regard to social and religious legislation that came up before this House. In my opinion it was necessary for this House to scrutinise

[Mr. M. S. Aney.]

this particular conduct of Government more carefully, more minutely, and more vigilantly than it has done. I, therefore, stated, when I got up that although I congratulate my Honourable friend, Mr. Kazmi, for having brought about a measure like this and thereby done a service to Muslim women, I am not prepared to congratulate the House because it has allowed probably a serious inroad of certain more serious and dangerous principles upon the rights which the great Hindu and Muhammadan communities hitherto enjoyed in regard to legislation of a religious and social nature in so far as Government interference is concerned. So, these are the various reasons why I am standing here with a kind of mixed feeling, a feeling of admiration for my Honourable friend and a feeling of a little want of admiration for my colleagues from whom I expected a more robust stand when bigger and more vital principles were involved. With these words, I support the third reading of this Bill and once more congratulate my Honourable friend, Mr. Kazmi.

**Syed Ghulam Bhik Nairang:** Sir, I had an idea that speeches on this third reading of the Bill may now cease and the question may be put and the motion decided. But it appears to me from some of the speeches made and especially from the speech of my Honourable friend, Mr. Aney, that a very grave misconception is still entertained by some Honourable Members here as to the scope and effect of the Bill and as to the underlying principle of Muslim law as far as the question of apostasy of a married Muslim woman is concerned. And, perhaps, it will not be proper if remarks based on such misconception are allowed to pass unchallenged. I really cannot understand the attitude of my Honourable friends like Mr. Aney or even Bhai Parma Nand. They appear to entertain the notion that hitherto the one ground on which the courts could dissolve a Muslim marriage, under Muslim law, was the apostasy of the wife.

They repeatedly mentioned that as the one ground for dissolution. That is certainly the greatest misconception that could be entertained about Muslim law. It has been said repeatedly during the course of the debates on this Bill by speakers who like myself addressed the House on that point that the various rulings of the High Courts in India based on the notion that apostasy effected automatic and immediate dissolution of the marriage tie were based, in the first place, on a misconception as to the real nature of such effect and, secondly, on, at the best, a view which was held by one school of Muslim jurists dissented from by another school of Muslim jurists. That point was made perfectly clear to the House but some people still persist in thinking that according to Muslim law that was not only a valid ground for dissolution of marriage but the only ground on which Muslim women could claim divorce. This is such a serious misconception that I must say once again on the floor of this House that my Honourable friends who think that way are mistaken. Some of them in the course of their speeches say that they are not experts in Muslim law. Even my Honourable friend, Mr. Aney, in the speech which he has just made was generous enough to say that he did not claim to know much about Muslim law or Muslim usages; and yet he also in one part of his speech twice or thrice said that that was the one ground for dissolution. That is entirely wrong and any one who thinks with him on that point is entirely wrong. The fact simply is that according to one school of Muslim jurists this was in certain circumstances and with certain conditions attached

to it one ground for dissolution of marriage; and we have made it clear that those conditions which that school of Muslim jurists laid down are not fulfilled at the present day. Therefore, the doctrine of the other school naturally and automatically comes in and such apostasy is not under Muslim law a ground for dissolution of marriage. Anyhow all that could be said by non-Muslims on that point could have been only from the point of view of their respective communities if the proposed section in any way appeared to be likely to violate any of the rights of their communities. They could certainly say that such and such objection was entertained by them and unless that was answered they would not agree to this proposition. That objection was put forward in various forms by various speakers.

