

7th November 1941

**THE
LEGISLATIVE ASSEMBLY DEBATES**

Official Report

Volume IV, 1941

(27th October to 18th November, 1941)

**FOURTEENTH SESSION
OF THE
FIFTH LEGISLATIVE ASSEMBLY,
1941**



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LEGISLATIVE ASSEMBLY

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

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CORRIGENDUM.

In the Legislative Assembly Debates, Budget Session, 1936, Volume I, dated the 10th February, 1936, page 471, for the subject heading "DEMAND OF SECURITY FROM THE ABHYUDAYA OF ALLAHABAD." substitute the following independent heading, namely:—

"MOTION TO DISCUSS A QUESTION OF PRIVILEGE, NAMELY, HOW FAR PRESS PUBLICATION OF A MEMBER'S SPEECH IN THE ASSEMBLY IS PRIVILEGED."

LEGISLATIVE ASSEMBLY.

Friday, 7th November, 1941.

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.

†79*—82*.

LACK OF SUITABLE WAITING ROOMS IN THE INCOME-TAX OFFICES IN SIND AND BALUCHISTAN ASSESSMENT RANGE.

†83. *Mr. Lalchand Navalrai: (a) Will the Honourable the Finance Member be pleased to state if any suitable waiting rooms have been provided by Government in each of the Income-tax offices in the Sind and Baluchistan range for the assesseees and their representatives for waiting until their business is done?

(b) If there are no waiting rooms in any of the offices, do Government propose to provide the same at an early date? If not, why not?

The Honourable Sir Jeremy Raisman: (a) Generally speaking, Yes.

(b) The question of providing a proper waiting room where one does not exist, and of improving existing arrangements at certain places is under consideration.

COMPLAINTS MADE BY THE HINDU DEPUTATIONIST TO THE CONTROLLER OF BROADCASTING AT LUCKNOW.

84. *Mr. Govind V. Deshmukh: Will the Honourable Member representing the Information and Broadcasting Department please state:

(a) if a deputation consisting of prominent Hindus waited on the Controller of Broadcasting at Lucknow during the last six or seven months; and

(b) the complaints made by the deputationists and promises, if any, given by the Controller of Broadcasting to them?

The Honourable Sir Andrew Clow: (a) No; not during the last six or seven months.

†For these questions and answers, see pages 472-75 of these Debates.

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

(b) Does not arise.

Mr. Govind V. Deshmukh: May I know if there was any deputation—may not be within the last six or seven months—but roughly during this period?

The Honourable Sir Andrew Clow: No. I think the Controller received a deputation in Lucknow about a year ago; But I am not prepared to say that it consisted of prominent Hindus.

Mr. Govind V. Deshmukh: I learn from the Honourable Member that they were not prominent Indians?

The Honourable Sir Andrew Clow: I said I was not prepared to say whether they were prominent or not. I do not know the names.

Mr. Govind V. Deshmukh: The period is not a matter of importance, but I want to know whether the deputation made any complaints and ventilated any grievances: if so, what were the complaints?

The Honourable Sir Andrew Clow: They raised a number of points. They talked about the fees paid and the language used and the number of items broadcast and matters of that kind.

Mr. Govind V. Deshmukh: Were any of those questions looked into and grievances removed? If so, what?

The Honourable Sir Andrew Clow: I think the Controller explained the position to the deputation and set out the general policy pursued by the department.

BROADCASTING OF HINDU RELIGIOUS PROGRAMMES BY MUSLIM ANNOUNCERS AND ARTISTS.

85. *Mr. Govind V. Deshmukh: Will the Honourable Member representing the Information and Broadcasting Department please state:

- (a) if Hindu religious programmes were broadcast through Muslim announcers and artists, and if he is aware that this method of broadcasting is resented by Hindus; and
- (b) if any Muslim religious programmes were broadcast through Hindu announcers and artists; if not, why not?

The Honourable Sir Andrew Clow: (a) and (b). As a general rule talks, recitations from the scriptures and devotional music are broadcast by persons belonging to the community concerned. In plays, features, group singings, etc., on religious occasions, artists belonging to the other community have, however, also taken part, the choice of artists being governed mainly by programme requirements and the merits of the artists. Announcements are made by the announcer on duty, irrespective of his religion. This applies to Hindu as well as Muslim religious programmes.

Government are not aware of any resentment on the part of Hindus on this account. On the other hand, I understand that certain broadcasts

by Muslim artists on Hindu religious occasions have been much appreciated by the Hindus.

COMPLAINTS AS REGARDS THE HINDI LANGUAGE USED BY THE ALL-INDIA RADIO.

86. *Mr. Govind V. Deshmukh: Will the Honourable Member representing the Information and Broadcasting Department please state:

- (a) if he is aware that the Central India Hindu Sahitya Sammelan held at Mhow on 13th October, 1941, presided over by Pandit Suraj Narain Vyas, has strongly condemned the so-called Hindi language used by the All-India Radio; and
- (b) what measures are proposed to be adopted to remove the complaint as regards the Hindi language used by the All-India Radio?

The Honourable Sir Andrew Clow: (a) Yes.

(b) All-India Radio is constantly engaged in an endeavour to simplify the language of its Hindustani broadcasts in the light of experience and well-informed criticism.

Mr. Govind V. Deshmukh: In view of almost annually recurring complaints regarding this language used for broadcasting Hindi, may I know if Government will consider the feasibility of having basic Hindi, as they have a basic English now?

The Honourable Sir Andrew Clow: They are making some endeavours, I understand, not for basic Hindustani, but a sort of standard Hindustani for their own work.

PROPORTION OF HINDUS AND MUSLIMS IN THE INDIAN ARMY AND NAVY AND RECRUITMENT FROM THE PROVINCES.

87. *Mr. Govind V. Deshmukh: (a) Will the Defence Secretary please state the proportion of Hindus, as well as of Muslims, to the total strength in the Army now?

(b) What is the proportion of Hindus, as well as of Muslims, to the total strength in the Navy now?

(c) What is the response of the non-listed classes to recruitment in the Army as well as in the Navy?

(d) What is the number of persons recruited for the Army as well as for the Navy, since September 1940 to September 1941 from the following Provinces:

- (i) Bengal, (ii) United Provinces, (iii) Bihar, (iv) Central Provinces and Berar, (v) Orissa, and (vi) Madras?

(e) Out of these recruits, how many are combatants and how many are non-combatants?

Sir Gurnath Bewoor: (a) Hindus 52 per cent.; Muslims 35 per cent.

(b) Hindus 12 per cent., Muslims 53 per cent.

(c) No distinction of class is observed in recruiting for the Navy. As regards the Army, many classes who were not represented, or who were poorly represented, in the Army in peace have responded very satisfactorily.

(d) and (e). I regret I cannot supply the information as it is not in the public interest to do so.

Sardar Sant Singh: May I know the percentage of the Sikhs in the Army?

Sir Gurunath Bewoor: 12 per cent., Sir.

Sardar Sant Singh: May I know the percentages of the various communities to the total population of India?

Sir Gurunath Bewoor: I am sorry; I shall want notice.

Mr. Govind V. Deshmukh: I do not want the total strength of the whole army—it may not be in the public interest to give it out; but so far as these different provinces are concerned, I want to know the figures for one year. The public are certainly entitled to know this so that it might stimulate the war effort in provinces in which there was no response formerly.

Sir Gurunath Bewoor: Government still think that it would not be in the public interest to give the numbers of persons recruited; but I may tell the Honourable Member that all provinces have responded satisfactorily according to their population.

Lieut.-Colonel M. A. Rahman: May I know if the percentage of the various classes depends on the men who present themselves for recruitment?

Sir Gurunath Bewoor: Naturally.

MUSLIM EMPLOYEES' ALLEGATIONS OF HARASSMENT, MALTREATMENT, ETC., AGAINST THE EXECUTIVE OFFICERS OF THE AGRA CANTONMENT BOARD.

88. *Qazi Muhammad Ahmad Kazmi: (a) Will the Defence Secretary please state whether it is or it is not a fact that in Agra Cantonment all the Executive Officers since 1930, have been Sikh gentlemen, with the exception of one who was there for two years only?

(b) If the answer to part (a) be in the affirmative, what is the reason for it?

(c) Is it or is it not a fact that the Muslim employees of the Board are being harassed and being treated unfairly by the Executive Officers due to communalism?

(d) Is it or is it not a fact that the representatives of the Muslims of Agra Cantonment made certain allegations against Captain Rachpal Singh to the Inspecting Officer, Eastern Command, when he came on tour in December 1940?

(e) Was any enquiry made in connection with these allegations? Were they found to be true or false, and if found to be true, what action has been taken in respect of them?

Sir Gurnath Bewoor: Sir, with your permission, I would like to reply to questions 88 and 89 together.

I am collecting the information and will lay it on the table in due course.

MUSLIM EMPLOYEES' ALLEGATIONS OF HARASSMENT, MALTREATMENT, ETC., AGAINST THE EXECUTIVE OFFICERS OF THE AGRA CANTONMENT BOARD.

†89. ***Qazi Muhammad Ahmad Kazmi:** (a) Will the Defence Secretary please state whether it is or it is not a fact that on transfer, Captain Rachpal Singh, Executive Officer, Agra Cantonment, has been succeeded by another Sikh Executive Officer, who is much junior to others in his service, and had been working in smaller Cantonments of much less importance?

(b) Is it or is it not a fact that the new Executive Officer has publicly declared that he has come there under instructions to carry out the policy of Captain Rachpal Singh and to turn out from service some Muslim members of the outdoor staff of the Cantonment Board?

(c) If the answer to part (b) be in the affirmative, have any such instructions been given to him? If so, by whom?

(d) Is it or is it not a fact that accelerated promotion has been given to a Sikh official of the staff at the cost of other senior officials in promoting him from Tax Section to the English Section of the Office?

(e) Is it or is it not a fact that this Sikh official is, to all intents and purposes, working as a private secretary to the present Sikh Executive Officer and has been put in charge of all communications from and to the office by the removal of the telephone to his table from the room of the Head Clerk?

(f) If the answer to the above parts or some of them be in the affirmative, what action do Government propose to take against the said Executive Officer?

MUSLIM EMPLOYEES' ALLEGATIONS OF HARASSMENT, MALTREATMENT, ETC., AGAINST THE EXECUTIVE OFFICERS OF THE AGRA CANTONMENT BOARD.

90. ***Qazi Muhammad Ahmad Kazmi:** (a) Will the Defence Secretary please state whether it is or it is not a fact that Pirthipal Singh, Executive Officer of Agra Cantonment Board, openly took part in the recent election of the Hindu members of the Board and declared that he had asked them to form a 'Control Board' to return some members unopposed?

