

21st March 1941

THE

LEGISLATIVE ASSEMBLY DEBATES

Official Report

Volume II, 1941

THIRTEENTH SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY,
1941



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Legislative Assembly

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SIR H. P. MODY, K.B.E., M.L.A.

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LEGISLATIVE ASSEMBLY

Friday, 21st March, 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

DIRECTORS GENERAL, DEPUTY DIRECTORS GENERAL AND OFFICE SUPERINTENDENTS OF THE ARCHÆOLOGICAL DEPARTMENT.

441. *Maulvi Muhammad Abdul Ghani: (a) Will the Education Secretary please state how many Muslims and non-Muslims have held the posts of Director General, Deputy Director General and Office Superintendent, of the office of the Director General of Archæology ever since the creation of the Department?

(b) Were suitable Muslims not available for the posts of Director General, Deputy Director General and Office Superintendent?

Mr. J. D. Tyson: (a) Director General of Archæology—Europeans 7, Hindus 2, Muslims nil.

Deputy Director General of Archæology—Europeans 3, Hindus 2, Muslims 1.

Superintendent—Hindus 4, Muslims nil, but one has officiated.

(b) I would refer the Honourable Member to answers to the questions that have been asked on the subject in the past.

Maulvi Muhammad Abdul Ghani: Having regard to the paucity of the Muslim members referred to in the question, will the Honourable Member take steps to see that there is proper Muslim representation in the Department?

Mr. J. D. Tyson: There is no paucity actually of Muslim officers. They have 33 per cent. of the Class I posts; they have both the Class II posts, and in the Director General's Office they have certainly more than the prescribed ratio, in fact, they have 50 per cent. of the representation. There is no paucity of Muslim representation in the Department.

Mr. Lalchand Navalrai: May I know whether these higher appointments are filled directly, or they are filled from the lower ranks?

Mr. J. D. Tyson: I think all the Class I appointments are made by direct recruitment.

Mr. Lalchand Navalrai: Is there any communal ratio by which these higher appointments are made, or are they made by promotion?

Mr. J. D. Tyson: Class I is recruited with a communal proportion and we recruit by what we call a roster, but promotion is on merit.

Mr. Lalchand Navalrai: May I know what appointments are included in Class I ?

Mr. J. D. Tyson: Class I includes Assistant Superintendents, Superintendents, the Deputy Director General and the Director General. There are also two specialised posts in Class I which are not subject to communal ratio.

Mr. Lalchand Navalrai: Are these posts filled up through the Public Service Commission?

Mr. J. D. Tyson: Yes, Sir, they are filled up with the advice of the Public Service Commission.

APPOINTMENT TO THE POST OF CLERK IN THE DELHI FORT MUSEUM.

442. *Maulvi Muhammad Abdul Ghani: (a) Will the Education Secretary please state if it is a fact that the Muslim clerk at Taxila Museum applied to the Superintendent, Northern Circle, for the post of clerk in the Delhi Fort Museum? Did the Director General of Archæology withhold his application, and supported the candidature of a non-Muslim clerk?

(b) Is it a fact that the Muslim clerk in question has experience of museum work for about ten years and that the other candidate had no experience of work in a museum? If so, will the Honourable Member please state the reasons for giving preference to the latter over the Muslim candidate?

Mr. J. D. Tyson: (a) A number of applications were received for the post of clerk at the Delhi Fort Museum, including one from the Muslim clerk at the Taxila Museum. No action was taken on the applications as there was no immediate prospect of the post falling vacant. No application was supported by the Director General of Archæology in India.

(b) The reply to the first part of the question, in so far as it relates to the Muslim clerk, is in the affirmative. The rest of the question does not arise.

COMPETENCY OF THE DIRECTOR GENERAL OF ARCHÆOLOGY TO INTERFERE IN CERTAIN POWERS DELEGATED TO THE ARCHÆOLOGICAL SUPERINTENDENTS.

443. *Shaikh Rafiuddin Ahmad Siddiquee: Will the Education Secretary please state if the Director General of Archæology is empowered by rules to interfere in the powers delegated to Archæological Superintendents under the Classification, Control and Appeal Rules in respect of appointments, punishments, etc.? If so, under what rules?

(b) Is it a fact that the Director General of Archæology has interfered in the powers of Superintendents at Agra, Patna, Poona and Calcutta? If so, why?

Mr. J. D. Tyson: (a) I would refer the Honourable Member to my reply to part (b) of Sir Syed Raza Ali's starred question No. 224 on the 3rd March, 1941.

(b) Government are aware of two instances in which the Director General of Archæology in India had occasion to interfere with the exercise of powers delegated to them by the Superintendents, Northern and Central circles, for reasons given in replies to questions No. 224 on the 3rd March, 1941, and No. 373 on the 17th March, 1941, respectively. They are not aware of any such instance so far as the Western and Eastern circles are concerned.

Mr. Lalchand Navalrai: May I ask if the Director General has got the power to interfere in this case, but that he did not actually interfere in this case?

Mr. J. D. Tyson: We think he had the power. I won't say the thing is entirely free from doubt.

APPEALS OF MUSLIM OFFICIALS IN THE ARCHÆOLOGICAL DEPARTMENT.

444. *Shaikh Rafuiddin Ahmad Siddique: Will the Education Secretary please state whether the appeals of any Muslim officer, Assistant Technical subordinate, or inferior servant, in the Archæological Department, have ever been accepted? If so, whose?

Mr. J. D. Tyson: During the last three years one appeal by an inferior servant and three by assistant technical subordinates were rejected and one appeal by an officer was disallowed on the ground that no appeal lay. No appeal from a Muslim belonging to any of the categories referred to was allowed during that period. Information for the previous period is not readily available.

DEATH OF ONE NAIMA BEGUM AT THE IRWIN HOSPITAL, NEW DELHI.

445. *Dr. Sir Ziauddin Ahmad: (a) Will the Education Secretary please state whether it is not a fact that one Naima Begum, daughter of Mr. Sirajuddin Ahmad of Delhi, who swallowed a copper coin, came to Irwin Hospital for medical treatment?

(b) Is it not a fact that a nurse advised the father to take her back and give her some *halwa* to swallow?

(c) Is it not a fact that the father insisted on having expert medical advice in the Hospital?

(d) Is it not a fact an inexperienced doctor attempted to take out the coin with an instrument, and burst the tube going to the stomach?

(e) Is it not a fact that the said doctor sent the patient away with an assurance that she will be cured in a few days?

(f) Is it not a fact that the relatives of the patient, who were medical men, first discovered the bursting of the artery?

(g) What action, if any, did Government take against the person who is responsible for the murder?

(h) Are Government aware that feelings against indifferent treatment in the Irwin Hospital are general?

(i) Are Government prepared to make exhaustive enquiry?

Mr. J. D. Tyson: (a) Yes.

(b) to (g). The facts of the case have been investigated by a committee specially appointed for the purpose and as a sequel to the committee's report a doctor on the hospital staff was called upon to answer charges in departmental proceedings. The report and proceedings are now under examination. Government will consider the question of placing on the table of the House the report and the orders passed when a decision has been arrived at.

(h) and (i). Reference is invited to the reply given to part (e) of question No. 381 asked by Mr. Essak Sait on the 17th March, 1941.

Dr. Sir Ziauddin Ahmad: With reference to part (h) of the question, is it not a fact that in spite of the protests of Sir Henry Gidney, the feelings of grievances are general? Are Government aware of this?

Mr. J. D. Tyson: No, Sir.

Maulvi Muhammad Abdul Ghani: Will the Honourable Member please lay on the table a copy of the explanation submitted by the Doctor?

Mr. J. D. Tyson: That is already covered, I think. We shall have to consider what papers we lay on the table when a decision has been arrived at in the case. The papers are very voluminous.

Maulana Zafar Ali Khan: With regard to the last part of the question, may I ask what prevents Government from making an exhaustive inquiry?

Mr. J. D. Tyson: If the Honourable Member means an exhaustive inquiry into this particular incident, we have had two such and the matter is still *sub-judice*.

Dr. Sir Ziauddin Ahmad: By "exhaustive inquiry" was intended the general efficiency of the hospital?

Mr. J. D. Tyson: We have no reason to doubt the general efficiency of the hospital.

EXPENDITURE FOR MAINTENANCE OF THE PILGRIM DEPARTMENTS IN BOMBAY, KARACHI AND CALCUTTA.

446. *Mr. H. M. Abdullah: (a) Will the Secretary for Education, Health and Lands be pleased to state the annual expenditure for the maintenance of the Pilgrim Departments in Bombay, Karachi and Calcutta, when the same was under the Commissioner of Police at Bombay and Calcutta and the Collector of Karachi at Karachi?

(b) Was the whole expenditure met by Government? If not, what part of it was given by Government and how and from where was the balance met?

(c) What is the annual expenditure of the maintenance of this department at present which has now since 1933 been transferred to the control of the Port Haj Committee established under an Act of this Legislature?

(d) What is Government's contribution towards the same at present and how and from where is the balance met?

Mr. J. D. Tyson: (a) The average annual expenditure was Rs. 35,846.

(b) Yes.

(c) The actual expenditure during 1939-40 was:

Port Haj Committee, Bombay—Rs. 29,898.

Port Haj Committee, Karachi—Rs. 28,506.

Port Haj Committee, Calcutta—Rs. 12,554.

(d) The Port Haj Committees of Bombay and Calcutta have been given grants-in-aid of Rs. 4,000 and Rs. 7,700, respectively, during 1940-41 by the Government of India. The balance of expenditure in the case of the Bombay and Calcutta Port Haj Committees and the whole expenditure in the case of the Karachi Port Haj Committee was met from the Haj Funds of the Committees created under the provisions of section 20 of the Port Haj Committees Act, 1932.

Khan Bahadur Shaikh Fazl-i-Haq Piracha: With reference to parts (c) and (d) of the question, may I ask what is the Haj Fund and from whom it is realised?

Mr. J. D. Tyson: The Haj Fund was built up during the four years after the Port Haj Committees were created; during these four years Government financed the actual working of the Port Haj Committees, and the Port Haj Committees during that time accumulated funds from the sources of revenue specified in the Act.

Khan Bahadur Shaikh Fazl-i-Haq Piracha: What are the sources of revenue specified in the Act?

Mr. J. D. Tyson: I have referred to the section of the Act.