We, in the Select Committee, added a proviso to the present clause 4 which was clause 5 in the original Bill and we did all we could to concede to them all that they could in good faith want to be conceded. After that we expected them to hold the view that all reasonable objections had been met and not to act any longer as *amicus curiæ* advocates for the cause of Islam and Muslim religion and not to tell the Muslim people that they are violating their own religion and are throwing to the winds the most precious doctrines of their own faith. Let them leave that task to us who are Muslims and who represent the Muslims in this House. We have taken every care to see that we do not in any way violate any of the essential principles of the *Shara* in laying down the several reasons in the form of a section which would suffice for the dissolution of a marriage in court. And when, we, in a spirit of responsibility as Muslims, declare that we have done all that was necessary under the *Shariat* to do, they ought to have felt satisfied that as far as Muslims are concerned they need not take up a brief for them and say: "well you are violating the spiritual side of the doctrine: you are only going on worldly principles: the other worldly principles are being thrown to the winds" and all that. I think they ought to have acted as we Muslims did with regard to the several social legislations which were undertaken by this House—we took up the attitude, when those Bills related to the Hindus, that it was for the Hindu Members as knowing the subject best, as knowing the needs of their community best, as having a better regard for the best interests of their community, to decide what to do with regard to those pieces of legislation and that we should certainly most gladly offer them all the support we could. In one of the speeches I made in the course of the debates on this Bill I reminded the House of what I had said in a former speech, explained the attitude which the Muslim Members had adopted with regard to those Bills and requested my Hindu friends to adopt the same attitude and let the Bill be passed without obstruction. I know that most sections in this House did very generously support this Bill but I am really surprised to hear objections on that point being still repeated—perhaps it will be presumptuous on my part to say—*ad nauseam*, but anyhow without any need. I would submit, therefore, that really now that the section has been regularly passed it is no use crying over spilt milk. As far as the valid legitimate interests of the Hindu community and other non-Muslims are concerned, they are sufficiently protected by the proviso added to section 4; and for the rest, it only affects Muslims and should be let alone now: it need not be discussed any longer. I may say one thing more.

My Honourable friend, Mr. Aney, talked of religious liberty. I think if he will consider this matter at his leisure he will see that we have really taken a step in that direction too. Is it not objectionable that a person by

[Sayed Ghulam Bhik Nairang.]

mere change of faith should incur any social disability or any loss of property or of inheritance? Is it not to further the cause of religious liberty and freedom of conscience that the Caste Disabilities Removal Act was passed in 1850? What did it do? It abrogated all laws or customs which in any way brought about any loss of right of inheritance or loss of property or anything merely on account of change of religion. Here also, as was explained in great detail, this change of religion of a Muslim woman led to her losing the right of inheritance to the husband or of other rights which she enjoyed as the wife of the man who was duly married to her under Islamic rites. By this section the marriage will subsist and all those rights will be maintained intact. Is this a gain or a loss? My friend was also thinking of some other religion, I think, when he said that the husband and wife have to perform religious rites together and if the wife believes in one religion and the husband believes in a different religion, how can they do it? I think he is thinking of something which is contemplated by Hindu law or the Hindu social system. There is no worship in Islam which is performed by the husband and wife together. In fact I think he cannot be unaware of the fact that admittedly it is permissible for a Muslim to marry a Jewess or a Christian lady. How could a Christian lady and her Muslim husband perform any prayer or religious worship together? But such a marriage is admittedly allowed under Muslim law. So really he was thinking of things that do not exist in Muslim society or Muslim law. I think the proper view to take is that really, as has been explained many a time in the course of the debates over this Bill, the Muslim women were suffering from a longstanding disability. They used to suffer on account of neglect by their husbands who could maltreat them in any way and according to certain notions about Muslim law which had prevailed so far, they could not move the court to effect a dissolution of the marriage. Now, by this Bill there will be such an immense improvement of their lot that there is, I think, cause for nothing but congratulation and satisfaction that this most desirable change has been brought about in the law, and I must congratulate my Honourable friend, Mr. Kazmi, on the successful way in which he has piloted this Bill in this House. I know personally what amount of labour he has had to go through and I have personal knowledge also of the most delicate and difficult nature of the task he had to perform. He has been equal to the task and I more than formally congratulate him on the successful way in which he has carried out his work. With these words I support the motion.

**Honourable Members:** The question may now be put.

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

“That the question be now put.”

The motion was adopted.

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

“That the Bill, as amended, be passed.”

The motion was adopted.

# THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

## (AMENDMENT OF SECTION 386.)

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

"That the Bill further to amend the Code of Criminal Procedure, 1898 (*Amendment of Section 386*), be referred to a Select Committee consisting of the Honourable Sir Nripendra, Sircar, the Honourable Mr. R. M. Maxwell, Mr. C. J. W. Lillie, Dr. F. X. DeSouza, Mr. P. J. Griffiths, Mr. Muhammad Azhar Ali, Syed Ghulam Bhik Nairang, Mr. M. Ananthasayanam Ayyangar, Mr. Sham Lal, Mr. Govind V. Deshmukh, Mr. K. S. Gupta, Mr. Lalchand Navalrai 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 object of my amendment is to remove certain words in the proviso to section 386 (1) of the Code of Criminal Procedure. This section 386 gives power to the courts for issuing a warrant for levying a fine. The section, as it now stands, reads:

"386. (1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

- (a) issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender;
- (b) issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the moveable or immoveable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so."