(b) Is it or is it not a fact that the nomination papers of nine candidates filed for the election were declared invalid by the City Magistrate, who was appointed to scrutinize the nomination papers?

(c) Is it or is it not a fact that after appeals had been filed by the candidates, the Executive Officer openly stated that he was dictating

† For answer to this question, see answer to question No. 88.

certain terms to the Hindu candidates and had asked them to select only four members from amongst them and to place the resignations of others in his hands and he will get the appeals decided in their favour?

(d) Is it or is it not a fact that all the nine nomination papers were admitted by the President of the Cantonment Board on grounds other than legal, while he concurred with the legal interpretation of the City Magistrate?

(e) Is it or is it not a fact that the decision of the President was given in the presence of and in collaboration with the Executive Officer?

(f) Is it or is it not a fact that in consequence and due to the pressure of the Executive Officer, only four members of his choice were selected and were put in as members?

(g) If the answer to all or some parts above be in the affirmative, what action do Government propose to take against the Executive Officer for his acts in connection with the said election?

Sir Gurunath Bewoor: Sir, there is no executive officer of the Agra Cantonment Board of the name of Prithipal Singh. The Honourable Member is presumably referring to Mr. Prailad Singh who took over charge at Agra on the 7th April, 1941.

On this presumption, the reply is as follows:

(a), (c), (e) and (f). No, the statements made in these parts are not facts.

(b) and (d). Twenty nomination papers were declared invalid by the Nomination Officer, *viz.*, the City Magistrate. His decision was revised and they were admitted by the President of the Board under rule 29 of the United Provinces Cantonment Electoral Rules.

(g) Does not arise.

Qazi Muhammad Ahmad Kazmi: Is there any question of the Control Board having been formed by this gentleman?

Sir Gurunath Bewoor: No. I have replied in the negative.

INADEQUATE EQUIPMENT OF THE INDIAN ARMY.

91. ***Sardar Sant Singh:** (a) Will the Defence Secretary please state whether it is a fact that (i) only a few minor weapons of modern warfare are produced in India and the chief essential weapons, such as big tanks, motor vehicles, planes, etc., are not produced here, (ii) there is no adequate equipment for the Indian army, (iii) Britain itself cannot spare enough equipment for the Indian army, and (iv) the Indian army raised during these two years is not sufficiently trained to stand German onslaughts?

(b) Has the attention of Government been drawn to the speech of Lord Croft, Under Secretary of State for war, substance of which is reported in the press, *e.g.*, *The Tribune of Lahore*, dated 19th October, 1941, page 1? Is it a fact, in the light of this speech, that it is chiefly the Indian army which is to be used to "hold the line to the East"?

which, as stated in one of the Right Honourable Mr. Churchill's speeches, extends from the "Caspian Sea to Egypt"? Will it be used without full equipment if Germans soon create the Caucasus front?

Sir Gurunath Bewoor: (a) (i) No, very many items of modern equipment are produced in India.

(ii) The Indian Army was short of equipment at the outbreak of war but is being equipped as rapidly as possible.

(iii) Britain is sparing equipment as rapidly as she can with due regard to the strategical position throughout the world.

(iv) Most emphatically No. The Indian soldiers overseas are fully trained and have shown the excellence of their training on the battle-field.

(b) The answer to the first part is in the affirmative and to the second and third parts in the negative.

Lieut.-Colonel Sir Henry Gidney: Will the Honourable Member inform this House whether locomotives are being supplied for defence purposes, i.e., military lines of communications?

Sir Gurunath Bewoor: That is rather a large question—whether they are being supplied, and up to what place, from where, etc. I am afraid I shall require notice of that question.

Lieut.-Colonel M. A. Rahman: What about aeroplanes? We were informed that one aeroplane was manufactured last year. Has there been any increase on that one?

The Honourable Sir Jeremy Raisman: I may say that the oft-repeated statement that one aeroplane was manufactured last year is a gross travesty of a sentence in my budget speech.

Lieut.-Colonel Sir Henry Gidney: Does that mean it was built in India or was merely assembled, because the announcement was made in the public press some months ago with a great flare of trumpets?

The Honourable Sir Jeremy Raisman: I think everybody, who is familiar with this question, is aware that there was never any question of anything more than assembling. We know that engines cannot be manufactured in India.

PERCENTAGE OF AND CASUALTIES IN THE INDIAN ARMY IN THE AFRICAN, SYRIAN, IRAQI AND IRANIAN CAMPAIGNS.

92. *Sardar Sant Singh: Will the Defence Secretary please state the percentage of the Indian army as compared with the British, Australian, New Zealand, and African armies, respectively, in the African, Syrian, Iraqi, and Iranian campaigns and what was the percentage of casualties among each?

Sir Gurunath Bewoor: Government have no information as to the exact percentages of troops which took part in these campaigns; but it has already been announced in the Press that the total of Indian casualties in

the Middle East Command so far is slightly over 7,000, while that for the Australian Imperial Forces is over 13,000 and for the United Kingdom Forces over 29,000.

EQUALIZATION OF THE STATUS, PRIVILEGES, ETC., OF BRITISH AND INDIAN OFFICERS AND SOLDIERS.

93. *Sardar Sant Singh: Will the Defence Secretary please state whether Government intend to equalize the status, salary, allowances, pension, and other privileges of Indian officers and soldiers with those of the British?

Sir Gurunath Bewoor: No.

Sardar Sant Singh: May I know the reasons, why, in view of the praises conferred on the Indian troops' bravery, Government do not consider the desirability of equalising the status of the Indian troops, Indian officers and soldiers, to that of the British?

Sir Gurunath Bewoor: There have been numerous questions put in this House before, on this subject. The Honourable Member did not put this question with the usual addition of "if not, why not", and so I am not prepared to give any reasons.

Sardar Sant Singh: May I know, Sir, if Government are considering the desirability of raising the status of Indian soldiers in view of the praises conferred upon their bravery in the various theatres of war?

Sir Gurunath Bewoor: So far as their status is concerned, there is no question of any difference, but if my Honourable friend is talking of salaries, allowances and pensions, the reasons for the difference have been stated in this House before in connection with a number of debates, and I do not think I can add anything useful to them.

Sardar Sant Singh: But that was before the war and before these praises were conferred upon the Indian troops for their bravery. But may I know, in view of the bravery displayed by Indian troops in the field, if the Government is not prepared to raise their salaries, allowances and pensions to the same level as those of the British soldiers; if not, why not?

Sir Gurunath Bewoor: The Honourable Member is arguing, but I don't think it follows necessarily.

Sardar Sant Singh: I am asking why, if the

Mr. President (The Honourable Sir Abdur Rahim): The question has been asked before many a time. He cannot discuss it here again.

NECESSITY OF MAINTAINING THE INDIAN ARMY WELL-EQUIPPED AND AT ADEQUATE STRENGTH FOR MEETING INTERNAL DISORDERS AND EXTERNAL AGGRESSION.

94. *Sardar Sant Singh: Will the Defence Secretary please state whether Government are aware of the necessity of keeping a well-equipped

Indian army of adequate strength in India to meet all possible apprehensions of internal disorders and external aggression from the West, North, and the East?

Sir Gurunath Bewoor: Yes.

Sir F. E. James: Is the Honourable Member satisfied that the forces which are being sent overseas from this country are being sent over adequately equipped and with the supplies necessary to enable them to meet the conditions of modern warfare?

Sir Gurunath Bewoor: The Indian army is adequately equipped for the tasks it has to perform.

Lieut.-Colonel Sir Henry Gidney: Will the Honourable Member inform this House whether, in the present increased Indian army there is an adequate supply of artillery for the internal defence of the country?

Sir Gurunath Bewoor: I must ask for notice of the question.

95*—98*. Mr. Jamnadas M. Mehta: Sir, I do not ask any of the questions† standing in my name.

Mr. President (The Honourable Sir Abdur Rahim): You are not asking any of the questions† standing in your name?

Mr. Jamnadas M. Mehta: No, Sir.

DEPORTATION, ARREST AND DETENTION OF SARDAR AJAIB SINGH OF THE HONGKONG BRITISH POLICE.

99. *Sardar Sant Singh: (a) Will the Honourable the Home Member please state whether it is a fact that Sardar Ajaib Singh son of S. Kishan Singh of Ludhiana, and a member of the Hongkong British Police was deported from Hongkong to India under the Defence regulations?

(b) Is it a fact that, on his arrival at Calcutta, he was again arrested under the Defence of India Rules and has since been detained in jail as a security prisoner?

(c) Is it a fact that he has lost considerable weight since his arrest?

(d) How is he being treated, whether as a better class or only as a C class prisoner?

(e) Are Government prepared to consider this case and, in view of his social status, education and failing health, award him B class while he is confined in Jail?

(f) Are Government also prepared to sanction a reasonable allowance for his wife and children?

The Honourable Sir Reginald Maxwell: (a) It is a fact that Sardar Ajaib Singh, an ex-member of the Hongkong Police Force, was deported from Hongkong after he had deserted from the force and had indulged in propaganda aimed at undermining the loyalty of other members of the force.

(b) Yes.

(c) and (d). I have no information as he is detained under the orders of the Punjab Government.

(e) and (f). These are matters for the Punjab Government to decide.

Sardar Sant Singh: May I know, Sir, in view of the reply which the Honourable Member gave the other day to my question that the Defence of India Act does not apply to Hongkong, under what rule Sardar Ajaib Singh was deported from Hongkong?

The Honourable Sir Reginald Maxwell: I suppose they have a Defence Act of their own which gives them similar powers.

Sardar Sant Singh: May I know why he was arrested under the Defence of India Rules when he committed no offence in India after his arrival from Hongkong?

The Honourable Sir Reginald Maxwell: Because of his record, and the reasons for which he was externed, which made it necessary to protect ourselves against similar acts being committed here.

Sardar Sant Singh: Is it not fair that he should have been given a chance of what is called *locus poenitentiae*?

The Honourable Sir Reginald Maxwell: It was also important he should not be given a chance of doing here what he did in Hongkong.

(The Honourable the President called out Mr. Lalchand Navalrai to put his question, but the Honourable Member was absent and the question was not put even in the second round.)

TRANSFERRED STARRED QUESTIONS AND ANSWERS.†

DEMAND FOR DECLARATION ON INDIA'S POLITICAL STATUS AFTER THE WAR.