Khan Bahadur Shaikh Fazl-i-Haq Piracha: Is it not a fact that the pilgrims are charged passport fees and visitors' fees?

Mr. J. D. Tyson: Two of the sources of revenue are pilgrim passport fees and visitors' fees.

Khan Bahadur Shaikh Fazl-i-Haq Piracha: Is the money spent on the amenities to be provided to the Hajis?

Mr. J. D. Tyson: I must ask for notice. The Accounts are very complicated.

Khan Bahadur Shaikh Fazl-i-Haq Piracha: Is not the recovery of passport fees a burden on the Hajis?

Mr. J. D. Tyson: The Hajis certainly have to pay the passport fees but they were imposed for very good reason originally. They should take their pilgrim passes in their own districts where they are known well. If they prefer to leave it till they come down to the port, then they must pay the fee. Some of them find it more convenient to pay the fee than to submit themselves to local enquiries. It is their own choice.

Khan Bahadur Shaikh Fazl-i-Haq Piracha: Did this practice of collection of passport fees from the pilgrims come into existence before the Haj Committee was set up?

Mr. J. D. Tyson: *It was imposed as a result of the Haj Enquiry Committee of 1930.*

Seth Haji Sir Abdoola Haroon: Is it a fact that there are two sources of income, firstly passport fee from those members who are not bringing their passports from their districts and secondly the income derived from pilgrims who die in Jeddah without leaving any claimant for the belongings or the passage money—these two amounts are put into the Haj fund?

Mr. J. D. Tyson: Besides these two sources, there are five other sources of income.

Dr. Sir Ziauddin Ahmad: What are the others?

Mr. J. D. Tyson: It is mentioned in section 20 of the Act. I will read it out to the House if it is so desired, but it is a long one.

Mr. President (The Honourable Sir Abdur Rahim): If it is in the Act, the Honourable Member need not read it out.

Seth Haji Sir Abdoola Haroon: Is it a fact that Government were formerly meeting all the expenses of the Haj Committees, and is it a fact that the Haj Enquiry Committee report has suggested that these funds should be spent on the betterment of the condition of the Hajis in steamers and ports and in many other ways? Is it a fact that Government are utilising these fees for the maintenance of the Haj Committees?

Mr. J. D. Tyson: I must ask for notice. I am afraid I cannot answer offhand.

Dr. Sir Ziauddin Ahmad: Is it not a fact that the money referred to by Seth Haji Abdoola Haroon is now realised from the Hajis which ought to have been spent for improving the facilities and amenities to the Hajis and instead of that Government are now devoting the money for Port Haj Committees? Is it not a fact that Government were spending from out of their general funds the expenses of these committees before?

Mr. J. D. Tyson: I do not think so. Section 20 of the Act is perfectly clear. There are seven sources of income provided for Port Haj Committees and only one of them is in any way allocated to any particular purpose and that is item (d), "the amount now standing to the credit of the fund known as the indigent pilgrims fund, provided that such amount shall be applied by the Committee solely for the relief of indigent pilgrims". There was no specification in the Act that any of the other six sources should be applied to any particular purpose. They were all for the financing of the activities of the Port Haj Committees.

Seth Haji Sir Abdoola Haroon: May I know whether the Port Haj Committees willingly decided to spend this amount on the staff, or did Government press upon them to spend that money on the staff which previously Government used to defray from the general revenues?

Mr. Govind V. Deshmukh: I rise to a point of order. Is it permissible for any Honourable Member to suggest that Government brought pressure on the Port Haj Committees?

Seth Haji Sir Abdoola Haroon: Did the Port Haj Committees spend this money of their own accord or Government brought pressure on them to spend the money on the staff?

Mr. Govind V. Deshmukh: He is again using the word "pressure".

Dr. Sir Ziauddin Ahmad: Did Government direct the Port Haj Committees? That is a better way of putting it.

Mr. J. D. Tyson: With the best intentions, Sir, I am afraid, I do not quite follow the question.

SCALES OF PAY AND ALLOWANCES OF THE SECRETARIES OF THE PORT HAJ COMMITTEES AT BOMBAY, CALCUTTA AND KARACHI.

447. *Mr. H. M. Abdullah: (a) Will the Secretary for Education, Health and Lands be pleased to state whether it is a fact that when the Port Haj Committee, Bombay was not an elected body, but was nominated by the Commissioner of Police, Bombay, and when the pilgrim department was under his control, the Secretary of the Committee was a high official, such as, the Deputy Commissioner of Police, with a Muslim gazetted officer as the Protector of Pilgrims?

(b) What is the status and pay of the present Secretary and Executive Officer of the Committee?

(c) Is it a fact that the Haj Inquiry Committee, 1929, had recommended that the Secretary and the Executive Officer of the Port Haj Committee at Bombay should be in the grade similar to that of a Deputy Collector drawing a salary of 500—700 with house and conveyance allowances?

(d) If the answer to part (c) be in the affirmative, why has the recommendation not yet been put in practice for all these 12 years?

(e) Is it a fact that contrary to the recommendation of the Haj Enquiry Committee, the scale of pay and allowance of the Secretary and Executive Officer of the Port Haj Committee at Bombay recently has had to be reduced to meet the limited budget at the disposal of the Committee?

(f) What is the scale of pay and allowances of the Secretary of the Port Haj Committee at Calcutta and Karachi?

Mr. J. D. Tyson: (a) The Deputy Commissioner of Police, Port, Bombay, acted as Secretary of the Haj Committee in addition to his own duties. The Muslim Protector of Pilgrims was not a gazetted officer.

(b) He is an employee of the Committee. His present pay is Rs. 200 per mensem in the grade of Rs. 200—10—300 and he draws in addition a consolidated house and conveyance allowance of Rs. 50 per mensem.

(c) Yes.

(d) The recommendation was considered by Government in consultation with the Standing Haj Committee and it was decided that the Executive Officer should receive the same emoluments as were drawn by the former Protector of Pilgrims, Bombay, and that the question of a higher scale of pay might, if necessary, be taken up when there was an improvement in the financial position. Since 1938 the conditions of service of the Executive Officer have been regulated under the bye-laws made by the Port Haj Committee, Bombay.

(e) Yes: when making a new appointment to the post, the Port Haj Committee fixed a lower scale of pay.

(f) A statement is laid on the table.

Statement.

Designation of Officer.	Pay.	Allowances.
	Rs.	
Secretary, Port Haj Committee, Calcutta	150—10—250 .	Personal allowance Rs. 10 p. m.
Secretary, Port Haj Committee, Karachi	200—20—400 .	House rent allowance Rs. 30 p. m. Conveyance allowance Rs. 65 p. m.

PROVIDENT FUND AND PENSION FOR THE STAFF OF THE PORT HAJ COMMITTEE, BOMBAY.

448. *Mr. H. M. Abdullah: (a) Will the Secretary for Education, Health and Lands be pleased to state whether it is a fact that the staff of the Port Haj Committee, Bombay, are not extended the benefits of Provident Fund and Pension, while those at Calcutta and Karachi are given these benefits?

(b) If the answer to part (a) be in the affirmative, will the Education Secretary please state why this differential treatment is being given at different places and whether Government are willing to look into the matter to see that equal treatment is meted to all?

(c) Is it a fact that when the Pilgrim Department at Bombay was transferred from the Commissioner of Police to the Port Haj Committee, the Muslim Government staff working therein were compulsorily made to retire on pension and transferred to the Port Haj Committee where the same facilities as in Government service did not exist?

(d) Is it a fact that the non-Muslim staff working in that department were retained in Government service and absorbed in other departments?

(e) Is it a fact that similarly the staff so transferred at Calcutta and Karachi, were sent to the Port Haj Committee on deputation, having their lien on Government service?

(f) If the answer to parts (c), (d) and (e) be in the affirmative, will the Honourable Member state why this differential treatment was given at Bombay and whether Government are prepared to look into the matter and see that equal treatment is meted to all?

Mr. J. D. Tyson: (a) Employees of the Port Haj Committees, Bombay, Calcutta and Karachi are not entitled to the benefits of the Provident Fund. The rules of the Calcutta Port Haj Committee provide for the grant of pension but no such provision is contained in the rules for the Bombay and Karachi Port Haj Committees.

(b) The matter is regulated by the bye-laws of the respective Port Haj Committees. In so far as the approval of the Central Government is required, they will be prepared to examine any proposals which may be received from the Committees.

(c) and (d). Yes.

(e) No.

(f) The former Pilgrim Department of Bombay was administered by the Government of Bombay and the decision regarding its staff was taken by that Government. Government will examine any proposals which may be received from the Port Haj Committee.

Maulvi Syed Murtuza Sahib Bahadur: Will the Honourable Member inform us if the Government are prepared to bring about uniformity in all the other two Port Haj Committees so that all the executive officers attached thereto may get either pension or provident fund as their funds permit? Are the Government of India prepared to make the suggestion?

Mr. J. D. Tyson: We shall be ready to examine any recommendations which come up from the Committees. They are fairly autonomous bodies and I do not know whether we should suggest any uniformity among them.

**LAYING BEFORE THE LEGISLATIVE ASSEMBLY AT THE BEGINNING OF SESSION
IMPORTANT LEGISLATION TO BE INTRODUCED IN THE SESSION.**

449. *Dr. Sir Ziauddin Ahmad: (a) Is the Honourable the Leader of the House prepared to lay before the House at the beginning of each session the important legislation which Government may be contemplating to introduce in the Session?

(b) Are Government aware that the non-official Members are very much handicapped for not having sufficient time to consider and study the various aspects of important legislation on account of short notices?

The Honourable Sir Muhammad Zafrullah Khan: (a) From observations made by the Honourable Member in the course of his speech on Tuesday last I understand his suggestion to be that Government should, at the commencement of a Session, supply Honourable Members with an indication of the probable legislative programme for the Session. Within the limits of practicality I am prepared to give effect to this suggestion. But I must warn the Honourable Member that there will always be cases in which a decision to introduce legislation in the course of a Session is not taken until after the commencement of the Session and also cases in which the public interest would preclude disclosure of the decision in advance of the introduction of the Bill.

(b) No. I must repudiate the suggestion that existing arrangements result in Honourable Members having insufficient time to study the measures placed before the House.