The object of my amendment is to remove the words beginning with "unless" and ending with "to do so", thus the power given to the Court to issue warrants for the recovery of fine after the prisoner has undergone the sentence provided for undergoing in default of the payment of the fine should be taken away from the Court. In 1923, Sir, when this section was amended, the power to realise fine from the immoveable property of the offender was added to this section. Before that, the Courts could only recover fines from moveable properties of the prisoners, but from 1923 it was considered necessary that the power should be extended for realising the fines from immoveable properties as well. The reason given during the debate on this point was that the law was to be brought in consonance with the law which prevailed in England where the levy of a fine was considered as a judgment debt against the offender, and it was to be recovered as if it was a decree of the Crown. So, Sir, in pursuance of that policy, the remaining two sections were amended, and such fine was regarded as a decree of a Civil Court in which a decree-holder was the Crown.

We found, Sir, that in the last Civil Disobedience Movement, and also the Akali Movement, certain persons were awarded sentences for payment of fines, and, in default of payment of fine, they were sentenced to undergo imprisonment. As the object for which imprisonment was sought in those days related purely to questions of conscience, questions of faith and questions of conviction, those persons refused to pay the fine, and the result was, that though they had undergone the imprisonment awarded in default of fine, still the fines were levied later on. Now, Sir, although the power under this section is limited to make the recoveries of the fine during the time the offender was undergoing imprisonment, still, though

[Sardar Sant Singh.]

the offenders had already undergone the sentence of imprisonment in default of the payment of fine, yet, without giving any adequate reasons for issuing the warrant as the section requires, the Courts issued warrants and actually recovered fines. There are so many reported cases, which for lack of time at my disposal I shall not quote,—and the Courts, particularly in Bombay and Calcutta, have held that the power should not be exercised after the offender has undergone the sentence, but in actual practice the power was exercised without giving any reasons in writing as required by the section. The result was that warrants were issued not in regard to carrying out the provisions or the spirit or the letter of the law as laid down in this section, but in regard to the political considerations involved in the case. Apart from the political cases, Sir, in cases reported in the All-India Reporter, 1935, Calcutta, 446, page 149, as well as in a recent case reported in I. L. R., 59, Bombay, page 850, this principle was discussed, and the spirit of the law enacted by the Legislature was shown to be that fine could only be realised during the time when the offender is undergoing imprisonment.

Looking to the provisions of the Indian Penal Code from sections 64 to 69, we will have to make a provision wherein the period of limitation, during which the Court can levy a fine only, should be limited to the time during which the person is undergoing imprisonment. It does not mean, as is said in certain quarters, that the power is entirely taken away for inflicting a punishment or sentence for default of payment of fine, the power is only limited during which the fine can be recovered. I hope the House will agree with me that this double punishment for one offence should not be allowed to remain on the penal Statute of this country, and; therefore, I move this.

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

“That the Bill further to amend the Code of Criminal Procedure, 1898 (*Amendment of Section 386*), be referred to a Select Committee consisting of the Honourable Sir Nripendra Sircar, the Honourable Mr. R. M. Maxwell, Mr. C. J. W. Lillie, Dr. F. X. DeSouza, Mr. P. J. Griffiths, Mr. Muhammad Azhar Ali, Syed Ghulam Bhik Nairang, Mr. M. Ananthasayanam Ayyangar, Mr. Sham Lal, Mr. Govind V. Deahmukh, Mr. K. S. Gupta, Mr. Lalchand Navalrai 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 Mr. R. M. Maxwell** (Home Member): Sir, this is the third occasion on which this House has been asked to apply its mind to a proposal of this kind to alter the law. The first occasion when this proposal was brought forward was in 1923 when the Criminal Procedure Code (Amendment) Bill was under discussion in the House, and I would remind the House that section 386, as it now stands, was entirely remodelled at the time when the 1923 Amendment Bill was passed. The object for which it was then remodelled was to make it clear—so it was summed up at the time,—that fines should not ordinarily be levied by distress when imprisonment in default has been suffered. That is the express object of the section of the Criminal Procedure Code as it now stands, and as it was inserted by the amending Bill of 1923. But at the time when that amending Bill was under discussion in the House, an amendment to exactly the same effect as my Honourable friend's Bill was moved, and it was negatived by the House—without a division, I may say. That then was the first occasion on which the House considered this proposal and turned it down.