79. ***Mr. Govind V. Deshmukh:** Will the Honourable the Leader of the House please state:

- (a) if Government are aware of the demand for an immediate declaration fixing a brief and reasonable time limit when, after the conclusion of the war, India will enjoy the same measure of freedom as will be enjoyed by Britain and the Dominions as voiced at the Non-Party Leader's Conference held at Poona in the last week of July 1941, and by the Premier of the Punjab in his interviews, with reference to Mr. Churchill's statement that the Atlantic Charter is inapplicable to India, to the Associated Press of India on the 1st October at Simla, and at Lahore on 3rd October, 1941;

- (b) if the demand referred to above has been brought to the notice of the Secretary of State for India; and

†The meeting of the Assembly, that was to be held on the 6th November, 1941, having been cancelled, the answers to starred questions for that day were, in pursuance of convention, laid on the table of the House today.—*Ed. of D.*

- (c) the reply, if any, received from the Secretary of State for India with reference to this demand of immediate declaration specified in part (a) of this question?

The Honourable Mr. M. S. Aney: Please see my reply to the Honourable Member's question No. 28 put on the 28th October.

MALAYA GOVERNMENT'S BILL FOR UTILISING THE INDIAN IMMIGRATION FUND FOR IMPORTATION OF JAVANESE LABOUR.

80. *Mr. Govind V. Deshmukh: (a) Will the Honourable Member for Indians Overseas please state if the Government of Malaya have brought in a Bill for utilising the Indian Immigration Fund to finance the recruitment and transport of Javanese to Malaya?

(b) What was the origin of the Indian Immigration Fund?

(c) Are Government prepared to take immediate steps to see that the fund is utilised for the purpose for which it was started?

(d) What has led now to the importation of Java labour in Malaya, and on what terms are they now imported from Java, a Dutch possession? Did the Indians in Malaya refuse to work on these terms?

(e) Is the importation of Javanese labour the result of a scheme agreed to between Britain, the Netherlands Indies, and Australia to oust Indians from Malaya?

(f) What steps are Government going to take to guard the interests of the Indians in Malaya?

The Honourable Mr. M. S. Aney: (a) Yes.

(b) The Fund was constituted by the Malayan Governments in 1907, mainly to avoid the possibility of one employer unfairly obtaining the services of labourers for whose recruitment another employer had paid.

(c) The Fund is controlled by the Malayan Governments, not by the Government of India. Government have, however, under consideration the question of making certain representations to the Malayan Governments.

(d) The Malayan Governments are free to recruit labour where they think fit. The precise terms on which Javanese are recruited are not known, but Government are satisfied that they have no effect upon the terms offered to Indian labourers.

(e) Government have no reason to believe so.

(f) Government have all matters affecting the interests of Indians in Malaya constantly under consideration.

DEPORTATION, ARREST AND DETENTION OF SARDAR AJAIB SINGH OF THE HONGKONG BRITISH POLICE.

81. *Sardar Sant Singh: (a) Will the Honourable Member for Indians Overseas please state whether it is a fact that Sardar Ajaib Singh son of S. Kishan Singh of Ludhiana, and a member of the Hongkong British Police was deported from Hongkong to India under the Defence regulations?

(b) Is it a fact that, on his arrival at Calcutta, he was again arrested under the Defence of India Rules and has since been detained in jail as a security prisoner?

(c) Is it a fact that he has lost considerable weight since his arrest?

(d) How is he being treated, whether as a better class or only as a C class prisoner?

(e) Are Government prepared to consider this case and, in view of his social status, education and failing health, award him B class while he is confined in Jail?

(f) Are Government also prepared to sanction a reasonable allowance for his wife and children?

The Honourable Mr. M. S. Aney: The question should have been addressed to the Honourable Member in charge of the Home Department.

CO-ORDINATION BETWEEN WAR AND PEACE TIME INDUSTRIES.

82. *Mr. Lalchand Navalrai: (a) Has the attention of the Honourable the Commerce Member been drawn to the statement of Sir Muhammad Zafrullah Khan in his broadcast speech on Wednesday, the 16th July, 1941, to the effect that co-ordination between war and peace time production must be taken on hand now and simultaneously and not be left for the future? If so, will Government be pleased to make a full statement as to which industries, particularly major ones they have established, which have chances of survival after the war and which are of great importance to the country?

(b) Will the Honourable Member also be pleased to state which of such industries Government propose to start further and when?

(c) Is it a fact that the Board of Scientific and Industrial Research has recently declared that a list of schemes has been drawn up, which might result in the future in the establishment on a commercial scale of new industries? If so, how many schemes have been drawn up, and which are they?

(d) Will Government be pleased to state the terms on which industrialists would be given the right to make commercial use of researches made by the Board and the names of any to which Government have granted the rights of the use of the researches made by the Board?

(e) Is the programme of research, in which the Board of Scientific and Industrial Research are now engaged, confined mainly or largely to the war time industries, or is it of a permanent character?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: (a) I have not read the statement attributed to Sir Muhammad Zafrullah Khan but I am prepared to take it from the Honourable Member the correctness of the statement attributed to him. The entire problem of war and peace time production will, it is expected, engage the attention of the various Reconstruction Committees that have been recently constituted by the Government of India. It is premature to make any definite statement in regard to the concluding part of the Honourable Member's question.

(b) I would refer the Honourable Member to the concluding part of my reply to (a) above.

(c) I am not aware that the Board of Scientific and Industrial Research has drawn a list of schemes as suggested by the Honourable Member.

(d) The terms to be offered to industrialists depends on the nature of the researches that are to be made available for industrial development. The Government of India are guided by the advice of the Industrial Research Utilisation Committee that consists of the leading industrialists in this country in regard to the terms on which any particular research should be given for industrial development to any particular industrialist. A statement of the researches so far given out for industrial development is laid on the table.

(e) The programme of Research conducted under the auspices of the Board of Scientific and Industrial Research comprises not merely the problems of war time industries but also the problems of long term interest to Indian industries.

Statement showing the researches so far given out for industrial development

1. Laminated Paper Fibre Board.
2. Manufacture of Solid Fuel.
3. Steam Proof Plastic Powder Composition.
4. Luminous Pigments and Paints.
5. Anti-Gas Cloth.
6. Bhilawan Enamels and allied products.
7. Oil Silk.
8. Substitute for Glass.
9. Waterproof paint for Indianite roofing slabs.

UNSTARRED QUESTION AND ANSWER.

RETURNS OF INCOME, ETC., IN RESPECT OF THE INCOME-TAX OFFICES IN THE SIND AND BALUCHISTAN ASSESSMENT RANGE.

33. Mr. Lalchand Navalrai: Will the Honourable the Finance Member be pleased to place on the table a statement showing the following information in respect of each Income-tax Office situated in the Sind and the Baluchistan assessment range for the years 1939-40 and 1940-41, respectively:

- (a) how many returns of income were furnished within time in pursuance of the public notice issued under section 22 (1);
- (b) how many of the assesseees did not furnish the same within time, and how many of them were penalised under section 28 and to what extent;
- (c) in how many cases notices were issued under clause 2 of section 22, and in how many cases penalty was imposed for not furnishing the returns so required and to what extent;
- (d) whether it is a fact that the Income-tax Officers in almost all cases issue notices under clause 4 of section 22 and clause 2 of section 23 of the Income-tax Act; if not, in how many cases they were issued;

- (e) in how many instances out of the total number of assessed cases, action has been taken under clause 1 of section 28; and
- (f) in how many cases out of the total number of cases dealt with in each office, provisions of section 37 of the Income-tax Act were exercised?

The Honourable Sir Jeremy Raisman: I have called for the information from the Commissioner of Income-tax and a statement will be laid on the table of the House in due course.

THE RAILWAYS (LOCAL AUTHORITIES' TAXATION) BILL.

PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

The Honourable Sir Andrew Clow (Member for Railways and Communications): Sir, I present the Report of the Select Committee on the Bill to regulate the extent to which railway property shall be liable to taxation imposed by an authority within a Province.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Dr. P. N. Banerjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I beg to move:

"That the Bill to simplify the procedure in appeals to the Federal Court, as reported by the Select Committee, be taken into consideration."

Sir, this Bill is a non-controversial measure, its sole object being to expedite the administration of justice in this country. At the present moment, a great deal of delay takes place in bringing appeals from the High Courts to the Federal Court, and this is due to the insertion of section 111A and Rule 17 of Order XLV in the Civil Procedure Code. Now, this addition, Sir, was made by the Adaptation of Laws Order in Council in 1937, and the effect of these additions is that the provisions which used to govern and which still govern the presentation of appeals to the Privy Council have been made applicable to appeals presented to the Federal Court. Now, Sir, the Privy Council is situated at a distance of six thousand miles from India, whereas the Federal Court is situated within the borders of the country. Besides it should be remembered that when these provisions were first made, about a century ago, communications were very difficult between India and England. Therefore, it was found very necessary at that time to have a considerable spade work done in India before the appeals were presented to the Privy Council. In that respect, the situation is very different today. The longest time that is taken for bringing an appeal from any of the High Courts is 48 hours. Therefore, it is not necessary to retain any longer the dilatory and cumbrous procedure which is laid down in section 111A and Rule 17 of Order XLV of the Civil Procedure Code.

Sir, when I moved the second Reading of this Bill, I asked the question whether the adaptation made in 1937 was *ultra vires* or not. I will not enter into that argument once again, but I would once more express my own conviction that that adaptation is *ultra vires*. But leaving aside that question, we should have to consider the desirability or otherwise of

this adaptation. Now, Sir, many of us know that some time ago Sir Maurice Gwyer, the Chief Justice of the Federal Court, observed that the Federal Court should be in a position to control from first to last the conduct of appeals which may be brought before it. Another Judge of the same Court, the late Sir Muhammad Sulaiman, also said that to us it was not necessary to make the whole of Order XLV applicable to appeals from the High Courts to the Federal Court even when no constitutional issue is involved. The first thing which is needed now is to do away with this dilatory and cumbrous procedure, but how can that be done? It can be done by omitting from the Civil Procedure Code section 111A and Rule 17 of Order XLV. This is sought to be done by clause 2 of this Bill which is before us in an amended form. But this will not suffice. It will be necessary to invest the Federal Court with power to regulate the procedure of the High Court after the certificate has been given. The giving of the certificate should be the last thing that is to be done by the High Court. The jurisdiction of the High Court ends with the giving of the certificate and the jurisdiction of the Federal Court begins straight-away. But at the present time the powers which have been given by the Government of India Act do not seem adequate for the Federal Court to exercise this jurisdiction, and clause 3 of this Bill is intended to give the Federal Court that power. As soon as this power is given, the Federal Court will be able to regulate the procedure after the certificate is given. In this connection I wish to tell the House that this particular clause was inserted by the Select Committee, and to that extent it was an improvement on the original Bill. My thanks are due to the Honourable the Law Member for the assistance which he gave in improving this Bill and for the speedy manner in which this Bill has been brought before this Assembly.