**PRESENTED ARTICLES SURRENDERED TO GOVERNMENT BY OFFICERS IN THE
SUPPLY DEPARTMENT.**

450. *Dr. Sir Ziauddin Ahmad: (a) Will the Honourable the Leader of the House be pleased to state the value of the articles presented to the officers in the Supply and its allied departments, surrendered by the officers to the Government?

(b) How do Government dispose of these articles?

The Honourable Sir Muhammad Zafrullah Khan: (a) I am not aware of any case in which articles have been presented to any officer of the Supply Department and its subordinate organisations.

(b) Does not arise.

NECESSITY OF A TECHNICAL OFFICER UNDER THE CONTROLLER OF PRINTING AND STATIONERY.

451. *Mr. Muhammad Azhar Ali: (a) Is the Honourable the Labour Member aware that a few years ago when the Indian Stores Department wanted to take up the management of the Central Stationery Office, it was contended by the then Controller of Printing and Stationery that the Central Stationery Office must be under a printer as it deals with printing materials?

(b) If the above mentioned facts are substantially true, when the future Controller of Printing and Stationery happens to be a non-technical man, are Government prepared to appoint a Printer in the Central Stationery Office, Calcutta? If not, why not?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: (a) The question of transferring the purchase of stationery stores to the Indian Stores Department which was considered by the Government of India a few years ago, did not emanate from the Indian Stores Department. The reply to the second part is in the negative.

(b) Does not arise.

Dr. Sir Ziauddin Ahmad: May I know whether the Indian Stores Department used to buy or does it buy now the various articles required by the Department of Stationery of the Government of India?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: No, Sir; not at any time.

Dr. Sir Ziauddin Ahmad: Does that department buy for itself?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: Yes, Sir.

APPOINTMENT OF MR. THOMAS AS MACHINE FOREMAN IN THE GOVERNMENT OF INDIA PRESS, CALCUTTA, AND APPOINTMENT OF MUSLIM OFFICERS IN THE CENTRAL PUBLICATION BRANCH, DELHI.

452. *Mr. Muhammad Azhar Ali: (a) Will the Honourable the Labour Member in charge please state whether a Section Holder Mr. Thomas from the Composing Branch of the Calcutta Government of India Press, was appointed as Machine Foreman of the Press, and the claims of senior qualified Muslim employee of the Machine and Press Department were overlooked?

(b) Will the Honourable Member please state whether any Muslim has ever been appointed as Manager, Assistant Manager, or Superintendent of the Central Publication Branch, Delhi?

(c) If the answer to part (b) be in the negative, when do Government propose to appoint a Muslim Officer in the above office? If not, why not?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: (a) The reply to the first part is in the affirmative. As regards the second part, the post in question being a selection post, the appointment was made with due regard to the principles governing appointments to such posts.

(b) No.

(c) Appointments to these posts are made by selection on merit. It is not possible to forecast when the post might be held by a Muslim.

NECESSITY OF A TECHNICAL OFFICER UNDER THE CONTROLLER OF
PRINTING AND STATIONERY.

453. *Mr. Muhammad Azhar Ali: (a) Will the Honourable the Labour Member please state whether it is a fact that the next Controller of Printing and Stationery is a non-technical man?

(b) Is it a fact that the last I.C.S. Controller of Printing and Stationery recommended that a Printer should be appointed as Deputy to assist him? If so, is it proposed to appoint a technical man as the Deputy Controller of Printing?

(c) Is it a fact that there is not a single Muslim Officer, or Superintendent in the Headquarters Office of the Controller of Printing and Stationery? If so, when is it proposed to appoint a Muslim Officer in that Office?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: (a) Yes.

(b) No. The second part does not arise.

(c) Yes. As regards the second part, superior posts in the Headquarters Office of the Controller of Printing and Stationery are ordinarily filled by promotion. It is, therefore, not possible to forecast when a Muslim will be appointed.

INDIANS RESIDENT IN SOUTH AFRICA.

454. *Mr. Govind V. Deshmukh: Will the Secretary for Education, Health and Lands, please state :

- (a) if the Union Government of South Africa and the Government of India had arrived at an agreement that while no new Indian was to be admitted to South Africa, the Indians already resident in the country should be treated with every consideration and given all the rights of citizenship;
- (b) whether the Union Government has kept its promise of treating Indians with consideration and giving rights of citizenship; if not, why not;
- (c) whether this matter was referred to His Majesty's Government; if so, with what result; and
- (d) whether it will be referred to His Majesty's Government now?

Mr. J. D. Tyson: (a) If the Honourable Member is referring to the claim put forward by the Government of India at the Imperial Conference in 1921 for full rights of citizenship for Indians domiciled in different parts of the Empire, I must point out that the representatives of South Africa expressed the Union Government's inability to accept the claim in view of the exceptional circumstances of the greater part of the Union. In the agreement arrived at between the Government of the Union of South Africa and the Government of India at Cape Town in 1927 the former recognised an obligation to take all possible steps for the uplift of the Indians resident in the Union to the full extent of their capacity and opportunities.

(b) I would invite the Honourable Member's attention to part III of the annexure to the Cape Town Agreement of 1927, a copy of which will be found in the Library of the House. The Government of India are not aware that the Union Government have modified the policy stated therein.

(c) and (d). Having regard to the constitutional position of the Union of South Africa no occasion for referring the matter to His Majesty's Government has arisen.

Mr. Govind V. Deshmukh: With regard to part (a) of the question, was the undertaking merely about the uplift of the Indians or citizenship of Indians in South Africa?

Mr. J. D. Tyson: No, Sir. In the Cape Town Agreement there was no undertaking about citizenship. There was only what we call the uplift clause.

CONTRACT FOR SUPPLY OF DRIED FRUITS TO THE ARMY GIVEN TO AFGHAN NATIONALS.

455. *Mr. Govind V. Deshmukh: Will the Honourable the Law Member please state if Government have given any contract for the supply of dry fruits to the Army to the Afghan nationals? If so, were any tenders invited in this case before the contract was sanctioned? If tenders were not invited what were the reasons for not doing so?

The Honourable Sir Muhammad Zafrullah Khan: In December last tenders for the supply of dried fruits were invited in India. The response was inadequate and the firms on which the orders were finally placed succeeded in supplying only a small proportion of the quantity ordered. This necessitated the placing of a contract outside India.

Mr. Govind V. Deshmukh: May I know if any Indians have been given the contract for dried fruits?

The Honourable Sir Muhammad Zafrullah Khan: That is what I have just said, that we did give contracts in India for dried fruits and they failed to supply the quantities for which orders were placed with them.

Mr. Govind V. Deshmukh: May I take it that no contracts have been given to the Afghan nationals?

The Honourable Sir Muhammad Zafrullah Khan: I have answered that in the affirmative.

Mr. Govind V. Deshmukh: May I suggest that hereafter Government will abstain from giving contracts with respect to dried fruits in view of the facts that the Indo-Afghan exchange *hundi* problem is not settled and there are other factors such as the realisation by Indians of their decretal amount in Afghanistan and remission of money from Afghanistan by Indians?

The Honourable Sir Muhammad Zafrullah Khan: I am afraid I am unable to accept the suggestion. If dried fruits or any other article wanted for the army is not procurable in India we must go wherever it is procurable.

Mr. Govind V. Deshmukh: Am I to understand that in India there are no merchants who would be able to supply these dried fruits? Is the Honourable Member aware that there is the Frontier Chamber of Commerce who might be able to make this supply?

The Honourable Sir Muhammad Zafrullah Khan: I have been at pains to explain that we did place orders in India. As a matter of fact, in December we invited tenders for 132 tons of dried fruits, only 102 tons were offered and out of that only 30 tons were supplied and the contractors applied to be excused for the rest as they were unable to procure them. What was I to do in the circumstances except to go outside India?

DURGAH OF MAKHDUM SHAH SAHIB NEAR SHAHPUR, QUTAB ROAD, DELHI.

456. *Maulana Zafar Ali Khan: (a) Will the Secretary for Education, Health and Lands please refer to the answer to starred question No. 1380, dated the 30th March, 1939, and state what constitutes the Durgah of Makhdum Shah Sahib near Shahpur, Qutab Road, Delhi, which comes under the definition of "protected monument" under the Archæological Department?

(b) Does it also include other graves and mosque, etc.,—in fact every thing encircled by the boundary wall of the Durgah?

(c) If the answer to part (b) above be in the negative, are Government prepared to hand over the possession of that portion of the Durgah which does not come under (b) above to the descendants of Makhdum Sahib?

(d) If the answer to part (b) be in the affirmative, will Government please refer to the undertaking given in reply to starred question No. 1381, dated the 30th March, 1939, and state why only partial repairs have been carried out in respect of certain graves while others have been left out?

(e) Is he aware that there is no gate at the main entrance of the Durgah, in the absence of which animals enter the place freely? If so, are Government prepared to provide a gate to remove this trouble and thus protect the sanctity of the place?

(f) Is it a fact that there is no passage leading from the main road to the Durgah? If so, do Government propose to provide a passage for the convenience of the visitors?

(g) Does the adjoining Serai with its boundary wall and the house of Makhdum Shah Sahib also come under the Protected Ancient Monuments Act?

(h) If the answer to part (g) above be in the affirmative, will the Secretary please state how cultivation is being done inside the compound wall of the Serai?

Mr. J. D. Tyson: (a) and (b). The whole area enclosed by the boundary wall is protected. This includes a mosque and a number of graves.

(c) Does not arise.

(d) Such structural repairs as funds permitted were carried out to the monument and graves. Further repairs will be carried out as funds permit.

(e) No complaint of animals entering the enclosure has been received.

(f) There is already a footpath from the main road to the monument.

(g) No.

(h) Does not arise.

Maulana Zafar Ali Khan: I understand the piece of land beyond the precincts of the mosque is under cultivation. Who is cultivating it at the present moment?

Mr. J. D. Tyson: If the Honourable Member means land within the boundary wall, I will certainly inquire. But I have no information that cultivation is being carried on within the boundary of the protected monument.

Maulana Zafar Ali Khan: Will the Honourable Member please make an inquiry?

Mr. J. D. Tyson: Yes, Sir.

†457. *

UNSTARRED QUESTIONS AND ANSWERS.

APPOINTMENT OF MR. JOHN PODGER AS GOVERNMENT MICA INSPECTOR.