Then, again, my Honourable friend, the Mover of the present Bill, as the House may recollect, introduced a general Criminal Law Amendment Bill in 1933, and a provision having the same effect as the present Bill was included in that Bill also. On that occasion after a full discussion of this as well as of the other measures involved the House negatived the motion for reference to a Select Committee, so that as I say . . . .

**Mr. M. S. Aney** (Berar: Non-Muhammadian): Now, you must yield.

**The Honourable Mr. R. M. Maxwell**: This is the third time on which the House has been asked to consider exactly the same proposal.

**Mr. S. Satyamurti** (Madras City: Non-Muhammadian Urban): Try, try again.

**The Honourable Mr. R. M. Maxwell**: I remember myself something of the discussions which led up to the amendment of section 386 in 1923. At that time or just before it I was myself a Magistrate and I had to apply this law for the recovery of fines, and I fully admit to the House that I found the law as it then stood an oppressive one, and it was very distasteful to me to see these accounts dragging on against people who were obviously unable to pay their fines and small recoveries being made from month to month. In fact, these accounts ran on something like those of a *baniya*, only with this difference that they did not double themselves every month. That was precisely the position which the 1923 Bill was intended to amend, and I may say that that proposal first came up to the Government of India in about 1918 when it came up from my own province. As I have just mentioned, the whole object was to make it quite clear from the Statute that there should be no ordinary practice of going on levying fines by distress after imprisonment in default had been undergone. That is the only principle really that underlies the present Bill, and what I want the House to observe is that the Statute, as it stands, practically achieves what my Honourable friend wishes to achieve by his present Bill, the only difference being that under the Criminal Procedure Code, as it stands, it is open to the court to adopt the distress procedure after imprisonment has been suffered, for special reasons to be recorded in writing. Those words are very emphatic. It is clearly contemplated by the Code as it stands that no court would make a regular practice of doing such a thing. We know that in all cases where a court has to record special reasons it has to be careful to see that those reasons are of a judicial character and in fact they may be taken up to a superior court, in revision, on those reasons. Therefore, we are perfectly satisfied that there is nothing oppressive. There is no general practice of what my Honourable friend calls double penalty in the administration of section 386 as it stands. My Honourable friend's main argument seems to be that there is no need for even this qualified permission for the adoption of distress procedure in cases where sentences have been served in default, and that if the magistrate thinks that the accused is rich enough to pay a fine he need not pass any sentence of imprisonment at all. As my Honourable friend knows, section 64 of the Indian Penal Code leaves it entirely to the court to decide whether any sentence of imprisonment shall be passed in default. The section says that in all cases of offences punishable with fine, that is, with or without imprisonment or with fine only, it shall be competent to the court, which sentences such offenders, to direct by the sentence that in default of payment of fine the offender shall suffer imprisonment. Therefore, in cases where the magistraté knows that the accused is sufficiently well-to-do to pay the fine he is not obliged

[Mr. R. M. Maxwell.]

to sentence him to imprisonment in default at all. He can, in fact, do exactly what the Honourable the Mover wants him to do . . .

**Sardar Sant Singh:** They always do it.

**The Honourable Mr. R. M. Maxwell:** But how can a magistrate know whether the fine will be realised or not? As we all know, the recovery of a fine is often a difficult and doubtful matter, and under the distress procedure—supposing the magistrate decides not to impose an imprisonment and resorts only to the distress procedure—we know that immovable property can disappear mysteriously when such warrants are issued, and also processes for execution against immovable property through the civil court are somewhat uncertain and, at any rate, dilatory. If the offender knows that by placing obstacles in the way of the realisation of the fine he will get away with it, he will not have any sentence in default to undergo, or rather if he knows that by undergoing a sentence in default he will completely end the recovery process, there is very much more inducement to him to place obstruction in the way of the execution of the process. If, on the other hand, he knows that by placing obstructions in the way of processes at first, he will not ultimately avoid the liability to pay the fine, as my Honourable friend wants him to avoid it, then he is much more likely to pay up the fine into court at once if he is a well-to-do person. We do not want, as my Honourable friend suggests, to oblige the court to issue the warrant in every case. The ideal disposal of a fine case is that the offender should pay up the fine into court without either suffering imprisonment in default or obliging the court to issue a warrant, and, therefore, we wish to leave the same inducement to the person who has to pay the fine to do that without being tempted to try and prevent the fine from being realised. There is a particular class of cases in which it is specially important to make sure that no obstruction is placed in the way of recovery of fines, and that is the class of cases where compensation has been awarded to the complainant out of the fine, if realised. Those are cases in which a comparatively well-to-do offender is ordered by the court to pay compensation to the complainant who may be a poorer person, and it is a matter of interest to us all that every possible pressure should be put on the accused in such cases to pay up.