Sir, I believe, if this Bill is passed into law, it will save a great deal of time, trouble and expense of the litigants, and, not only of the litigants, but also of the Courts as well as of the Provincial and Central Governments. I am sure, therefore, that this Assembly will accept my motion.

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

"That the Bill to simplify the procedure in appeals to the Federal Court, as reported by the Select Committee, be taken into consideration."

The Honourable Sir Sultan Ahmed (Law Member): The Bill, as was introduced here and sent to the Select Committee, contained a lacuna which I am glad to say has now been removed. The Bill undoubtedly simplifies the procedure for appeals to the Federal Court and restores to it the power to regulate its own procedure and practice. The House will remember that in the original Bill there was no provision like clause 3, and it is the introduction of this clause which makes the Bill self-contained and effective. I have absolutely no doubt that this is a rightly conceived measure, and the Bill, as it has emerged from the Select Committee, is bound to be very useful to the litigants. I, therefore, support the motion.

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

"That the Bill to simplify the procedure in appeals to the Federal Court, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

[Mr. President.]

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Dr. P. N. Banerjea: I move:

"That the Bill, as reported by the Select Committee, be passed."

I have no words to add, but I hope that this will confer a benefit on the general public of this country.

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

"That the Bill, as reported by the Select Committee, be passed."

The motion was adopted.

THE PROFESSIONS TAX LIMITATION BILL.

Sir F. E. James (Madras: European): I beg to move:

"That the Bill to limit to a maximum of Rs. 50 per annum the amount payable in respect of any person by way of tax on professions, trades, callings, or employment, as reported by the Select Committee, be taken into consideration."

I am glad to be able to report that the Select Committee on this Bill is completely unanimous,—so unanimous in fact that in the first reprint of this report the Department found it unnecessary to print even the names of the Members. No distinction was necessary because we were of one mind in regard to the Bill.

There are two main changes. One is, there was some flubtiety about certain words in clause 2 of the Bill, and that has been removed. The words "duties, cesses or fees" which were in the original clause have been deleted. Secondly, those Provincial Governments which had raised objections to the Bill had based those objections upon the supposition that the Bill as originally drafted affected certain taxation under local Acts from which local bodies in those provinces derived certain revenues. Now, in the schedule to the Bill there is a list of taxes which are specifically excluded from the operation of clause 2, and all the objections which had been raised by the Provincial Governments have now been met. I would refer particularly to the exemption of the taxes on professions, trades and callings levied under the Calcutta Municipal Act of 1923 and the Bengal Municipal Act of 1932. Those have now been excluded and, therefore, the objections from my Honourable friends, Dr. Banerjea, Mr. Chattopadhyaya and others have been met in full. Sir, in view of the unanimous nature of the report I hope that the House will now accept it.

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

"That the Bill to limit to a maximum of Rs. 50 per annum the amount payable in respect of any person by way of tax on professions, trades, callings, or employment, as reported by the Select Committee, be taken into consideration."

Lieut.-Colonel Sir Henry Gidney (Nominated Non-Official): Sir, I rise to speak on this Bill, not merely to confirm my support to this Bill which has already received my signature as a member of the Select Committee, but to congratulate Sir F. E. James on the passage of this Bill after a long period of waiting. If any one has shown tenacity and pertinacity, it has been my friend, Sir F. E. James, and I think his Province owes

him a deep debt of gratitude. But the most delightful part of it was the accommodating way in which the Mover of the Bill met the objections of Bengal in particular and other Provinces also objected to parts of his Bill. It gives me great pleasure, Sir, to know that this is one of the few Bills that has been presented to this House without a single note of dissent. In fact, as Sir F. E. James said the first reprint of the report did not even have the signatures of the Select Committee. Sir! I give the Bill my entire support on behalf of my Party and I do hope that it will bring relief to a deserving class of men who feel that they do suffer under its present day operation. Sir, I support the Bill.

Dr. P. N. Banerjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I congratulate my Honourable friend, Sir F. E. James, on the sweet reasonableness and the spirit of accommodation which he has shown in regard to this Bill. The original Bill contained some serious defects, but I am glad to be able to say that the Select Committee, at the instance of Sir F. E. James, have removed those defects. When I pointed out to this House that uniformity in a matter of this kind was undesirable, and that it would be difficult for some of the local bodies to adjust their finances, Sir F. E. James immediately agreed with me and gave an assurance on the floor of the House that those provisions of the Bill would be removed. I am glad he has kept his word. His whole object, as he pointed out the other day, is to help the middle class. I have the fullest sympathy with that object. The middle class, at least a section of it, is very poor, although their style of living is somewhat expensive. Therefore, this class deserves the sympathy of all the Members of this House, and, to that extent, my friend has rendered a service to that class, but I hope and trust that this Bill will not be utilised in adding to the burdens of the poorest classes. It is not its object. It is not the object of the Mover of the Bill, and I hope that it will not be utilised for that purpose. I give my support to the Bill.

Mr. Jaganadas M. Mehta (Bombay Central Division: Non-Muhammadan Rural): Sir, I do not congratulate until I feel sure that we have got a gift. No doubt the report of the Select Committee exempts from the operation of the Bill, three provinces, Bengal, the United Provinces and the Central Provinces. I am not sure that it exempts all the municipalities therein, although I would like to be assured that all the municipalities in these three provinces will be free to impose professional taxes beyond Rs. 50 if they thought it necessary. But out of eleven provinces, only three provinces are benefited. I know by reason of the recent amendment of the Government of India Act those municipalities which were not imposing any professional tax are barred from imposing any such tax beyond Rs. 50 hereafter; but I do not know whether in the case of the Punjab, Bihar, Orissa, Assam, Madras and Bombay and the North-West Frontier Provinces the recent Parliamentary amendment of the Government of India Act debars all these provinces from imposing any professional tax beyond Rs. 50. If it does, then the Bill is shorn of most of its objections. Will Sir F. E. James or Prof. Banerjee kindly enlighten the House on that point, whether as a result of this Bill, municipalities which were imposing this tax beyond Rs. 50 and which were, therefore, not coming within the mischief of the recent Parliamentary amendment of their powers, whether those municipalities will remain free or not. Whether their freedom to impose professional tax beyond

[Mr. Jamnadas M. Mehta.] .

Rs. 50 is being curtailed by that passing of this Bill or is being maintained, I do not know. I congratulate the three provinces which have escaped but those who may not yet be as free as they are may have a grudge. May I know from the Honourable the Mover of this Bill whether there are any who are not benefited.

Sir F. E. James: As far as I understand, the position is this—Those provinces which have not in existence at the moment taxes on professions, trades and callings under local enactments, exceeding Rs. 50 cannot in any case now impose such taxes, so that this Bill does not affect the position of those provinces. The only provinces where the position might be affected are those which did raise objections but in respect of which exemption has now been specifically made in the Schedule.

Mr. Jamnadas M. Mehta: Then in that case, I take it that the provinces which I have mentioned are no longer free to impose any taxation beyond Rs. 50 by way of professional tax?

Sir F. E. James: That would be the position in any case.

Mr. Jamnadas M. Mehta: That means that it is the Parliamentary amendment and not Sir F. E. James who has deprived them of it.

An Honourable Member: That is so.

Mr. Jamnadas M. Mehta: Then in that case all I can say is that I have not much objection left, which I originally had to this Bill and I will not stand in the way of its enactment.

The Honourable Sir Jeremy Raisman (Finance Member): I rise only to indicate that the influence of Government has been exercised in order to meet the legitimate objections which certain Governments raised to the enactment of this Bill. At a previous stage I indicated my view that provided time was given the municipalities which were adversely affected by this Bill should be able to adjust their schemes of taxation and my friend, Professor Banerjee, thought that that indicated a somewhat unfeeling attitude on my part. Well, Sir, in the course of the Select Committee, I wish to make it clear that I myself, on behalf of Government, was prepared to go further and to endeavour to exclude from the mischief of this Bill cases in which the Provincial Governments after their survey of the existing taxes had felt that damage would be done and we are anxious that the local bodies should not be subjected to any disadvantage.

My Honourable friend who is in charge of this Bill has already explained to Mr. Jamnadas Mehta that in the case of the provinces which are not mentioned in the Schedule it is fair to conclude that the Bill takes nothing away which has not already been taken away by the Government of India Act as it now stands. I think it is generally agreed that considering the somewhat widespread possibilities of a measure of this kind, a very safe and innocuous course has been steered and the main object has been achieved with the minimum of damage. Sir, I support the Bill.

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

"That the Bill to limit to a maximum of Rs. 50 per annum the amount payable in respect of any person by way of tax on professions, trades, callings, or employment, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): The House will now consider the Bill clause by clause.

Clauses 2 and 3 were added to the Bill.

The Schedule was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Sir F. E. James: Sir, I move:

"That the Bill, as reported by the Select Committee, be passed."

In doing so, I should like to thank Honourable Members for the favourable reception they have given to the Bill and for the extremely useful criticisms they have offered in the earlier stages of its passage. I think the House is entitled to share any credit which has been placed on my shoulders. I should also like to thank the Honourable the Finance Member for his interest in this matter from the beginning, and also for his very helpful advice throughout.

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

"That the Bill, as reported by the Select Committee, be passed."

The motion was adopted.

THE SPECIAL MARRIAGE (AMENDMENT) BILL.

Dr. G. V. Deshmukh (Bombay City: Non-Muhammadan Urban): Sir, I move:

"That the Bill further to amend the Special Marriage Act, 1872, for certain purposes be circulated for the purpose of eliciting opinion thereon by the 31st January, 1942."

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

"That the Bill further to amend the Special Marriage Act, 1872, for certain purposes be circulated for the purpose of eliciting opinion thereon by the 31st January, 1942."

Dr. G. V. Deshmukh: Sir, I do not want to take very much time of the House. First of all, I should like to point to the House as to what the Bill really is. The Bill really is that those Hindus who have been married according to the mode of the Hindu Law should have the choice of having that marriage registered if they so choose to do. The reason for it is this. After all, like every society, the Hindu society is a changing society in spite of whatever opinion the stable element of the society may hold. Any person who has had a look at the Hindu religious law has to admit that, after all, the laws of the Hindu society are not what

[Dr. G. V. Deshmukh.]

they were three thousand years ago and, therefore, it is unreasonable, I think, to say, as they obstinately say, that there should be no change in the Hindu Law. Secondly, modern times are not like the old times. In modern times we come in contact with different kinds of civilization and, therefore, the ideas of social justice and otherwise, which are prevalent in other countries, have found a way in this country. Therefore, according to the ideas of the modern times, the Hindu society will necessarily have to move. Now, Sir, all that I want to urge is this, that this problem of modification of Hindu Law is before the Hindu society and will have to be before the Hindu society.