160. Pandit Nilakantha Das: (a) Will the Honourable the Law Member be pleased to state whether the resolutions of the Delhi Mica Conference of 4th January, 1940, with respect to the appointment of a Mica Advisory Committee, have been implemented? If not, why not?

(b) Was Mr. Podger's appointment made in consultation with representatives of the Bihar mica industry? If not, why not?

(c) Is it a fact that Mr. Podger was transferred to Calcutta during November, 1940, to assist the Geological Survey of India in the purchases of mica on behalf of the American Government? If so, was the Bihar mica industry consulted in the matter? If not, why not?

(d) Is it a fact that when Mr. Podger was offered the post of Government Mica Inspector, it was on condition that he should completely sever all his connections with the firm of Messrs. John Podger and Company, Limited, of which he had been the manager and one of the owners and directors?

(e) Did Mr. John Podger, while accepting the post of Government Mica Inspector, completely sever his connection with the firm of Messrs. John Podger and Company, Limited?

(f) Is it a fact that the firm of Messrs. John Podger and Company, Limited, mica dealers and exporters, Kodarna, Bihar, is still carrying on under the same name, and under the management of the brother of the Government Mica Inspector for Bihar? Is it permissible under the Government Servant's Conduct Rules?

The Honourable Sir Muhammad Zafrullah Khan: (a) No. The Advisory Committee referred to by the Honourable Member was to be set up by the Industry itself in each field for definite purposes and the Government of India have not found an Advisory Committee to be needed at present.

(b) Yes.

† This question was withdrawn by the questioner.

(c) Yes. The Industry was not consulted as Government had urgently to make the best arrangements possible, and it is in any case questionable whether consultation with the Industry was necessary or even desirable.

(d) Mr. Podger was in any case about to retire from business but he was required formally to sever his previous connection with any business interests.

(e) Yes.

(f) The firm of John Podger and Co., still carries on business. Government understand that Mr. John Podger's brother has an interest in the firm. This is permissible under the Government Servants' Conduct Rules.

APPOINTMENT OF MR. JOHN PODGER AS GOVERNMENT MICA INSPECTOR.

161. Pandit Nilakantha Das: (a) Will the Honourable the Law Member be pleased to state whether Government are aware that the firms of Bihar employed in exporting mica to foreign, especially American, buyers suffer as the result of those buyers being obliged to give their orders to Messrs. John Podger and Company, Limited, because of Mr. John Podger himself being the Government Mica Inspector?

(b) Are Government aware that since Mr. John Podger became Government Mica Inspector, the export business of the firm of Messrs. John Podger and Company, Limited, with America in 1940 very much increased as compared with its business in previous years?

(c) Are Government aware that the appointment to the post of Government Mica Inspector of an individual with identity of name with a firm of mica exporters has influenced foreign buyers to patronise that firm to the detriment of other firms?

(d) Are Government aware that Messrs. John Podger and Company, Limited, are entirely owned by the mica mining and dealing firm of Messrs. Chaturam Horilram, Limited, who have themselves been the recipients of large orders from the Geological Survey of India? Is it a fact that Mr. John Podger is acting as their adviser?

(e) Is it the policy of Government to employ in the purchase of mica, an individual who is either directly or indirectly connected with two of the principal suppliers?

The Honourable Sir Muhammad Zafrullah Khan: (a) No, buyers are not obliged to give orders to any particular firm.

(b) Government have no information.

(c) Government have no reason to believe that such a consideration would influence any foreign buyer.

(d) The answer to the first part is that Government have no information and to the second part is no.

(e) No.

MICA PURCHASE.

162. Pandit Nilakantha Das: (a) Will the Honourable the Law Member please state the methods employed by Government for the purchase of mica by the Geological Survey of India, and state, if any, and if so, how much, was purchased by private treaty?

(b) Is it a fact that the export value of mica through the Calcutta Custom House was approximately one crore and fifty lacs of rupees for

1940? Have Government made any provision for the representation of the industry in the matter of mica purchase?

The Honourable Sir Muhammad Zafrullah Khan: (a) By limited tender. No mica was purchased by private treaty.

(b) The answer to the first part is in the affirmative and to the second part in the negative. I would add that all known mica dealers are invited to tender.

MOTIONS FOR ADJOURNMENT.

INTERFERENCE BY THE DELHI POLICE IN KHAKSAR ACTIVITIES.

Mr. President (The Honourable Sir Abdur Rahim): There was a motion of adjournment in the name of Maulana Zafar Ali Khan which came up yesterday, but the Government Member did not possess information as to the facts and I allowed the motion to stand over till today.

The Honourable Sir Reginald Maxwell (Home Member): Sir, I have now obtained information of the incident referred to from which it is quite clear and definite that there was no interference by the police of any kind with any lawful procession conducted by the Khaksars. The organisers of the Khaksar camp in Delhi obtained the advice of the police authorities before their celebrations as to whether they could march in single file and whether they would be allowed to carry *belchas*. The correct advice was given to them by the police officer concerned that marching in single file would be a contravention of the orders issued regarding the performance of military drilling and evolutions under the Defence Rules and that carrying *belchas* would be an infringement of the order still in force in Delhi under section 144 of the Criminal Procedure Code. On hearing this they agreed to follow the advice given to them and to avoid any contravention of the law. There was no dispute of any kind between the local police and the Khaksars.

Dr. Sir Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): Is the Honourable Member aware that the U. P. Government allowed them to march one behind another so long as they were not marking time, *i.e.*, their paces were not regular?

The Honourable Sir Reginald Maxwell: Whatever arrangement the U. P. Government may make with their local people has no application in Delhi.

Maulana Zafar Ali Khan (East Central Punjab: Muhammadan): Sir, I may explain that an understanding was arrived at between the Khaksars and the Government of India through the Chief Secretary of the U. P. Government that these restrictions which had been imposed upon them were modified to this extent that they will be allowed in future to march in single file one behind another, not of course in military formation, and they will be allowed to carry *belchas* also. This is in writing and this agreement was signed by Mir Ahmad Shah, Barrister, on the one hand and the Secretary to the Government on the other

The Honourable Sir Reginald Maxwell: Secretary to what Government?

Maulana Zafar Ali Khan: Secretary to the U. P. Government, Mr. Mudie. And then in reply to a question the other day the Honourable the Home Member had already declared that as the Khaksars had agreed to follow the instructions of the Government the ban was removed from them in Delhi as elsewhere.

The Honourable Sir Reginald Maxwell: They agreed to abide by the law, namely, the notification under the Defence of India Rules.

Maulana Zafar Ali Khan: Yes; they are abiding by the law; they have not budged an inch.

Mr. President (The Honourable Sir Abdur Rahim): There has been no dispute. That is what the Honourable the Home Member has clearly stated. On the facts stated by the Honourable the Home Member, the case for a motion for adjournment falls. The motion is disallowed.

TREATMENT OF NON-VIOLENT POLITICAL PRISONERS AND UNDERTRIALS.

Mr. President (The Honourable Sir Abdur Rahim): Then, there is a notice given by Mr. Kazmi, who wishes to ask for leave to move the adjournment of the business of the House to discuss a definite matter of urgent public importance, *viz.*, the failure of the Government of India in not giving proper instructions to the Provincial Governments regarding the treatment of non-violent political prisoners and undertrials for such offences under the Defence of India Rules and the consequent maltreatment by the Provincial Governments as described by Dr. Pattabhi and reported in the *Hindustan Times* dated 21st March, page 3.

Maulana Zafar Ali Khan: With due respect to the Chair, I may remind my Honourable friend, the Home Member

Mr. President (The Honourable Sir Abdur Rahim): I have called on Mr. Kazmi.

Maulana Zafar Ali Khan: The matter is a very important one

Mr. President (The Honourable Sir Abdur Rahim): The matter may be very important, but the business of the House is also very important.

I should like to know from Mr. Kazmi under which rule instructions are given to Local Governments as regards the treatment of prisoners.

Qazi Muhammad Ahmad Kazmi (Meerut Division: Muhammadan Rural): An undertaking was given by the Government at the passing of the Defence of India Act.

Mr. President (The Honourable Sir Abdur Rahim): Is it the allegation of the Honourable Member that the instructions given by the Central Government have been disregarded?

Qazi Muhammad Ahmad Kazmi: My submission is that instructions have not been given at all, not that they have been disregarded; and the Government were bound, on account of the undertaking they have given, to give such instructions.

Mr. President (The Honourable Sir Abdur Rahim) : Under rule 108 ?

Qazi Muhammad Ahmad Kazmi : The Honourable the Home Member has again and again said that they have given certain instructions to Local Governments for the proper enforcement of the Defence of India Rules and my submission is that along with those instructions, as given according to the undertaking, they ought to have instructed the Provincial Governments that proper treatment should be given to people who are found guilty of non-violent offences under the Defence of India Act.

Mr. President (The Honourable Sir Abdur Rahim) : Perhaps the Honourable the Home Member will say what, if any, instructions have been given.

The Honourable Sir Reginald Maxwell : No, Sir; there is no duty on the Government of India to give instructions in regard to the treatment of prisoners. That is not a matter which arises under the Defence Rules. The instructions which the Central Government may issue to Provincial Governments relate to the general enforcement of the rules; but the treatment of prisoners after the rules have been put into force against them is a matter entirely of provincial administration. Therefore, the Government of India neither issue such instructions to Provincial Governments on a provincial matter, nor have they any duty to do so. Nor is it shown, I may add, that this duty or failure to perform the duty has arisen at any particular point of time, and, therefore, it could not in any case be said to be a matter of recent occurrence.

Mr. President (The Honourable Sir Abdur Rahim) : Can the Honourable Member cite any rules which lay such an obligation on the Central Government?

Qazi Muhammad Ahmad Kazmi : I can only say that an undertaking was given by the Government of India as to what instructions they would like to give to Provincial Governments.

Mr. President (The Honourable Sir Abdur Rahim) : Not as regards the treatment of prisoners. That seems to be denied.

Qazi Muhammad Ahmad Kazmi : Where is the line to be drawn? Whenever anything is brought before them, they say they have given instructions, but this is not included in the instructions. My submission is that after giving an undertaking to this House that the rules will be properly enforced, it was the duty of the Government of India to give all these instructions, and if they have failed to do so, they are guilty of

Mr. President (The Honourable Sir Abdur Rahim) : Will the Honourable Member read the undertaking given to the House?