While, therefore, I entirely agree with the Honourable the Mover that any trace of harassment of the poor offender is entirely wrong, I would submit to the House that that is sufficiently safeguarded by the Code as it stands. Imprisonment in default of fine ordinarily does discharge the sentence. There is no more outstanding against the accused unless the court, for special reasons, orders otherwise. But I submit that it would be highly unwise to deprive the court, in cases where it has special reason for doing so, of the possibility of issuing a process which is enabled by section 386. Finally, I would point out to the House that this Bill cannot stand alone: a Bill to amend section 386 of the Criminal Procedure Code cannot stand alone. We have the provisions of sections 67 to 70 of the Indian Penal Code which deal with imprisonment in default of payment of fine, and, particularly, I would draw the attention of the House to section 70 of the Indian Penal Code which lays down that the fine or any part thereof which remains unpaid may be levied at any time within six years after the passing of the sentence, and, if under the

sentence, the offender is liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period. That section goes on to state that the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts. Therefore, it is quite impossible for the House to consider this Bill as an isolated measure. It would give rise to a conflict with the Indian Penal Code unless it was accompanied by a further careful amendment of sections 67 to 70 of the Indian Penal Code. Sir, I oppose the motion.

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

"That the Bill further to amend the Code of Criminal Procedure, 1898 (*Amendment of Section 386*), be referred to a Select Committee consisting of the Honourable Sir Nripendra Sircar, the Honourable Mr. R. M. Maxwell, Mr. C. J. W. Lillie, Dr. F. X. DeSouza, Mr. P. J. Griffiths, Mr. Muhammad Azhar Ali, Syed Ghulam Bhik Nairang, Mr. M. Ananthasayanam Ayyangar, Mr. Sham Lal, Mr. Govind V. Deshmukh, Mr. K. S. Gupta, Mr. Lalchand Navalrai 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 Assembly divided:

AYES—41.

Abdul Qaiyum, Mr.  
Abdur Rasheed Chaudhury, Maulvi.  
Aney, Mr. M. S.  
Asaf Ali, Mr. M.  
Ayyangar, Mr. M. Ananthasayanam.  
Azhar Ali, Mr. Muhammad.  
Bajoria, Babu Baijnath.  
Banerjee, Dr. P. N.  
Basu, Mr. R. N.  
Chaudhury, Mr. Brojendra Narayan.  
Chettiar, Mr. T. S. Avinashilingam.  
Chetty, Mr. Sami Vencatachelam.  
Das, Mr. B.  
Das, Pandit Nilakantha.  
Datta, Mr. Akhil Chandra.  
Desai, Mr. Bhulabhai J.  
Deshmukh, Mr. Govind V.  
Gadgil, Mr. N. V.  
Gupta, Mr. K. S.  
Hegde, Sri K. B. Jinaraja.  
Jogendra Singh, Sirdar.

Kailash Behari Lal, Babu.  
Lalchand Navalrai, Mr.  
Maitra, Pandit Lakshmi Kanta.  
Manu Subedar, Mr.  
Mudaliar, Mr. C. N. Muthuranga.  
Muhammad Ahmad Kazmi, Qazi.  
Murtuza, Sahib Bahadur, Maulvi Syed.  
Paliwal, Pandit Sri Krishna Dutta.  
Pande, Mr. Badri Dutt.  
Parma Nand, Bhai.  
Ramayan Prasad, Mr.  
Rao, Mr. M. Thirumala.  
Sant Singh, Sardar.  
Santhanam, Mr. K.  
Satyamurti, Mr. S.  
Sham Lal, Mr.  
Singh, Mr. Ram Narayan.  
Sinha, Mr. Satya Narayan.  
Subbarayan, Shrimati K. Radha Bai.  
Varma, Mr. B. B.

NOES—39.