Now, the problem is how to absorb and assimilate the ideas of social justice which are prevalent in modern times. I think the laws with regard to marriage that are prevalent in the Hindu society are very unfair to the women, and it is from that point of view that I have brought forward this Bill. As you know, Sir, whenever any change is proposed or suggested, there are different elements of the society which are opposed to it. First of all, there is the so-called orthodox or the religious or the Sanatanist section. They say they will have nothing to do with my Bill; they do not want any change at all. They think that this world is ruled by extra-mundane powers and the law that was given to the Hindus was by some Divine power, although they can see today that no Divine power enforces or exercises the law that was given to the Hindus. Even these very persons, if they have to enforce this old Hindu Law, have to go to the law courts. Therefore, my proposition is this. Wherever they have to take the sanction of law, the legal courts and the State machinery, it entitles the State or the society to see that just law is enforced. It is not right for any Government or any State to exercise all the power and majesty of the law in favour of laws which evidently are inequitable and which are not just. Therefore, to the point that is made by these persons that their laws are divine and, therefore, they should not be interfered with, my answer is this. When you think that your Divine Laws are infringed, why do you run up to the State? Depend on the Divine Power. On the other hand, you go to the courts to invoke the provisions of the modern machinery of law to keep up your Divine Law. I do not think that is fair and right. I think it is the duty of the State to see that the laws which are invoked or which are appealed to by persons are fair and just. And it is from that point of view that I urge that it is the duty of the Law Member and the Government to see that these laws are fair and just according to the modern ideas of equity and justice. This is the first section. I understand them. This section opposes everything *in toto*. Then there is the second section which does not want to take up this obstinate or unreasonable attitude. But then they have a clever way of attacking it. If you suggest something, then they will say, this is partial reform. If on the other hand you suggest something radical, they say, how can it be? This will uproot the whole Hindu society. That is they want it both ways. If you suggest an improvement here or an improvement there, in the big structure of Hindu society, to get rid of the evils of Hindu society, their argument is that this Bill as it is drafted does not go far. This will not help. If on the other hand you suggest something radical, then the very same Professors, the same lawyers and the same Pandits will come forward and

say, what is this? This suggestion is to uproot the whole Hindu society and, therefore, that is the kind of opposition which anybody who has a wish to leave the world a little better than he found it, has to encounter. In other words, you have to meet religious objection as well as what you may say very extra ultra intelligent opposition.

After a little experience of Hindu society and of the opposition, all that I have tried to do is to avoid religious questions altogether. In this Bill all that I say is this, whoever is married according to Hindu Law—Hindu marriage is a sacrament and, therefore, they are married according to their religious sentiments—I do not want to interfere with it. What I say is this. I respect that sentiment. At the present moment the position is this. There has been a good deal of study of Hindu Law both by interested and non-interested parties. The meaning of the laws cannot be interpreted in the same way as they were interpreted a long time ago. Formerly, a few Pandits collected together and they interpreted the law according to their own interests. With the diffusion of education among persons in *shastras* and looking to the interests of their own society and trying to improve that society, even according to the old laws, they found that the interpretations put by the Pandits were wrong, that the interpretations were not correct, and, therefore, even from the point of view, you may call this a revival of the old principle in Hinduism, or if that does not meet the case, then I have no objection to say that even if these new ideas have to be brought into the society, so much the better for the society.

The Honourable Sir Sultan Ahmad (Law Member): I do not want to interrupt the Honourable Member, but I want to make it perfectly clear that at this stage we have absolutely no objection to the circulation of the Bill, and, therefore, the speech which my Honourable friend is delivering might be more usefully made at a later stage. At present it seems to be unnecessary.

Dr. G. V. Deshmukh: I accept the Honourable Member's suggestion. I am very happy to learn that the Government are very sympathetic so far as the motion for circulation is concerned. My point in elaborating this subject was that it might help to get you proper public opinion and this would be a great help to the outside public. However, with that assurance, I will be brief and shall bring my speech to a close in two or three minutes.

What I say is this. The object of my Bill is that I want to avoid altogether the religious aspect of the question. Even today, you will find that there are many marriages which are first registered—I am speaking only of Hindu society—and then afterwards, on account of the prevailing sentiments, they go and have the marriage celebrated according to the Vedic rites. All that my point of view is this. That being the feeling, we have to take account of the sentiments in the Hindu society and at the same time, we want to give them all the advantages of modern ideas of social justice with respect to marriage laws. That being my intention, I expect that there will not be any kind of religious objection to it, but that it will be accepted later on when it comes. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): The motion has already been put to the House. Now, other Honourable Members might take part. Babu Baijnath Bajoria.

Babu Baijnath Bajoria (Marwari Association: Indian Commerce): Sir, I will be brief and sweet. In the first place, true to my prediction, my Honourable friend, Dr. Deshmukh, divorced the Assembly after the marriage business was finished the other day; he has come again today when marriage business is being discussed in this Assembly. Sir, it is quite true that this Bill, as has been said by Dr. Deshmukh himself, has nothing to do with religious sentiments. I quite agree with that, because this Bill, as well as the parent Act, the Special Marriage Act, is quite an irreligious measure. The Special Marriage Act was conceived by those people who had nothing to do with religious matters or who had no faith in the form of marriage being a sacrament as laid down in the *Shastras*....It is also meant for the benefit of those irreligious people who have got no belief whatsoever in Hindu *Shastras* or in the Hindu form of marriage. Sir, as far as this Bill is concerned, I at once say that so far as the Sanatanists or the orthodox section of Hindus are concerned, they have got no connection, because the Sanatanists or the orthodox section of Hindus would never look at this form of marriage at all. They also do not believe that any marriage performed according to this Act or according to the amended Bill of my Honourable friend will be considered to be a marriage according to Hindu ideas.

Dr. P. N. Banerjee (Calcutta Suburbs: Non-Muhammadan Urban): What about inheritance?

Babu Baijnath Bajoria: I do not want to go into all those questions in detail at the present stage. I will say now only something about general principles of this Special Marriage Act and about this Bill which is proposed to be circulated for eliciting public opinion. Sir, as I already said, the very conception of this Act is irreligious. Indeed it was enacted before, only to give a room or rather an advantage to those people who do not want to marry according to the true form of Hindu law or according to Hindu religion. But, Sir, I take exception to one or two words which fell from the lips of my Honourable friend, Dr. Deshmukh. He said that the old laws of marriage were laid down by a few Pandits in their own interests.

Dr. G. V. Deshmukh: I did not say so about marriage laws. I was only referring to how they were interpreted by the Pandits.

Babu Baijnath Bajoria: If I understand my Honourable friend aright, he has got nothing to say against the laws themselves but only against the interpretation which was given to those laws by the Pandits. There I will say that if Dr. Deshmukh himself will take the trouble of reading those laws and understanding them from one who knows those laws and *Shastras*, then he will see whether the interpretation put upon the laws were correct or not.

Dr. G. V. Deshmukh: I am in a position to teach these Pandits.

Babu Baijnath Bajoria: A little knowledge is a dangerous thing.

Sir, I say, this Special Marriage Act has the effect of disintegrating Hindu society, and any special privileges which may further
 12 Noon. be given under this Act will go against the Hindus in general. As a matter of fact, I would be very pleased if this Special Marriage Act were repealed altogether, because, then, the Hindus will have only one form of marriage left to them, and that is strictly according to Hindu ideas and Hindu religion. Sir, I understand Government are not opposing this circulation motion, but I take it that that does not mean that Government are at all sympathetic towards this Bill. I hope their mind is absolutely open, and they will be guided by the opinions which will be received.

Sir, I have nothing more to say about this Bill at the present stage. I hope it will meet the same fate as the other misconceived Bills which came from my Honourable friend, Dr. Deshmukh.

Sardar Sant Singh (West Punjab: Sikh): Sir, I congratulate my Honourable friend, Dr. Deshmukh, on the zeal which he shows in matters of social legislation. It is not without a good deal of inconvenience and expense that he ran up from Bombay to Delhi in order to pilot this Bill. But there are certain facts about this Bill which put me on guard. I am afraid by introducing this Bill he wants to encourage those marriages which in England are known as Gretna Green marriages. Sir Henry Gidney will correct me if I am wrong.

Lieut.-Colonel Sir Henry Gidney (Nominated Non-Official): Sir, I am not familiar with what is allowed or happens at Gretna Green or Turnam Green, a suburb of London, not Scotland.

Sardar Sant Singh: According to this Bill, what I am afraid is that an enterprising unmarried young lady of about 18 who wants to marry somebody may run away with him from a mofussil town to Bombay, live quietly there for 14 days and then the two can get themselves registered as a married couple without reference to the parents or to those who are interested in their marriage. And this aspect of the case makes me doubt whether it is consistent with what my Honourable friend calls modern ideas of social justice.

Dr. G. V. Deshmukh: Sir, my Honourable friend evidently has not read the Bill. This is for married people and not for unmarried people. If those who are already married want to register, they will do so. So that the evil that my Honourable friend is thinking of is never going to arise. It is more likely to arise in the present situation than if the Bill is passed.

Sardar Sant Singh: Sir, I am glad my Honourable friend has corrected me. But I do not agree with him when he says that modern ideas of social justice will be complied with if this Bill is passed. So far as I know the Anglo-Hindu law,—I do not pretend to have knowledge of Hindu *Shastras*, as Mr. Bajoria has,—there are eight forms of marriage given in Maine's Hindu Law; and not a single aspect of society remains in which one or the other form of marriage as given in Maine's Hindu

[Sardar Sant Singh.]

Law is not covered. The position at present is that there are certain difficulties in the Courts of law as to the proof of marriage. There are certain difficulties in adducing evidence, but in most cases no such question arises; and in matters of inheritance or succession, etc., some doubts are raised as to the marriage of individuals. To me, Sir, no change is called for in the present social order. With due respect to my Honourable friend, I am not convinced that modern society has advanced to a degree where this Bill is called for. I do not, therefore, support this Bill.