Qazi Muhammad Ahmad Kazmi : It has been said many times before.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable the Home Member denies that he ever gave any such undertaking.

Qazi Muhammad Ahmad Kazmi: The undertaking was given by the Leader of the House.

The Honourable Sir Muhammad Zafrullah Khan (Leader of the House) : I have given no undertaking whatsoever with regard to the treatment of any prisoners under any circumstances.

Qazi Muhammad Ahmad Kazmi: The undertaking was not in respect of prisoners, but was in respect of the enforcement of the Defence of India Act; and these things arise from the enforcement of the Act and the rules made thereunder by the Government of India; and the undertaking covers everything, every aspect of it. You cannot say that it covers only this part, and not that part of the Act.

Mr. President (The Honourable Sir Abdur Rahim) : Will the Honourable Member read the undertaking?

Qazi Muhammad Ahmad Kazmi: Just at present I can only orally submit; but my Honourable friend knows it.

Mr. President (The Honourable Sir Abdur Rahim) : It is denied by the Government Member that any undertaking was given to issue instructions to Local Governments as to the manner in which undertrial and other prisoners under the Defence of India Act and the rules should be treated. The motion is out of order and is disallowed.

THE INDIAN MERCHANT SHIPPING (AMENDMENT) BILL.

Khan Bahadur Shaikh Fazl-i-Haq Piracha (North-West Punjab : Muhammadan) : Sir, I beg to move :

"That the Bill further to amend the Indian Merchant Shipping Act, 1923, as reported by the Select Committee, be taken into consideration."

Before I speak on the motion itself, I should like to thank the Honourable the Leader of the House, and my friend, Mr. Tyson, the Education Secretary, who represented the Government on the Select Committee for their favourable consideration of the public opinion and support to the Bill. Although the Bill before the House is a very short one, comprising only two clauses, it will go a long way to provide a little more space which will undoubtedly add to the convenience of the much-troubled pilgrims to the Hedjaz, who hitherto were packed up like herds in pilgrimships.

By bringing this Bill on the Statute-book and, thereafter, bringing it into force, when circumstances permit, the Hajees will be relieved of at least one of the series of troubles, during their voyage to the holy land.

Sir, the Select Committee, I am glad to say, was almost unanimously in favour of the Bill and it took us only a few minutes to sign the report, now before the House for consideration. The only amendment proposed by the Committee is an addition of the commencement clause, as it was considered that it may not be convenient under the present conditions of war to enforce the Act immediately. In fact this was done in accordance with the undertaking given to the Government at the time of the motion for reference of the Bill to the Select Committee.

[Khan Bahadur Shaikh Fazl-i-Haq Piracha.]

Sir, in the report it will be observed that my Honourable friend, Mr. Boyle, has appended a Note of Dissent. But I should not call it to be so, as he has expressed complete sympathy with the universal desire of the Mussalmans for improved amenities offered to passengers making the Haj pilgrimage. I am very thankful to him for that. The only thing which he has pointed out in his note is the consideration of the desire, expressed in many of the opinions for avoiding an increase in fares. I will clear this point shortly.

On a careful examination of the opinions supplied to all of us in two papers, it will be seen that 90 per cent. of them are completely in favour of the Bill, and only a few of them, and not a great majority, as observed by Mr. Boyle in his note, have only expressed their apprehension of increase in fares and nowhere do they suggest, to drop the Bill in case the fares were increased. So, in a vast majority of the opinions, which I may call unanimous, an earnest desire has been expressed in favour of the Bill and no reference to fares has been made at all, which fact certainly goes in favour of the Bill being passed without any such consideration. There is still a responsible class of persons who have discussed the fare question, and have expressed their opinion that even if there is a slight increase in the fare, the Bill should be passed into an Act very soon. I would like to read a few of such opinions for the information of this House and specially for the information of my Honourable friend, Mr. Boyle, in reply to his note "that nowhere in the opinions is the view expressed that Pilgrims will be willing to pay the extra cost for the extra comforts". Sir, at page 2 of Paper No. 1, my friend, Khan Bahadur Wilayatullah, Retired Deputy Commissioner, Nagpur, an *ex*-Member of this House, writes thus :

"The shipping companies make huge profits more particularly at such times and they ought not to grudge a little more space to accommodate the pilgrims. It is hoped that they will adjust themselves to it without disturbing the present rates. If they do not do so, fear of slight increase in the fares should not deter us. The pilgrims will pay a little more. The increase must be reasonable and should not be heavy and prohibitive."

Then at page 10 of the same book, the Sind Government remarks thus :

"Moreover the rates of fares are not fixed. They vary from time to time and are fixed on every occasion by each shipping company separately keeping in view (i) the number of Pilgrims intending to travel (ii) the number of Pilgrim Ships of the rival company available at that time. Consequently the question of space whether 16 square feet or 18 square feet is not likely to affect the rates of fares. However, if any increase in fares on account of the small additional area allotted to each pilgrim becomes absolutely necessary, there should be no objection to it."

Then in Paper No. II, at page 15, the Madras Government writes thus :

"The Government of Madras are in favour of the proposed amendment for the increase of space as the inconvenience and hardship caused to the pilgrims on account of the inadequacy of the space already afforded greatly outweighs any hardships that may be caused by an increase in the rates."

Then on the same page, the Collector of Kurnool writes :

"The steamer fares might increase on account of the provision of more space for each pilgrim, but this does not matter at all."

On page 16, the Southern India Chamber of Commerce writes :

"The question of increase of fares is not necessarily intertwined with the proposal if increase of space and my Committee feel that it might be left to the state of competition between the steamship lines that may prevail from time to time."

Then again the Collector of Ramnad writes :

"If the competition between the different steamship lines does not keep the fares down at a reasonable level, the pilgrims should not grudge to pay a little more for the extra space."

But in spite of all what I have quoted, I beg to submit that the objection in regard to the possibility of an increase in the fare would not hold, because the Government, although it has complete control over the pilgrim traffic, has no statutory power, to fix the fares. This is a question of demand and supply and merely depends on the circumstances. When there are more than one company in the field to carry Haj traffic, the fares, as we have experienced, must go down. The same company that used to charge Rs. 175 from deck passengers on account of the competition with the Scindia Steam Navigation Company came down so low as to charge Rs. 50 or Rs. 60 even for the return journey. The same company charged about Rs. 20 per pilgrim for the same journey during the last season, in spite of the fact that the Government had undertaken to subsidize the company to make good the loss, if any. Therefore, the apprehension of increase of fare should not deter us in any way from supporting the Bill, which means nothing but a little increase in space to the pilgrims on a pilgrim ship. If the Government care to allow healthy competition without showing favour to a particular company, the fares are bound to come down, even if the space is increased as the fares now charged are much above the economic rates.

Sir, I need not take any more time of the House, as the Bill has already been debated at length last year on two occasions, on the 4th of February, at the time of motion for circulation, and then again on the 7th of November, 1940, when I had moved a motion for reference of the Bill to the Select Committee. I would commend the Bill to the House, with the request that the House may follow the good example of the Select Committee and let the Bill pass into law.

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

"That the Bill further to amend the Indian Merchant Shipping Act, 1923, as reported by the Select Committee, be taken into consideration."

Syed Ghulam Bhik Nairang (East Punjab : Muhammadan) : Sir, I rise to support the motion for the consideration of this Bill. The amendments proposed in the existing provisions of the Merchant Shipping Act are really not very drastic, the purport of one of them being to get a little more space for each pilgrim and that of the other being to get the space properly demarcated,—the difference between the space at present allotted under the law to each pilgrim and the space which it is desired to secure for them is not much. It is roughly only 2 square feet superficial, but the point relating to the space being demarcated is really very important. In the absence of such demarcation a good deal of confusion prevails. Superficial measurements of the space available for the accommodation of pilgrims on ships divided by 16 square feet may give us a wrong idea of the actual capacity of a ship to carry pilgrims, because the space available for the purpose is not exactly rectangular, and if actual demarcation takes place, there is sure to be odds and ends space which would be left practically unused, and consequently the carrying capacity of a ship will be reduced. That is the danger which those who are opposed to the idea of demarcating are trying to avoid, because in that case a steamer which

[Syed Ghulam Bhik Nairang.]

may be looked upon as capable of carrying say 1,600 pilgrims may be found, when the space is actually demarcated into so many rectangular spaces, to have a carrying capacity of only 1,400, and thus the company owning the ship may be deprived of the opportunity of taking in a larger number of pilgrims and making larger amounts of money. But I would submit that the idea underlying the alleged necessity of the demarcation of the space is to secure reasonable comfort for the pilgrims who travel on those ships. Merely to say that such and such a steamer has a carrying capacity of so many pilgrims and that we have not taken in more than that number does not really solve the difficulties which are encountered by the pilgrims in the matter of securing space for their accommodation. That, as I have tried to point out, creates confusion and what looks on the face of it perfectly reasonable turns out in practice to be most inconvenient and leads to discomfort and even to worse consequences, for instance, ill health, disease and so on. Therefore, the necessity to mark out the space meant for one man or, say, for two men distinctly is quite apparent so that more than two men or more than one man may not be accommodated in the same space. That is really a matter of great importance and real necessity and it must be borne in mind.

As to the objection which was raised in the Note of Dissent of Mr. Boyle, it has been dealt with sufficiently by my Honourable friend, Shaikh Fazl-i-Haq Piracha.

Dr. P. N. Banerjee (Calcutta Suburbs : Non-Muhammadan Urban) : He does not object.

Syed Gulam Bhik Nairang : There may be a possible objection, not that he objects. But that point has been sufficiently dealt with by the Honourable the Mover. When better accommodation will be available and if there is a corresponding rise and not a disproportionate rise in the fares, I think the pilgrim public will not mind it. But that is a matter which, of course, need not be emphasised at the present moment because, as pointed out by the Honourable the Mover with reference to the opinions which he has quoted to the House, that matter can be dealt with in the future, and perhaps on each occasion there will be such a competition between the shipping companies that there may be no rise in the steamer fares at all, so that it need not deter us from effecting the amendments in the law which it is sought to get effected by the Bill. With these few words I support the motion.