Ahmad Nawaz Khan, Major Nawab Sir.  
Aikman, Mr. A.  
Ayyar, Mr. N. M.  
Bajpai, Sir Girja Shankar.  
Bewoor, Mr. G. V.  
Boyle, Mr. J. D.  
Chanda, Mr. A. K.  
Chapman-Mortimer, Mr. T.  
Dalal, Dr. R. D.  
Dalpat Singh, Sardar Bahadur Captain.  
D'Souza, Mr. F.  
Ghiasuddin, Mr. M.  
Gorwala, Mr. A. D.  
Griffiths, Mr. P. J.  
Grigg, The Honourable Sir James.  
Hardman, Mr. J. S.  
James, Mr. F. E.  
Kushalpal Singh Raja Bahadur.  
Lillie, Mr. C. J. W.

Mackeown, Mr. J. A.  
Maxwell, The Honourable Mr. R. M.  
Menon, Mr. P. A.  
Menon, Mr. P. M.  
Metcalf, Sir Aubrey.  
Miller, Mr. C. C.  
Mukerji, Mr. Basanta Kumar.  
Nur Muhammad, Khan Bahadur Shaikh.  
Ogilvie, Mr. C. M. G.  
Rahman, Lieut.-Col. M. A.  
Row, Mr. K. Sanjiva.  
Sircar, The Honourable Sir Nripendra.  
Sivaraj, Rao Sahib N.  
Spence, Mr. G. H.  
Staig, Mr. B. M.  
Stewart, The Honourable Sir Thomas.  
Sukthankar, Mr. Y. N.  
Sundaram, Mr. V. S.  
Thomas, Mr. J. H.  
Yamin Khan, Sir Muhammad.

The motion was adopted.

## THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

## (AMENDMENT OF SECTION 205.)

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

"That the Bill further to amend the Code of Criminal Procedure, 1898 (*Amendment of Section 205*), be referred to a Select Committee consisting of the Honourable Sir Nripendra Sircar, the Honourable Mr. R. M. Maxwell, Mr. C. J. W. Lillie, Dr. F. X. DeSouza, Mr. P. J. Griffiths, Mr. Muhammad Azhar Ali, Syed Ghulam Bhik Nairang, Mr. M. Ananthasayanam Ayyangar, Mr. Sham Lal, Mr. Govind V. Deshmukh, Mr. K. S. Gupta, Mr. Lalchand Navalraj 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 amendment aims at widening the powers of the magistrate to dispense with the personal attendance of the accused. I have given my reasons in the Statement of Objects and Reasons, and I do not want to take up much of the time of this Honourable House, but I will just point out one thing, *viz.*, that India is a very large country, and, occasionally, in order to bring pressure upon the accused, the power of the Court is abused to this extent that a criminal complaint is put in one Court, so that the expenses which are incurred by the accused or a number of accused for travelling from their places of residence to the place of the Court are more than those which may probably be involved by bringing about a compromise between the parties. So, with the purpose of putting pressure upon the accused, (Interruption) . . . . .

**An Honourable Member:** Finish your speech. . . .

**Mr. President** (The Honourable Sir Abdur Rahim): Order, order. The Honourable Member is moving his Bill further to amend the Code of Criminal Procedure, and he must be allowed to explain his reasons.

**Sardar Sant Singh:** My submission is that in order to put down this evil, it is necessary that more power should be vested in the magistrate for dispensing with the personal attendance of the accused. Therefore, I move:

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

"That the Bill further to amend the Code of Criminal Procedure, 1898 (*Amendment of Section 205*), be referred to a Select Committee consisting of the Honourable Sir Nripendra Sircar, the Honourable Mr. R. M. Maxwell, Mr. C. J. W. Lillie, Dr. F. X. DeSouza, Mr. P. J. Griffiths, Mr. Muhammad Azhar Ali, Syed Ghulam Bhik Nairang, Mr. M. Ananthasayanam Ayyangar, Mr. Sham Lal, Mr. Govind V. Deshmukh, Mr. K. S. Gupta, Mr. Lalchand Navalraj and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

**Some Honourable Members:** The question may now be put.

**The Honourable Mr. R. M. Maxwell** (Home Member): Sir, I am afraid I must oppose the motion forthwith. This is another measure which has been before the House repeatedly, and it seems to me that one of my Honourable friend's hobbies is to dig out Bills which have been decently interred in the past and ask them to reconsider the matter. Sir, this particular matter was considered first in 1930 on a Bill brought up by Pandit Thakur Das Bhargava containing slightly wider provisions but substantially the same thing. That Bill was negatived by the House without a division. Then again the same measure came up in my Honourable friend's omnibus amendment Bill in 1933—the one I was referring

to just now. I have read the debates on that Bill and I cannot find that any real necessity was shown for a change in the law in this respect or that any real demand had been expressed in the country as a whole or by any of the Provinces for such a change. The principal reason given by the Mover, on that occasion, was, "why should not the law be what the practice is?" The obvious answer to such an argument is, "why alter the law if it allows the practice which you want?"