Sir Vithal Narayan Chandavarkar (Bombay Millowners' Association: Indian Commerce): Sir, my Honourable friend, Mr. Bajoria's speech compels me to intervene in this debate because I do not think he was fair to the people who were responsible for the Act III of 1872. Perhaps he does not know that that Act was the result of a demand made by some of the greatest religious leaders of Bengal, the leaders of the Brahmosamaj. It was essentially an Act which was brought about by the insistent demand of the Brahmos who believed in essential principles of Hinduism but who were not prepared to observe all the religious ceremonies insisted upon by orthodox Hinduism. I was myself married under the Act III of 1872. I decline to admit that I do not believe in religion and I think it is very wrong and unfair on the part of anybody who is opposed to such legislation to say that such legislation is against religion or is going to make people irreligious. They should consider the question on merits. The question, however, is not free from difficulties and I think Dr. Deshmukh has not visualised all the difficulties when he wants the Act to be amended as he suggests. He says the Act applies to married people, but what about children who were born before registration? What about inheritance rights? We have been advised in Bombay that children born as a result of marriage under Act III of 1872 are still governed by Hindu Law; but that Bombay view, I am told, is not accepted in other provinces. The question is not free from doubt. It is true people who marry according to Gour's Marriage Act get the benefit of the Succession Act, but those of us who are married under the old Act are not sure of the position of our children as regards succession rights whether they are still governed by the customary Hindu Law to which we are subject or by the Indian Succession Act, I do not know if my Honourable friend, Dr. Deshmukh, has applied his mind to this aspect of the question. I gather that the Honourable the Law Member is prepared to circulate the Bill for opinion. If he applies his mind to all the problems I have referred to perhaps some *via media* may be found. I believe some years ago as a result of the efforts of the late Sir Sankaran Nair an Act was passed whereby Nairs who were already married were given the option of getting their marriages registered under what, I believe, was called the Nair Special Marriage Act. I am not opposing Dr. Deshmukh's motion but I do think that people who are speaking in favour or against should not go into the question of whether such legislation is against religion or in favour of religion, because that is not the point at issue. Any legislation which brings society in a line with modern ideas should be welcome, and it is only from that point of view, I submit, such questions should be considered on the floor of this House.

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

"That the Bill further to amend the Special Marriage Act, 1872, for certain purposes be circulated for the purpose of eliciting opinion thereon by the 31st January, 1942."

The motion was adopted.

THE KAZIS BILL.

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

"That the Bill to provide for the appointment of persons to the office of Kazi and for performing and keeping a record of marriages amongst Muslims be circulated for the purpose of eliciting opinion thereon by the 15th February, 1942."

This is only a circulation motion, and my reasons for the Bill are given in the Statement of Objects and Reasons. I understand Government are in favour of circulation, and so I need say nothing more about it now. Sir, I move.

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

"That the Bill to provide for the appointment of persons to the office of Kazi and for performing and keeping a record of marriages amongst Muslims be circulated for the purpose of eliciting opinion thereon by the 15th February, 1942."

The Honourable Sir Sultan Ahmad (Law Member): We support this motion for circulation. We have no objection.

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

"That the Bill to provide for the appointment of persons to the office of Kazi and for performing and keeping a record of marriages amongst Muslims be circulated for the purpose of eliciting opinion thereon by the 15th February, 1942."

The motion was adopted.

THE RECIPROCITY BILL.

Mr. Govind V. Deshmukh (Nagpur Division: Non-Muhammadan): Sir, I move:

"That the Bill to make provisions in regard to entry, residence, the acquisition, holding or disposal of property, franchise, the holding of public office, or the carrying on of any occupation, trade, business or profession in British India by persons domiciled in the British Possessions on a basis of reciprocity be circulated for the purpose of eliciting opinion thereon."

Sir, I would be very brief in my observations. Questions about the treatment of Indians overseas have been discussed on the floor of this Assembly as well as the other House almost every year or every Session, and the public has expressed its feelings in this matter from the platform and in this House by passing unanimous resolutions. Out of the several grievances one which I have mentioned in the Statement of Objects and Reasons is the Asiatic (Transvaal) Land and Trading Act. That was also referred to in one of the discussions here, and when one of the resolutions was being discussed on the floor of the House, Sir Jagdish Prasad, Ex-Executive Councillor said that all they could do was to negotiate with

[Mr. Govind V. Deshmukh.]

the Colonies and they could not do more than that. They were helpless. Of course, he incidentally referred, while discussing the resolution, that although help from provinces such as Madras and other provinces which were enjoying Provincial autonomy and which were interested in the welfare of the people who went from there was considerable, yet in addition he certainly wanted some sort of sanction and there was, at that time, no sanction. Even Sir Raza Ali, *ex* Agent general in South Africa, was in favour of some sort of retaliatory or reciprocal treatment being awarded to the Colonies who treated Indians in a very unsatisfactory way. Let me tell you one or two instances about the entry of Indians into Colonies. Mrs. Subbarayan, who is a Member of this House, when she was returning from England at the Time of the last war was not allowed to land in South Africa. She had a small child and she wanted some milk for the baby. She could not get on the shore. This morning I have learnt from a Mohamedan gentleman who is a member of the Fiji Assembly that while returning from Fiji to India one had to land at the port of Newzealand—Auckland, I think. His wife and son were to come to India. He had engaged a first class passage to Sydney and from Sydney was to travel by Air to Calcutta. At the port in Newzealand they wanted to get ashore but none of them were allowed to get down and land on the shore. It was with great difficulty that somebody took the guarantee about the conduct of this lady and then they were allowed to get ashore. As a matter of fact the gentleman wished to give me more details about this incident, this morning, but as I thought that this Bill would be taken up sometime later in the day I asked him to tell me more about it after Lunch. So much regarding entry even in case of educated ladies who travelled over the continent and in times of war when we are helping them to win it.

As regards other things, we have seen that we are not getting treatment which a self-respecting nation ought to get and which free nations or nations possessing Dominions get. Therefore, in order to raise ourselves to the Status of the Dominions who are self-governnig and to possess the same laws as regards entry or giving occupations, or carrying on business, trades, etc., I have brought this Bill, and wish to provide the Government with the sanctions so that they should not merely carry on negotiations—diplomatic or otherwise—but they should have some sort of authority to enforce better rights for the Indians, to which they can refer. As a matter of fact, this House should have taken a step of this character long ago because nothing has resulted from carrying on diplomatic negotiations. The Government of India have said times out of number that we are doing our level best and we cannot do anything more except carrying on negotiations. It has also been said that if we take any retaliatory measure, considering from the point of view of persons who stand to gain and persons who stand to lose, there is a majority of Indians going from here who stand to lose. There is one argument against that, that our treatment has been worse after waiting for years. We have waited and waited; waited year in and year out because this consideration was put before us that if you take some retaliatory measures things will worsen; we will suffer. But having acted on this assurance of the Government, has treatment of the Indians overseas improved in any way? Certainly not. Even other Colonies are following the examples of Kenya and Transvaal. British possessions, like Burma, are also putting on us all those restrictions

akin to the Colonies and which are embodied in the Indo-Burma Agreement. The Government of India as a subordinate Government is impotent. When they appeal to the Secretary of State; all he can do is to speak to the Colonial Government. Nobody can do anything. As a matter of fact they give a challenge to His Majesty's Government and to the Government of India: "Please do not interfere; if you do, such and such a thing will happen".

Well, Sir, under these circumstances when inspite of the reasonable attitude which we adopt the position is getting worse and worse, what alternative is left to us except to enact such a measure? This will enable us to raise our head before the world and say "if you treat us well, we will treat you well, but if you give us humiliating treatment or harm our interests a similar treatment will be meted out to you. Only the other day I put a question on the floor of the House about giving jobs to Australians in the Army. Have any Indians been given jobs in Australia? No. We have not the power. Remember how Australia treats India. Well, I submit we are going really too far in ingratiating ourselves into their favour. They will not change their attitude towards us unless we get our status raised to that of Dominion, unless we can carry on negotiations independently without referring to the Secretary of State for India or to the Colonial Secretary; and enforce our demands on our own strength. It is, therefore, very desirable that measure of this kind may be passed. Sir, I move.

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

"That the Bill to make provisions in regard to entry, residence, the acquisition, holding or disposal of property, franchise, the holding of public office, or the carrying on of any occupation, trade, business or profession in British India by persons domiciled in the British Possessions on a basis of reciprocity be circulated for the purpose of eliciting opinion thereon."

Mr. G. S. Bozman (Govt. of India : Nominated Official): Sir, I have been asked by the Honourable Member in charge of this Department to apologise to the Mover of this motion and to the House for not being in his seat at this time. He has an urgent appointment elsewhere on matters connected with Indians overseas. Sir, Government are not opposing this motion for circulation.

Mr. Govind V. Deshmukh: I very much appreciate this.

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

"That the Bill to make provisions in regard to entry, residence, the acquisition, holding or disposal of property, franchise, the holding of public office, or the carrying on of any occupation, trade, business or profession in British India by persons domiciled in the British Possessions on a basis of reciprocity be circulated for the purpose of eliciting opinion thereon."

The motion was adopted.

THE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION (AMENDMENT) BILL.

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

"That the Bill to amend the Muslim Personal Law (Shariat) Application Act, 1937, be referred to a Select Committee consisting of the Honourable Sir Sultan Ahmad, Sir George Spence, Mr. Muhammad Muazzam Sahib Bahadur, Khan Bahadur

[Qazi Muhammad Ahmad Kazmi.]

Sir Abdal Hamid, Mr. J. D. Boyle, Maulvi Abdur Rasheed Chaudhury, Shams-ul-ulema Kamaluddin Ahmad, Mr. Govind V. Deshmukh and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

In moving this motion, I am departing from the convention of the Government of India—and I find that there is an amendment in the name of Mr. Muazzam Sahib Bahadur that instead of referring the Bill to the Select Committee directly it must be circulated for eliciting opinion. I understand that the amendment may not be moved and, therefore, I will just make my submission as to the reason why I am making this proposal against the convention.

The *Shariat* Act was introduced in this House to overcome the difficulty that was found in some of the Local Acts of British India that the custom was to override the Muslim personal law. For example, we have got section 5 of the Punjab Laws Act. That section provided :

"In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—

Any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority....."