Mr. J. D. Boyle (Bombay : European) : Mr. President, I have risen early to make a brief intervention in this debate because, as the Deputy Leader of the Muslim League Party has pointed out, I am quite definitely not opposing the Bill. At the outset, I wish to draw the attention of the House to the fact that when the Bill was first moved and I asked for its circulation, it was not exactly welcomed by my Honourable friends to my right and at that stage the main argument was that the fares would not be increased. There is a speech on record which was made by Sir Abdul Halim Ghuznavi and from which a quotation has been made before in which he made a definite and solemn assertion on the floor of the House that even if the space was increased, Scindia would not increase their

rates under any circumstances. That is denied in the opinions that were received as a result of the circulation motion that I moved. Therefore, to that extent, I think, the Bill has not suffered by circulation. To my mind, it is quite clear that the shipping companies themselves cannot possibly mind whether they take fewer pilgrims at higher rates or more pilgrims at cheaper rates. To them it must be a matter of no consequence. I think the whole point is simply this and that is the point I wanted to make in my Minute of Dissent that, though it is true that two or three individuals have said that even despite the increase in rates, they would still support the Bill, the fact remains that the three Governments concerned who have ports from which pilgrim ships sail have all said the same thing, namely, they will be satisfied with the arrangements provided there is no increase in the fares. There is no use the Honourable the Mover quoting the opinion of the Madras Government because there are no pilgrim sailings from there. Therefore, you cannot get over the fact that the main objection to the Bill, when it is put into practice, will be from the pilgrim who has to pay more. If my Honourable friends are prepared to say that the potential pilgrim of the future years is going to bless them for increasing his fare for the sake of two square feet extra room, it is for them to decide. But, personally speaking, if I was a pilgrim and had to pay a considerable increase in the fare for the sake of two square feet, I should be more inclined to curse them than to bless them.

Besides, no attention has been paid by the Honourable the Mover to the question of the baggage in the Bill. This was an important complaint in all the opinions received. All of them have said the same thing. The Port Haj Committee, Karacli, referring to the baggage question, said that more than one-third of the space allotted to a pilgrim is filled by his baggage and if this question could be solved, a great deal of the inconvenience and trouble experienced by pilgrims would go. I have been led to believe that there are very good reasons why pilgrims do not want to put their baggage in the hold. I am told that it is very roughly treated. Some of their boxes contain food and they are badly handled and sometimes they lose a great deal of their luggage. If that is so, then I am sure everybody would support the Muslim appeal and see that direct action is taken by the shipping companies or the port authorities or whoever is responsible for this thing and see that it is put right. While, therefore, not opposing the Bill in any way, I wanted to bring these two points to the attention of the Honourable the Mover, namely, firstly, that he is absolutely satisfied in his own mind that he will be blessed by future pilgrims and, secondly, whether he won't concentrate in any case on seeing that pressure is brought to bear on the port authorities or whoever is responsible for the present position in regard to baggage which is by far the greatest inconvenience that is experienced by pilgrims today.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, I want to say a few words in support of this Bill. I think this Bill requires no more support after its return from the Select Committee. The Members of the Select Committee and the Government themselves seem to support it. So far as I know, most of the Members that were on the Select Committee were persons who had the personal experience of the inconvenience caused to pilgrims on these ships and the issue, therefore, before the House was whether the space that is being allotted to each pilgrim was sufficient or not. From the opinions that have been received and also from what has

[Mr. Lalchand Navalrai.]

been decided by the Select Committee it is quite plain and clear that the space that was being allowed was not sufficient and the complaint was that even for the fares that were being received, the space should have been more. Now, that question came up before the Select Committee and they have agreed to the passing of this Bill.

But then there is the question of the cost. There has been some hint given that the cost will be increased. Now, on that point, I would submit if it is a fact that there was too much of overcrowding and the shipping companies were not able to assign proper dimensions of space and the space was less, then in that case the companies should charge no more fares at all because the inconvenience has been done and the inconvenience was covered by the fares that they had given. But the question of fares should not arise at all. The question of fares arises only when the contract is being given to a particular shipping company. If it is left to be given by competition there will be no question of additional cost. In a fair competition fares will be put down and the conveniences will be given. Last year the Scindia Shipping Co., wanted to take this contract and asked for some subsidy. It was not offered to them and they did not take up the contract.

Mr. J. D. Tyson (Secretary, Department of Education, Health and Lands): The facts are completely otherwise.

Mr. Lalchand Navalrai: At any rate it was given out in several questions that we have put that this year it was given to Moghul lines on account of the war. On account of the war, they allowed more of the fares but what about the subsidy. A promise has been given to them and they will ask for that promise to be implemented and in that case the question arises, why should any subsidy be given. Why not give the contracts by competition and in that case no question of additional cost will arise. The fares may get even less.

I am told that the B. I. Co., takes passengers through the Persian Gulf to Basrah and also they take people to South Africa. On those lines my information is that they allow more space and less fares and that company is virtually the owner of this Moghul Line. Therefore, I think it will be fair not to give that threat that the fares will be increased, though I find some of the Governments, at least the Sind Government, are not in favour of any cost being raised, though the Honourable the Mover has been very generous to say that if any question arises as to any small increase in the fares, they shall have no objection but that of course should be subject to the question that the contracts are given by competition. Sir, I think I need not take any more time of the House and as the Bill has come out of the Select Committee, it should be accepted by the House.

Maulvi Muhammad Abdul Ghani (Tirhut Division: Muhammadan): There is no question of increase of fares, because the Indian Hajis have to pay more than double the average economic fare. For instance, the Return fare from Malaya to Jeddah is only Rs. 290 including food and everything, whereas this year, as pointed out by the Education Secretary, the fare charged from Indian Hajis was Rs. 195. The distance from Malaya to Jeddah is three times greater than that from India to Jeddah. If we consider the distance then the fare comes up only to Rs. 95 from Indian

Hajis whereas they had to pay Rs. 195. Besides, the question of demand and supply should not be ignored. It has been said that the carrying capacity of the ships of Turner Morrison and Co. is more than that of Scindia Co., but actually it is not so. It is a fallacy. Actually the carrying capacity is judged from the number of ships put on voyage. Turner Morrison and Co., put only three ships and the Scindia Co. also used to put three ships. The carrying capacity of both the ships is the same. Simply on account of the reservation that the Scindia Co. should get half of what was allowed to Turner Morrison & Co., they could not undertake to supply their ships as a protest against such reservation. Therefore it was due to this that Turner Morrison and Co., charged an increased fare from the Hajis this year. The usual rate was about 171 and they have to pay 195. Besides this, there is another thing. Turner Morrison and Co. has got an enormous profit on account of the high rate charged on the rice sent for the use of the Hajis. On account of the war, the rate has been increased no doubt but we should take into consideration the rates to other countries. For instance, the rate from here to Mauritius has been increased from Rs. 20 to Rs. 28—i.e., only Rs. 8 and in the case of rice from India to Jeddah it has been increased from Rs. 14 to Rs. 42, three times. They sent one lakh of bags and thus they saved about 2½ lakhs more on account of the Hajis. So, these and other similar factors do not permit any increase in the rates. Indian Hajis are already paying much more than they should have done and there are not going to be given considerably increased seat. They are only getting as much seat as was provided before. Their seat is simply marked. Nothing more. With these words I support the motion.

Mr. J. D. Tyson: Sir, the position of Government with respect to this Bill may be very briefly stated. We yield to no one in our sympathy for the pilgrims and we hope that the Bill, if passed, will be productive of all the benefits which the promoter and his supporters expect. But we cannot close our eyes to the fact that the effect of the Bill will be to reduce the carrying capacity of pilgrim ships in two ways. I express no opinion—I can express no opinion—as to the extent to which the carrying capacity will be reduced, although a figure for its own fleet has been mentioned by one of the companies, a figure of 24·8 per cent. I neither adopt that nor do the other thing: I do not know: but the carrying capacity must obviously be reduced and it may be very considerably reduced. As I said when the Bill was last before the House, we on the Government Benches have our misgivings with regard to the Bill. Our misgivings are that this reduction may involve an increase in fares. There again, we cannot say that it will involve an increase in fares but if it involves an increase in fares, our misgiving is that the Bill may be more disadvantageous to the pilgrims than the benefits conferred upon them by its clauses will be advantageous. That being so, we feel—as we had these misgivings and we still have them—we feel that we cannot support the Bill. But I recognize that in the opinion of the Members of this House who have a special care for the pilgrims the Bill is desirable and for that reason we shall adopt at this stage, as at the previous stage, an attitude of neutrality, and we shall certainly not oppose the Bill.

The Bill, as amended in Select Committee, contains a commencement clause: "It shall come into force on such date as the Central Government:

[Mr. J. D. Tyson.]

may, by notification in the official Gazette, appoint," and I should make it clear that if the Bill is passed, Government will find it difficult to give effect to the Bill until the shipping position has reached a position of normality after the war. That, Sir, is the attitude of Government and we shall stand neutral as regards the Bill.

An Honourable Member: I move:

"That the question be now put."

Mr. President (The Honourable Sir Abdur Rahim): Seth Haji Sir Abdoola Haroon.

Seth Haji Sir Abdoola Haroon (Sind: Muhammadan Rural): Sir, now that the Select Committee have already endorsed this Bill and Government also agree, it may be mentioned that there has been a general talk that if this Bill comes into force, there is the likelihood that the passage charges may be increased. I do not know when this Bill will come into force, but since the Honourable the Education Secretary just now said that this Bill will not come into force at least till after the war, and as there is a general talk, about the possibility of an increase in the passage money, I offer a few observations.

Sir, as regards the traffic of the Haj pilgrims, according to those who know and those who collect the figures I do not know how, the traffic is going on normally, but according to my experience, generally eight to ten steamers leave Bombay and Karachi for Jeddah in the whole season, say from the month of *Shaaban* to the end of *Ziqaad*, and at that time I find that out of ten steamers eight steamers go with not full complement,—sometimes they carry 200, 300 or 500, passengers and as the Haj season comes nearer, the passengers increase. Only one or two steamers go full, after the *Ramzan* or near the Haj. Therefore, when the Government notify this additional space, we consider very strongly that the fare charges should not be increased. Before the Government agree with the steamship companies that the fares charged, should be increased, I urge that the Government must take this House into their confidence,—first privately, in a committee or in the meeting of the Haj Committee, before increasing the fares. According to my view, the steamship companies will not suffer much. Instead of giving sixteen feet it is proposed to give eighteen feet, and in that way they will suffer only to the extent of one voyage or two voyages, hardly. Therefore, automatically the whole passage money should not be allowed to be increased.