The practice described by the Honourable the Mover was that on the occasions on which the Magistrate wished to dispense with the presence of the accused and had issued a warrant in the first instance he had to take steps to cancel the warrant in order that it might be brought under the head in which a summons had been issued in the first instance. It is not denied that he can do that if he wants to do so. There is a procedure open to him, and as the Honourable the Mover pointed out in 1933, that practice exists, and the only object of this amendment would be to make the law what the approved practice has been; and my reply is, "why should it be necessary to alter the law if the practice which you want can be secured by the ordinary court processes?"

Now, I would ask the House to consider section 205 of the Criminal Procedure Code. This section allows the magistrate to dispense with the personal attendance of the accused whenever he issues a summons. Therefore, in the exercise of the discretion allowed to him by the first sub-section of section 205, he starts with the broad distinction which is laid down by section 204 of the Code in conjunction with the Second Schedule of the Code. According to section 204 there are certain cases in which a summons shall issue in the first instance. Those are the cases so described in the Second Schedule of the Code. In all such cases the magistrate has the discretion allowed by section 205 (1) to dispense with the personal attendance of the accused. Then there is the other class of cases contemplated by section 204 in which a warrant shall issue in the first instance according to the Second Schedule of the Code. But it is further provided in relation to the issue of a warrant that the magistrate may—and I quote the words of the section "if he thinks fit"—issue a summons. In those cases in which a warrant would be issued ordinarily in the first instance the magistrate has the discretion, if he thinks fit, to issue a summons and in that case, of course, if he has issued a summons in the exercise of that discretion, section 205 (1) applies, and he would be able to dispense with the personal attendance of the accused. But the words I have quoted, "if he thinks fit", in regard to the issue of a summons instead of a warrant, imply that he will use a judicial discretion in doing so, and that usually one might expect a warrant to issue in those cases in which, as provided by the Second Schedule, a warrant should ordinarily issue in the first instance. Now, the sole object apparently of my Honourable friend is to make it easier by this Bill for a magistrate to change his mind when he has issued a warrant and to convert that warrant into a summons. It is not denied that under the law as it stands he can revoke the warrant and make it a summons, and then he has the discretion allowed by section 205 to dispense with personal attendance.

The only difference made in this amendment will be that it will be easier for him to do so. With regard to this matter of dispensing with the attendance of an accused person, I would ask the House to remember the ordinary principle of law, namely, that an accused person should face

[Mr. R. M. Maxwell.]

his accusers and should face the witnesses. That is a very important principle underlying our criminal processes and I do not think that is one which the House would ordinarily wish to see disregarded. It is entirely in the interests of justice that the accused should, as a normal thing, be present in the court, if it is physically possible to get him there whether the case is an important one or a serious one or not a very serious one. Hence, even where, as in section 205 (1), the law allows a certain amount of discretion to the court in the direction of dispensing with the attendance of the accused, cases where the attendance of the accused can properly be dispensed with must be definitely rare. But such cases of the class in which a warrant would ordinarily have issued in the first instance but the magistrate has decided to issue a summons must be rarer still. Finally, such cases in which a magistrate has decided to issue a warrant but wishes afterwards to change his mind and make it into a summons must be very much rarer still. Yet, on account of such altogether exceptional cases my Honourable friend, the Mover, wishes all the distinctions of the Second Schedule of the Criminal Procedure Code to be wiped out: so that a magistrate can dispense with the attendance of the accused irrespectively of the nature of the case, whether it is a serious case or whether it is a case in which a warrant would ordinarily issue in the first instance. Whatever the nature of the case, irrespectively entirely of section 204 of the Code, he wants the magistrate to have full discretion to dispense with the attendance of the accused. I think the House will agree with me that it is a very dangerous latitude to allow. When the matter was under discussion in this House before, the then Law Member, the Honourable Sir Bepin Behari Ghose, used these words to which I would draw the attention of the House:

"There are often cases in which the accused is very rich and has been accused of a grave offence. Now, if the Magistrate after issuing a warrant, because of the wealth of the accused, dispenses with his personal attendance, I, for one, as a peaceful inhabitant of the country would object."