So the rule of decision shall be custom. Muhammadans wanted that it must be the Muslim personal law; and for that purpose the *Shariat* Act was introduced in this House. Ultimately, there was a compromise and by that compromise it was settled that we cannot override custom in all cases but may be allowed to retain it in some cases and abolish it in others; and that is why the present *Shariat* Act was split up into two sections. Section 2 provided that in cases covered by that section it will always be governed by the Muslim personal law; and section 3 provided that in cases of adoption, wills and legacies it will also apply if a person goes before the prescribed authority and makes a declaration that he wants to be governed by that provision of Muslim law. So sections 2 and 3 really were in the original Act one and the same, but this distinction was brought about and sections 2 and 3 enacted because it was thought at that time that in cases of intestate succession and other questions, such as dissolution of marriage, marriage, gift, trust, and guardianship, etc., whether a man makes a declaration to the effect that he wants to be governed by Muslim personal law or not, he will always be governed by Muslim personal law; but in cases of adoption, wills and legacies he would not be governed unless he goes before the prescribed authority and makes a declaration that he wants to be governed by Muslim personal law; and the two sections came into force. Unfortunately at the time when this section 3 was being drafted, the words that were put in it were not in accordance with the intention of the Legislature. The words are:

"Any person who satisfies the prescribed authority that he is a Muslim, that he is competent to contract within the meaning of section 11 of the Indian Contract Act, 1872, and that he is a resident of British India, may, by declaration in the prescribed form and filed before the prescribed authority, declare that he desires to obtain the benefit of this Act. . . ."

Unfortunately, instead of using the words "the benefit of this section" the words "benefit of this Act" were put in; "and thereafter the provisions of section 2 shall apply to the declarant and all his minor children and their descendants as if in addition to the matters enumerated therein adoption, wills and legacies were also specified".

So, what was meant was that if he wanted to take advantage of this section then he could make a declaration before the competent authority and this Act would further apply to wills, legacies and adoption. On account of this word "Act" here, when he went before courts of law, some of them said that this Act does not apply to anybody unless he has made a declaration; and so they have taken away the effect of section 2 absolutely. That was never the intention of the legislature as is apparent from the Act itself. So my submission is that this was a question which could very easily be settled before the House itself, but to be on safe side I propose that it may be referred to Select Committee.

The other point that I have suggested is that item 3 of section 6 of the Act be deleted. By this section 6 were repealed all enactments which preferred custom to Muslim personal law. But this item 3 is itself an enactment which prefers Muslim personal law to custom. As a matter of fact we have brought this law in consonance with the provisions of item No. 3 and so it need not be repealed at all and that is why I have suggested that instead of including it in the Act it may be omitted as item 3 from section 6 of the original Act. With these words, I move my motion.

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

"That the Bill to amend the Muslim Personal Law (*Shariat*) Application Act, 1937, be referred to a Select Committee consisting of the Honourable Sir Sultan Ahmad, Sir George Spence, Mr. Muhammad Muazzam Sahib Bahadur, Khan Bahadur Sir Abdul Hamid, Mr. J. D. Boyle, Maulvi Abdur Rasheed Chaudhury, Shams-ul-ulema Kamaluddin Ahmad, Mr. Govind V. Deshmukh and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

Mr. Muhammad Muazzam Sahib Bahadur (Nominated Non-Official):
Sir, I move :

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st March, 1942."

I should not have troubled to make this motion but for the fact that my friend in his Statement of Objects and Reasons speaks of section 2 of this Act XXVI of 1937 as entirely independent of section 3 of that Act. My own view is that the two are inter-dependent. What section 2 lays down is this :

"Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift, or any other provision of Personal Law, marriage, dissolution of marriage, including *talaq, ıla, zihar, han, khula* and *mubaraat*, maintenance-dower, guardianship, gifts trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (*Shariat*)."

Now, Section 3 says that a person who is a Muslim and who is competent to contract and is a resident of British India, may, by declaration in

[Mr. Muhammad Muazzam Sahib Bahadur.]

the prescribed form and filed before the prescribed authority, declare that he desires to obtain the benefits of this Act, and thereafter the provisions of section 2 shall apply to the declarant and all his minor children and their descendants as if in addition to the matter enumerated therein; adoption, wills and legacies were also specified. What my friend really wants is to amend the provisions of section 3. His difficulty seems to be that in a certain case a District Judge refused to admit an application filed by a Muslim married woman under section 5 which says that the District Judge may dissolve a marriage, on a petition made to him on any ground recognised by the Muslim Personal law. I really thought that this right of Muslim married women existed irrespective of this enactment.

I do, however, think it is a misfit so far as this enactment is concerned. In the Statement of Objects and Reasons the Honourable Member says that "the two sections, section 2 and section 3 are independent". No declaration before the prescribed authority is required for the applicability of either section 2 or section 3. So far as section 5 is concerned, I admit it is all right, but as regards section 2, my own idea is that this section applies to cases where the parties want to get rid of such customs and usages as have the force of law, and want to adopt the Muslim Personal Law, the *Shariat*. Persons who want to achieve this object have to go before an authority as provided by section 3. Then they will be guided on questions of inheritance succession by the Muslim Personal Law. So far as section 3 is concerned, I admit that Section 3 enlarges the operation of Section 3 by providing for cases of adoption, wills and legacies, but one must make a declaration if he wants to avail himself of the benefit of this Act. I really don't see how the object for which my friend has brought in this amending Bill would be gained by changing the words "this Act" into "the provisions of this section".

So far as the other matter is concerned, the amendment relating to section 5, it is quite all right, but curiously enough I find in the course of the debate on this subject in 1937, my Honourable friend was the very person who introduced this change,—my friend himself was responsible for it,—and today he wants to correct it. So far as that is concerned, I am quite in agreement with him. We are all agreed that it should be deleted, but as regards his statement in para. 1 of the Objects and Reasons, I think my friend is under a misapprehension as to the applicability of section 2 or to treat section 2 as entirely independent of section 3. I really think that those two are inter-related.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member is discussing the clauses at length. He should confine himself to his motion.

Mr. Muhammad Muazzam Sahib Bahadur: I suggest that the Bill should be circulated for the purposes of eliciting public opinion thereon by the 1st March, 1942, so that it may go before a Select Committee. The Muslim Members are very few in this House at the moment, and so this is a matter which should go before a Select Committee when other Muslim Members are also present. That is why I have tabled this amendment for circulation. I am not opposed to the Bill before us, but I want it to be circulated for eliciting opinions on it so that it may go before a Select Committee when all the other Muslim Members also may be present.

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

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st March, 1942."

The Honourable Sir Sultan Ahmad (Law Member): Sir, my original reaction to this Bill was that it should be sent for circulation for eliciting public opinion, and that has now been confirmed by the amendment which has been proposed by the last speaker. Sir, we know that the most important section of the Mussulmans in this House, is not here, and remembering the discussion that we had in 1937 over the main Bill of Mr. Kazmi which is now sought to be amended, I feel that we must not take any action which is not supported by a large number of Muslim Members of this House. Now that the amendment has been moved, it appears that the few Muslims who are left here are also not quite agreed upon the course that has been suggested by the Mover. Under those circumstances, we will be taking a grave responsibility by accepting the motion for the Bill to go to a Select Committee at this stage. I, therefore, support the amendment. It would be in the fitness of things that those who are really affected by the amendment of the original Act should be consulted and should have a chance of saying what they have to say. The matter can come up at the next Budget session and there should be

Qazi Muhammad Ahmad Kazmi: 1st of March will be too late.

The Honourable Sir Sultan Ahmad: I cannot help it. If there is a difference of opinion among the few Muslim Members who are present here, Government are not prepared to take any responsibility whatsoever. I, therefore, support the motion for circulation, not on the grounds urged by the Mover of the amendment, but on the ground that the House is so thin of Muslim Members that we do not like to take the responsibility.

Mr. Husenbhai Abdullahai Laljee (Bombay Central Division: Muhamnadan Rural): Sir, I rise to support the motion moved by my friend, Mr. Kazmi. From the speech he delivered it is quite clear that he wishes to correct a small mistake that has apparently crept in. I do not think the Honourable the Law Member will dispute it. I quite agree that we should have the opinion of a large number of Muslim Members, but they are absent today. If the point is merely to correct a small mistake, and if the Honourable the Law Member thinks that it needs correction or clarification, and when the spirit of the whole thing is not going to be touched or altered, I don't see why we should delay the matter on the ground that a large number of Muslim Members are absent. Sir, I may say that a large number of people of my community have almost been ruined by lawyers in Bombay or by the different interpretations given by the proceedings in the High Court. With all due respect for the legal profession, I must say that our experience of law courts has been very bitter, and many families have been ruined on account of lawyers and wrong interpretations put on the provisions of the law. So

[Mr. Husenbhai A. Laljee.]

if the spirit of the law is not going to be changed, if the original intention of this measure is not going to be altered, I am sure, the Honourable the Law Member will not allow this delay,—because the mistake that has crept in has been admitted, and it must be rectified, otherwise it is being interpreted by legal luminaries in different ways. I, therefore, do appeal to the Honourable the Law Member,—I do agree with him that we ought to meet the sentimental point of view, and the Muslim League Members are absent here, but if it is only, as I say, a little correction that has to be made, which will clear away the doubt in the legal mind, then I submit that it is due to the public from the Government who are responsible for all legislations, whether moved by individual Members or by the Government themselves. Sir, I hope that the Honourable the Law Member will make it clear whether the spirit or the intention or the object is being interfered with by this amendment, or that it is only a correction or a clarification of a fact so that, as my Honourable friend, Mr. Kazmi, has pointed out, it will save Muslims from being ruined in the courts of law.

Qazi Muhammad Ahmad Kazmi: I would have been very pleased if the Honourable the Law Member had given his own interpretation of the section as it stands, but instead of doing that, he is going to leave it to be decided by the Honourable Members of this House who happen to be present after so many others had left. I would have bowed to his ruling if he had said that the interpretation which I had put upon the Act was not a correct one. But the Government want to adopt a very non-committal attitude, instead of saying whether what I was saying was correct or what my learned friend was saying was correct. My Honourable friend has said, because there is a dispute between the two, therefore let the matter be postponed. May I ask how many Bills are going to be postponed in this House because of the absence of some Honourable Members from this House? Do they not consider the Congress to be a very representative body, representing a very large section of the country? Have the Government been postponing Bills because they affected Indians considerably? There have been a number of Bills passed, but I have never heard this plea that because some Members are absent, therefore, the Bill must be postponed. So far as that argument is concerned, I absolutely fail to see the relevancy of that reason or the significance of that argument. I am prepared to withdraw if the Government stick to the logical consequence of its plea and postpone all the Bills till the next Session, till the Muslim League decides to come in.

Dr. G. V. Deshmukh (Bombay City: Non-Muhammadan Urban): Till all the minorities come together!