Mr. Husenbhai Abdullahai Laljee: (Bombay Central Division. Muhammadan Rural) : Quite right.

Seth Haji Sir Abdoola Haroon: Before the Government notify this and if the steamship companies ask for increasing the passage money, Government must consult this House before they agree to increasing the fares

Mr. J. D. Tyson: Sir, I must explain that the Government have no power to fix the fares either in peace time or in war time under the Merchant Shipping Act; we do not fix the fares.

An Honourable Member: You have already fixed the price of a ticket according to the Merchant Shipping Act?

Several Honourable Members from Official Benches: No, no.

Seth Haji Sir Abdoola Haroon: At all events Government might use their good offices in fixing the rate. My request is that since at present the Government of India are not enforcing this Act—and the Honourable Member has already said that not until the war is over, will they enforce this Act,—but when the Government of India do come to enforce this Act, then the steamer companies might approach the Government and tell them, “before you enforce the Act, you must settle this and agree to increase our passage money, and at that time I suggest that the Government should consult this House or at least some of the Honourable Members who are interested; Government must consult them and then and then only should they increase the fare.

Mr. M. S. Aney (Berar: Non-Muhammadan): After the war, it shall be “our Government”!

The Honourable Sir Girja Shankar Bajpai (Member for Education, Health and Lands): Is the Honourable Member's suggestion this that, before the Government of India brings this Act into force, if there is any request from the shipping companies or intimation from the shipping companies that the fares are to be increased, the Government of India should take some organization—such for example as the Standing Haj Committee of the Legislature into consultation before coming to a decision? If that in his suggestion, I do not see any difficulty in acceding to that.

Seth Haji Sir Abdoola Haroon: I take it that the Honourable Member will note all the points I have mentioned and I thank him for this, and Sir, with these remarks I support the motion.

Mr. President (The Honourable Sir Abdur Rahim): The question is: “That the Bill further to amend the Indian Merchant Shipping Act, 1923, as reported by the Select Committee, be taken into consideration.”

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Khan Bahadur Shaikh Fazl-i-Haq Piracha: Sir, I beg to move:

“That the Bill, as amended by the Select Committee, be passed.”

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

“That the Bill, as amended by the Select Committee, be passed.”

The motion was adopted.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

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

“That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes, be circulated for the purpose of eliciting opinion thereon by the 15th July, 1941.”

[Qazi Muhammad Ahmad Kazmi.]

Sir, I have given my reasons for introducing this Bill in the Statement of Objects and Reasons: and the simple object is to remove one of the hardships to the litigant public through the High Court not being able to give a judgment on a finding of facts. What I want is this. By this Bill we want to give the High Court full liberty in cases where the lower appellate Court has modified or reversed the decree of the trial Court. In such a case, the High Court must be allowed to judge the validity of the judgment for itself on merits. In cases where the two judgments are concurrent, and the High Court, on hearing the case, finds that there has been a serious error on facts also, it must be given discretion to interfere when it thinks fit.

Sir, I move.

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

"That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes, be circulated for the purpose of eliciting opinion thereon by the 15th July, 1941."

The motion was adopted.

THE HINDU MARRIAGE DISABILITIES REMOVAL BILL.

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

"That the Bill to remove legal disabilities under Hindu Law in respect of marriage between Hindus be referred to a Select Committee consisting of the Honourable Sir Reginald Maxwell, Mr. N. M. Joshi, Syed Ghulam Bhik Nairang, Mr. Akhil Chandra Datta, Mr. Lakshand Navalrai, Sardar Sant Singh, Mr. P. J. Griffiths, Mr. R. A. Gopalaswami, Rao Sahib N. Sivaraj and the Mover: and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Now, Sir, according to the law of marriage amongst the Hindus there are three prohibitions. One is blood relationship, which is called *sapinda*. It means that if persons to be married are related to each other within seven degrees they shall not be married. If there is a marriage within it, it shall be invalid. My Bill is not going to affect the Hindu Law so far as blood relationship is concerned. In other words, persons who are *sapindas* cannot contract a valid marriage even under this Bill. I have kept the old restriction so far as blood relationship is concerned, in tact. I have not tried to remove that disability. I am only trying to remove the other disabilities, namely, *sagotra* and *saprarava*. What is the meaning of a *sagotra*? I will tell you the meaning of it in the words of Mr. D. F. Mulla in his "Hindu Law".

"Two persons are *sagotra*, that is, of the same *gotra* or family, if both of them are descended in the male line from the *Rishi* or sage after whose name the *gotra* is called. However distant either of them may be from the common ancestor."

It may be that these persons may be removed for even centuries together. What happens as a matter of fact so far as *sagotra* is concerned, is this. There were *rishis*, these were preceptors. If persons happened to be disciples of the same preceptors, they could not contract a marriage. Whatever may have been the reason centuries ago, it cannot hold good today because there are very few persons who follow the same old system which existed centuries ago so far as the Hindu society is concerned. Now-a-days Hindus have hardly any common preceptor, and

those who follow the modern method of sending their boys to schools and colleges cannot have the same preceptor, and so that restriction ought not to prevail. The same can be said of the *pravara*. The *pravaras* are also mentioned after *rishis*. The *gotras* are 8 and *pravaras* are 49 or so. Take, for instance, A and B of the same *gotra* who wish to marry. One may be living in the United Provinces and the other in Madras. For centuries together the families of these two persons may be living in different provinces. Now, why should that *gotra*, that means common preceptor, come in the way of contracting a marriage between them? As I have said, I am not going to touch the blood relationship which exists as a bar, as it has been laid down by the old *rishis*. What I desire now is, having regard to the circumstances that families of the same *gotra* are spread out all over India for centuries together,—nobody has seen each other's face for centuries, why should they be debarred from contracting a legal marriage? This refers to clause 2 (a) of the Bill.

Sometime ago a short report of the Bill was published in the newspapers and I have got a letter from the Bombay Presidency Social Reform Association. The President of this association is Sir Sitaram S. Patkar, B.A., LL.B., The Vice-Presidents are the Hon'ble Mr. Justice H. V. Divatia, M.A., LL.B., Rao Bahadur D. G. Padhya, M.A., J.P., Dr. Kashibai Nowrange, B.A., L.M. & S., J.P. Even among the Secretaries there is a M.A., LL.B., namely, Mr. D. G. Dalvi, M.A., LL.B., there is also Mr. Y. V. Bhandarkar, B.A., LL.B. and also Mr. P. S. Bakhle, B.A., LL.B., Editor, *Social Reform Annual*. I will only read two or three lines and will not read the rest of the letter.

"I hope you will please excuse me for taking the liberty of writing this to you, I just had the privilege of reading the Bill to remove the legal disabilities under Hindu Law in respect of marriage between Hindus that you recently introduced in the Central Assembly. My Association is interested in the question, and you will be interested to know that in 1939 we had in fact drafted a Bill to validate '*sagotra*' and '*sapravara*' marriages."

But the matter does not rest here. In the Baroda State, there is a codified Hindu Law, where there is a section which validates marriages which are between *sagotra* and *sapravaras*. Nothing has happened, no evil has come, although in the words of my Honourable friend, Mr. Bajoria, they have transgressed the Hindu Law. I have stated in my Statement of Objects and Reasons:

"Under the Hindu Law, a man cannot marry a girl of the same *gotra* or *pravara*. This rule is not necessary from the point of eugenics."

There can be no view of medical grounds against a marriage between Hindus of the same *gotra*. I can understand medical grounds for objection where marriages are contracted within 3 or 4 degrees of relationship or even up to 7th and that these therefore should be considered invalid. It may lead to physical degeneration. I have said this rule is not necessary from the point of view of eugenics. It is very likely that the rule of *sapinda* of the 7th degree is necessary.

I have referred to another thing in part (b) and that is that persons who belong to several sub-castes of a caste—their marriages shall be held valid. Of course, exactly under the law they cannot be held to be invalid, but the leaders of several sub-castes exercise an authority so as to declare that such marriages would be considered to be invalid. Therefore to get over these two handicaps or prohibitions which so far as the Hindus are concerned stand in the way of contracting matrimonial relationship, I have brought this Bill. There is another aspect. I may be told, as I have said

[Mr. Govind V. Deshmukh.]

in my Statement of Objects and Reasons that there is already a way for persons who belong to the same *gotra* or *pravara* or sub-caste to contract marriages under the Special Marriage Act. As I was saying, Sir, there are persons—though such marriages can be contracted under the Special Marriage Act—who have got conscientious objection to marriages under the Special Marriage Act and they at times resort to a procedure which is like this. They give the girl who belongs to the same *gotra* as the boy to somebody of a different *gotra* in adoption. But such adoptions of girls in Hindu law are invalid. So long as the dispute of inheritance does not come into the court, such marriages are all right, otherwise such marriages would be challenged on the ground of invalidity of the adoption and, therefore, of the marriage also. The position of the issues of persons who resort to such devices would be really awkward. What I have done by bringing this Bill is to help persons of the same *gotra* anxious to marry under the sacramental form of marriage. As a matter of fact, I am helping my Honourable friend, Babu Baijnath Bajoria, to preserve the sacramental form of marriage by removing the bar which ought not to exist in modern times. Of course, I am conscious that there is an amendment of the Government to my motion of Select Committee of this Bill. I may say at once that I am prepared to accept the amendment for circulating the Bill for eliciting public opinion. At the same time I may be permitted to make one suggestion. While I have no objection for circulating the Bill for public opinion, I suggest that the scope of the Hindu Law reforms committee which is sitting here to go into the two Bills which have been referred to them should be enlarged so as to include this Bill also. I had a casual talk with some Members of the Committee and I gathered that they had no objection to include this Bill also within the scope of their enquiry.

An Honourable Member: Did you canvass their support.

Mr. Govind V. Deshmukh: No, I never go and canvass for support, just as Members of the Muslim League do to get documentary evidence. This document, the letter which I read just now came to me of its own accord. I, therefore, request the Honourable Member to consider whether he could not ask the Rau Committee to deal with this Bill also. They would willingly do this job. As a matter of fact they have already framed the questionnaire regarding those Bills which deal with maintenance and inheritance. I request this Bill also may be referred to that Committee.