Those were the words used by the Honourable the Law Member in 1938 and I must ask the House to consider this latitude from that point of view. Is this going to be a law that is going to help the poor accused or is it going to be a law that is going to help the rich accused? To what extent it will give scope for improper pressure? Is it, in fact, a democratic law or not and why does the Honourable Member wish to introduce it into our Code? I would ask the House to consider the implications of a measure of this kind very carefully. Although the motion is only one for the Select Committee, I would earnestly ask the House not to refer it lightly to a Select Committee merely because that is not the final disposal of the Bill. Unless the House is prepared to accept the principle that a magistrate should be able to dispense with the attendance of the accused in any case of whatever description and however serious it may be without recording any reasons whatsoever, I would ask the House to negative this motion. Sir, I oppose it.

**Mr. M. Ananthasayanam Ayyangar** (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, the Honourable the Home Member has raised three points against the motion for reference to the Select Committee, and I will deal with them categorically. In the first place, he referred to section 205 and said that there is a provision in section 205 itself in proper cases for the magistrate to dispense with the appearance of the accused. Then, he also referred to the inconvenience and he suggested a way as to how the magistrates can get over that inconvenience by issuing a summons in place of a warrant. But that is

not the course which is proper for the magistrate to follow later on. Once the warrant is issued, the accused is brought before the Court. He can appear either personally or through his Vakil. Even in a case where he appears on a summons, that is the end of it, and there is no more chance of issuing a warrant for summons. No doubt, the magistrates try to evade this provision of section 205 and try to stretch the language by cancelling the warrant and try to gain the benefit of the provisions of section 205 to issue summons to the accused. That is the reason why this amending Bill has been brought by my Honourable friend, Sardar Sant Singh.

Another point to which reference has been made by the Honourable the Home Member is that rich men would try to escape and the magistrates ought not to be clothed with powers of discretion to exempt the personal attendance of rich men. He also referred to the opinion of the Honourable the Law Member which he expressed in 1933 when a similar Bill was introduced. Let me take a concrete case. A number of people are charged for rioting, and, until the case is made out, it cannot be said who are really guilty. In the meantime, they have to undergo various kinds of tortures and the expenses and the inconvenience by attending the court personally in batches of 40 and 50. Although their Vakil is in the Court, their personal attendance is insisted upon. So, it works as a greater hardship on the poorer people. I remember a number of cases where the accused persons had engaged their Vakil and still their personal attendance in the Court was insisted upon. Of course, the Vakil is there invariably, and yet the poor people also have to be present in the Court. I would ask the Honourable the Home Member to realise the travail which these poor people have to undergo during the process of the inquiry in attending the Court at various places. The magistrates are not stationary in most cases. They are itinerants. The First Class Magistrates generally camp from place to place. I know of cases where the accused persons had to sit on the top of the hill and had to undergo all sorts of inconveniences. I would, therefore, say that we must not look merely to the cases of the rich men.

Let us address ourselves to the cases of the poor people who suffer lot of inconvenience although ultimately they may not be found to be guilty. Very often these poor people are abused. I would only mention one case of a Sub-Judge before whom I had to appear on behalf of a *Sahukar*, who was worth 20 lakhs of rupees. He was a member of the District Board. He had granted a *patta* to an individual to cultivate his land as a receiver. Another man had already got a *patta* for the same land. These two persons began to plough, and one of them filed a suit against the other. The Court asked for the personal attendance of the accused, who was between these two persons who claimed the property as rival claimants. The magistrate suggested that the accused might be present who gave the *patta* and he asked that the receiver might also be made a co-accused. The Vakil who was appearing for the complainant immediately took up the suggestion. Even without a sworn statement he merely gave a memorandum, and, on the strength of that memorandum, the man was taken as a co-accused. I was waiting there from 11 o'clock till half past two. On that particular day, I was appearing on behalf of the *Sahukar*. The magistrate did not turn up, because he was engaged in ceremony and he came at 2-45. I had just then left the

[Mr. M. Ananthasayanam Ayyangar.]

Court leaving word that I would be coming back after attending some work in another Court. By that time he wanted the *Sahukar* to appear. The sub-magistrate could not resist the application to allow the *Sahukar* to appear by a *Vakil* on a previous day, and he could find no excuse and he was waiting for an opportunity to issue a warrant for the appearance of the old man on account of a quarrel between one person to whom a *patta* was granted and another to whom *patta* was granted by a previous person.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member can continue his speech on the next day.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 15th February, 1939.