Qazi Muhammad Ahmad Kazmi: If the Government are going to pin their faith in the real representation of Indians in this House and their representatives being present, I have absolutely no hesitation in withdrawing this motion or agreeing to the amendment that has been moved. But if the Government are not going to adopt that principle in other cases but only for this particular Bill, I would submit, kindly exert your brains and do not go before the public for eliciting opinion on a matter on which no opinion can be obtained. I know that in the case of social Bills

Government prefer circulation for eliciting public opinion, but if this Bill is circulated for public opinion, people will say, "What nonsense this man is talking. The thing is clear by itself". I would not go into intricacies or put forth arguments which will make the thing more confused, but may I ask the Honourable the Law Member, when you make two sections do you mean to make them dependent upon each other or you want to have two independent ideas in the two sections? If section 2 and section 3 are to be governed by the provisions of section 3, then kindly let me know what rule of legislation is there that you must split up the same idea in two sections so that the provisions of section 3 would apply to section 2 also? My submission is that the proposition is so clear that it does not require any eliciting of public opinion. Strangely enough, just as I was under the impression that Government

Mr. President (The Honourable Sir Abdur Rahim): Today being Friday, the House has to adjourn earlier. I have to adjourn now. The Honourable Member can continue his speech after Lunch.

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

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

Qazi Muhammad Ahmad Kazmi: When we adjourn for Lunch, I was making any submission as to the reasons why clause 3 was separated from clause 2 and that they were independent clauses. In the interval I had the opportunity of looking at the debates at that time and I may very briefly bring to the notice of the House that in the Shariat Act, as introduced in the Assembly and as reported by the Select Committee there was no provision for any authority before which a declaration was to be made. I have got the report of the Select Committee with me and I would only read the relevant portion. Section 2 as reported by the Select Committee stands as follows:

"Notwithstanding any custom, usage or law to the contrary, in all questions regarding succession (*save as regards agricultural land*), special property of females, including personal property inherited or obtained under contract or gift or of any other provision of Personal Law, marriage, dissolution of marriage, including *talag, ıla, zihar, lian, khula* and *mubaraat*, maintenance, dower, (*and then comes an important word*) adoption, guardianship, (*then come the other important words*) wills, legacies, gifts, trusts and trust properties, and *wakfs (other than charities and charitable institutions and charitable and religious endowments)*, the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)".

That was the only section that was reported on by the Select Committee and that section 2 contains the words, adoption, wills and legacies.

Now, when the Bill came for consideration before the House, Mr. Jinnah took objection to the inclusion of the words, wills, adoption and legacies in this section and he said that in these cases it is necessary that we should persuade the Muslims to make a declaration if they want to be governed in these matters by the Muslim Personal Law. In such cases they would be entitled to make a declaration and they must be saved. It was only to save them that these three words were taken

[Qazi Muhammad Ahmad Kazmi.]

away from clause 2 and a separate clause 3 was put in. I may briefly put before the House the speech of Mr. Jinnah himself. The first amendment of Mr. Jinnah was this. He said:

“Sir, I move:

‘That, in clause 2 of the Bill, the word ‘adoption’ be omitted.’

I do not wish to make a speech. I think the House understands what it is.”

This was the only speech he made then and then another amendment was moved by him and, fortunately, in this case, he made a speech which may make the significance of the deletion of these words in clause 2 clear. He said:

“Sir, I move:

‘That in clause 2 of the Bill, the words ‘wills, legacies’ be omitted.’

I want to make it quite clear to the House that these three matters, namely, adoption, wills and legacies, we agreed to drop from clause 2 not because we do not want them.”

Then Sir Muhammad Yamin Khan asked Mr. Jinnah:

“Who agreed?

Mr. M. A. Jinnah: The matter was very carefully considered by almost every Mussalman Member of this House and I want to state on the floor of this House that these amendments which stand in my name are not my individual amendments at all. It is only that I am giving effect to the consensus of opinion. . . . I was asked to go there like any other Member and I think there were about 30 Members present, and, after careful consideration, these were the amendments that we thought that we should move. They are not my individual amendments. That is all I want to say on that to the House. With regard to the question of wills and legacies and adoption, the matter stands in this way. As I pointed out in reply to a question that was put to on another amendment about Cutchi Memons, I think I may inform the House—and that is my information and those are the facts—that by voluntary method, by persuasive method more than half the Cutchi Memons have come under that declaration and the Muhammadan law applies to them. We do not give up; we are only trying to apply persuasive methods, voluntary methods, and if any Mussulman who desires to be governed by the Muslim law even with regard to adoption, wills and legacies, he has only got to come and make a declaration immediately after this Bill is passed, and from that moment he will be governed by the Muhammadan law and his minor children. Therefore, let us try this method which has proved to a great extent to be successful, but, if, ultimately we find that we have exhausted this persuasive and voluntary method, and if this House then thinks that, even with regard to adoption as well as legacies the Muslim Personal Law should be made applicable, we shall consider it. There is no giving up of anything or committing ourselves in any way.”

So, he said that just at that stage the matter must be left to the option of the individual Mussulmans to make a declaration and then it would apply. Now, the words of the amendment were taken from the Cutchi Memons Act itself and because there was only one section in the Cutchi Memons Act, the word ‘Act’ was properly used there and it was unfortunately copied in this section also. The Cutchi Memon Act is Act XLVI of 1920. There is only one operative section there:

“Any Cutchi Memon who has attained the age of majority, and is resident in British India, may by declaration in the prescribed form and filed before the prescribed authority declare that he desires to obtain the benefit of this Act”, etc., etc. (*These are the words that have been incorporated in section 3.*) “and thereafter the declarant and all his minor children and their descendants shall in matters of succession and inheritance be governed by the Muhammadan law.”

Now, unfortunately, the words were taken from this Act for that amendment and it was not considered that in the present Shariat Act we

had conceded that with the exception of legacies and wills and adoption, in all other matters every Muhammadan will be governed by the Muslim Personal Law. In these matters we leave the option to every individual Mussulman to make a declaration before the prescribed authority and after the declaration has been made, in every matter, he will be governed by the Muslim Personal Law. That was the only amendment and it was based on the Cutchi Memons Act and now you will be astonished to find that even the Cutchi Memons Act has been repealed. And it has been substituted by another Act, Act X of 1938. It says:

"2. Subject to the provisions of section 3, all Cutchi Memons shall, in matters of succession and inheritance, be governed by the Muhammadan Law.

3. Nothing in this Act shall affect any right or liability acquired or incurred before its commencement, or any legal proceeding or remedy in respect of any such right or liability; and any such legal proceeding or remedy may be continued or enforced as if this Act had not been passed."

Anything that has been acquired before the commencement of this Act would remain, but in future even the Cutchi Memons in matters of inheritance and legacies will be governed by pure Muslim Personal Law. So, as a matter of fact, the ground on which Mr. Jinnah at that time proposed this amendment and provided this exception in favour of legacies and adoptions was on the basis of the Cutchi Memons Act. That Act has since been repealed. Now, it was not necessary for me to come before this House and say: "Please delete clause 3 and include adoption, wills and legacies in clause 2 itself." But I am not going so far. It is not fair for the Government to say: "Let us consult Muslim public opinion." There is absolutely no question of consulting Muslim public opinion on this matter because in the provision that we made we meant that that declaration would apply only to adoptions, wills and legacies of Musalmans. Personally, I think it will be an insult to the intelligence of this House if we are not able to find out as to how the mistake was committed and how that mistake crept in. It was we who are guilty of having made that mistake and now we want to go before the public and ask them what they think about it. If you want that sort of opinion, you are perfectly at liberty to do it. The House wanted to legislate in one particular way but instead of the word 'section' they wrote the word 'Act', and now you want to ask the public what they think about it. But, personally, I would oppose any motion for circulation. It is for the House to exert its brains and come to a particular decision and find out whether the submissions that I have made are correct or not. I would very much like to hear the views of the Honourable Members on the Government Benches on the point at issue and not on the fact that because a certain mistake was made, the Bill must be referred to elicit public opinion on it. There is no dearth of people who know the law on the Government Benches. They have only to look at the point and then come to a decision. I have tried my best to persuade them to do this by putting forward so many arguments and I will be very much pleased to hear any arguments to the contrary.

Mr. Muhammad Muazzam Sahib Bahadur: Sir, I think it will satisfy my Honourable friend if we change the 1st March, 1942, to the 1st February, 1942.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is: "That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st of February, 1942."

The motion was adopted.

Dr. G. V. Deshmukh: Sir, as Items Nos. 18* and 20† have been considered by the Hindu Law Society, I do not want to move them.

THE BUDDHA GAYA TEMPLE BILL.

Dr. G. V. Deshmukh (Bombay City: Non-Muhammadan Urban): Sir, I move for leave to introduce a Bill to make provision for the restoration of the Buddha Gaya Temple and its premises to Buddhists and for the better management of the same.

Mr. Deputy President (Mr. Akhil Chandra Dutta): The question is: "That leave be given to introduce a Bill to make provision for the restoration of the Buddha Gaya Temple and its premises to Buddhists and for the better management of the same."

The motion was adopted.

Dr. G. V. Deshmukh: Sir, I introduce the Bill.

THE FEDERAL COURT (SUPPLEMENTAL POWERS) BILL.

Dr. P. N. Banerjea (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I move for leave to introduce a Bill to confer supplemental powers on the Federal Court.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is: "That leave be given to introduce a Bill to confer supplemental powers on the Federal Court."

The motion was adopted.

Dr. P. N. Banerjea: Sir, I introduce the Bill.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

(AMENDMENT OF SECTIONS 162, 488 AND 496.)

Qazi Muhammad Ahmad Kazmi (Meerut Division Muhammadan Rural): Sir, I move for leave to introduce a Bill further to amend the Code of Criminal Procedure, 1898, for certain purposes (*Amendment of sections 162, 488 and 496*).

*18. Dr. G. V. Deshmukh to move for leave to introduce a Bill to amend the Hindu Women's Rights to Property Act, 1937.

†20. Dr. G. V. Deshmukh to move for leave to introduce a Bill to amend the Hindu Law relating to property inherited by a Hindu widow from her husband known as "Hindu Women's Estate".

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is: "That leave be given to introduce a Bill further to amend the Code of Criminal Procedure, 1898 for certain purposes (*Amendment of sections 162, 488 and 496*)."

The motion was adopted.

Qazi Muhammad Ahmad Kazmi: Sir, I introduce the Bill.

THE INDIAN PENAL CODE (AMENDMENT) BILL.

Qazi Muhammad Ahmad Kazmi (Meerut Division: Muhammadan Rural): Sir, I move for leave to introduce a Bill further to amend the Indian Penal Code for a certain purpose.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is: "That leave be given to introduce a Bill further to amend the Indian Penal Code for a certain purpose."

The motion was adopted.

Qazi Muhammad Ahmad Kazmi: Sir, I introduce the Bill.

The Assembly then adjourned till Eleven of the Clock on Monday, the 10th November, 1941.