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

“That the Bill to remove legal disabilities under Hindu Law in respect of marriage between Hindus, be referred to a Select Committee consisting of the Honourable Sir Reginald Maxwell, Mr. N. M. Joshi, Syed Ghulam Bhik Nairang, Mr. Akhil Chandra Datta, Mr. Lalchand Navalrai, Sardar Sant Singh, Mr. P. J. Griffiths, Mr. R. A. Gopaldaswami, Rao Sahib N. Sivaraj and the Mover, and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be five.”

The Honourable Sir Reginald Maxwell (Home Member): Sir, I move:

“That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st August, 1941.”

Sir, I think this motion will commend itself to the House as a proper way of dealing with a measure of this kind which is not only possibly controversial but in any case affects the social and religious customs of the Hindus. Apart from this fact, this is an item in the concurrent legislative list and the House has already accepted the principle that when legislating in the concurrent field, public opinion should be called for before the House deals with the Bill finally.

As regards the request made by the Honourable the Mover that this Bill be referred to Rau Committee which is dealing with measures of social legislation, it was not intended that they should be asked to deal with this particular measure because it is not analogous to any of the groups of law with which they have been asked to deal. Possibly the opinions received on the Bill might disclose some reason for consulting them and in any case I am not averse to consulting Mr. Justice Rau as to whether his Committee could usefully deal with this. But in deciding what matters to refer to him, we selected those Bills which made a definite modification of the statutory Hindu law on which we therefore required more expert guidance. This is a matter which, in a way, goes entirely outside the statutory Hindu law and introduces a new principle altogether and, therefore, I am not sure whether they can profitably deal with this, at any rate, along with the group of measures which they are now considering. I will, however, consult the Committee as to whether they can usefully help us in it.

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

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st August, 1941."

Babu Baijnath Bajoria (Marwari Association: Indian Commerce): Sir, I rise to oppose the two motions, the one of my Honourable friend, Mr. Govind V. Deshmukh, to refer the Bill to the Select Committee and also the motion for circulation moved by the Honourable the Home Member. This Bill introduces a principle of marriage which is quite repugnant to Hindus. Marriage between the parties of the same *gotra* is unheard of and inconceivable according to the Hindu shastras. I am surprised that my Honourable friend, Mr. Govind V. Deshmukh, says that he has not touched the blood relationship in marriages.

Sir, *sagotra* means, as Mr. Deshmukh himself says, descendants in the same male line, and if both the parties to the marriage are descended from the same male line there is blood relation and so there can be no marriage whatsoever according to the Hindu Shastras. Those persons who do not believe in the Shastras and do not want to marry according to their dictates have got a remedy in the Civil Marriage Act. But I have got no sympathy with those who will flout the authority of the Shastras and still want to say that they are following the Shastras and want to have a sacramental marriage. They cannot have it both ways. If they have to perform the marriage as a sacrament they have got to follow strictly the rules laid down by the Shastras. If they say they have no faith in the Shastras and want to marry according to their own will or according to what they are pleased to call the present reformed and enlightened views, they are quite at liberty to marry according to the present enlightened law in the shape of the Civil Marriage Act. Sir, I am surprised that the Honourable the Home Member did not oppose this Bill altogether but has

[Babu Baijnath Bajoria.]

only moved for circulation of this obnoxious measure. I may remind the Honourable the Home Member of what he announced in this House some time ago that this House is not the place for carrying out social reforms.

The Honourable Sir Reginald Maxwell: May I know when I said that?

Babu Baijnath Bajoria: I think on the occasion when Dr. Deshmukh brought in a Bill for Dissolution of Hindu marriage, the Honourable the Home Member opposed that motion and said that this is not the place for bringing up social reform measures.

As regards the opinions which will be collected on this Bill, I say that generally Bills are referred for opinion to English educated persons and associations, that is, lawyers, etc. It is an irony of fate that Bills of this kind on which authentic interpretations of the Shastras are required are not referred to learned pundits or associations of pundits who know more about the Shastras than any Bar associations or lawyers may ever claim to know. I will not be long today and probably it will not be necessary for me to speak at length on this Bill because it is a Bill which is repugnant to Hindu ideas. But I will say one word about the committee which has been appointed to deal with Hindu Law in relation to women's rights and probably marriage laws among Hindus. On this committee orthodox Hindu opinion is not at all represented. After all, the majority of the population in this country is still orthodox in spite of the boosting of social reformers and so orthodox opinion should be represented on this committee which deals with their laws. Sir, I oppose the Bill and I should like the House to throw it out at this stage and not to send it to circulation which will only mean loss of time and loss of public money.

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

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

Mr. M. S. Aney (Berar : Non-Muhammadan) : Sir, the motion before the House as moved by my friend, Mr. Deshmukh, was for referring the Bill to Select Committee; and to that the Honourable the Home Member has moved an amendment asking the House to circulate it for public opinion. I am here to support the motion for circulation. I have a few remarks to make with regard to the Bill itself.

I have no doubt my friend, Mr. Deshmukh, is actuated with a very laudable desire of bringing about certain necessary reforms in our marriage system because people are finding great difficulty in contracting marriages strictly under conditions laid down under the old shastras. That is by itself a laudable object and to that extent everybody will give him the credit. But the question that is raised by his Bill is not such a simple one that this House should proceed straightaway to appoint a committee and discuss the matter between themselves for a few days and come here with a report and pass it. As a matter of fact, if the principle of this Bill is to be accepted there is nothing to be done so far as the Select Committee is concerned. Either it should be accepted or thrown out. That

is the position. But we have to see whether, if we do that, there will be a fair support to this kind of reform which my friend wants to bring about in the existing marriage system of the Hindus. Among what are considered as the essential ingredients of the Hindu marriage, there are three conditions laid down by the Smritis from the days of Manu to the present day; notwithstanding various other changes in the marriage forms these three conditions have been regarded as of paramount importance, namely, the boy and the girl must not belong to the same *gotra*, they must not have the same *pravara* and they must not be of the same *sapinda*. These are the conditions laid down there—that they must not have the same *gotra* and the same *pravara*. One of my friends asked the question of my friend, Mr. Deshmukh, what is this *pravara*? I do not know if the time is enough to explain this thing to my friend—it will take a good deal of time, because there are few among the Brahmins themselves who are in a position to explain clearly what difference this *pravara* makes and how it is to be distinguished from the *gotra*; but one of the tests given is this, and that is laid down in one of the text books: it defines *pravara* as:

“*Gotra pravartakasya rishēh Vyabartakoyam rishiganuh.*”

Group of Rishis distinguishing the *Gotra*—*Rishi*, i.e., the proposition of the clan from another.

Those names of *rishis* which enable a man to distinguish definitely one *Gotra* from another. Each *gotra* has got three or four *rishis* or five *rishis* as *pravaras*: if these *pravara rishis* are the same, then the *gotra* may be considered to be the same; but if the names of the *pravaras* themselves are different then the *gotras* although they may have the same name must be understood as different. The *pravaras* have been mentioned with a view to enable a man to see whether what appears to be an identical *gotra* is really identical or is a separate or a distinct *gotra* or not; and so an artificial system has been created in order to distinguish a seeming identity between *gotras*; and the reason was that the importance of ascertaining the *gotra* was extremely essential for the sake of permitting one girl to be married to another man. The greatest emphasis was placed upon this point, that no woman belonging to one *gotra* can have a bridegroom married to her belonging to the same *gotra*. Sometimes the name of the *gotra* appears to be the same. It may be that the girl comes from the Gautam *gotra*, and it may be that the boy also comes from the Gautam *gotra*; but whether the Gautam *gotra* from which the girl comes is the same Gautam from whom the boy claims descent or not is to be known from the fact whether the *pravaras* of the Gautam of the girl are the same as the *pravaras* of the other Gautam. If there is a difference between them, then we can take it that these two Gautams are two different entities and not the same and the marriage between them is legal. That was one of the main reasons why an artificial list of *rishis* has been appended to each *gotra*. It is a very complicated matter into which this House need not go; and I really think it is certainly not one on which the Select Committee can come to any off-hand opinion.

The real point is this: a certain system has come into existence and people have been following that system for not only hundreds of years but for thousands of years. It is true that on account of certain changes in the present structure of society, which this new order has brought about,

[Mr. M. S. Aney.]

some of these conditions are creating difficulties in certain cases in getting suitable bridegrooms for brides or suitable brides for bridegrooms; and therefore some people are feeling the necessity to do away with these conditions if possible. It is true that facilities are already provided for on account of the passing of the Special Marriage Act and so on; but even in that case if a man is a party to a special marriage he has to dispose with all the Vedic and ceremonial rites which have to be performed in accordance with religion. Therefore there is an earnest desire amongst people that they should be able to observe all these ceremonial and religious rites at the same time without observing these rigid conditions. A system of compromise is gradually cropping up. My friend, Mr. Deshmukh, belongs to that school which wants to stand for those who want to compromise religious practices to satisfy the exigencies of society. My friend, Mr. Bajoria, stands for the rigid school—no compromise with anything at all—the shastras are there: either follow them or say “I owe no allegiance to them”. There are these two schools. I do not know ultimately what school is going to survive; but the struggle is going on; and knowing that there is a real struggle like that, it would be unwise for this House to adopt a motion like a reference to select committee, without first ascertaining as to what is the amount of support which legislation like this can receive from that big class which is really following the orthodox practice. I also agree that on Bills of this nature a special attempt should be made by the Government to ascertain the opinions of those who really believe in these shastras. It is perfectly true that the so-called educated class which is in fact chafing against the old rules and restraints placed by the shastras ought not to be the only class which is consulted by this House, and the big volume of opinion to which this is circulated ultimately shows nothing more than a reflection of what we have been thinking ourselves. If we really want to know what the people think, then you have to go beyond that circle and ascertain the opinion of all people. There are Mutts and there are Achariars, and all those people should be consulted. We only know the names of a few professors, doctors or lawyers, but they form an insignificant fraction of the large class of people outside who know the Shastras, who believe in and follow the Shastras, and, therefore, it is absolutely necessary for us to know their views. My friend wants to kill two birds with one stone. He not merely wants to bring about a little reform by removing the difficulties of *Pravaras* and *Sagotra*, but he wants to bring about reforms in order to introduce inter-marriages in sub-castes also. The first portion of the Bill affects what may be called the higher classes who have got something to do with the *Gotra* and *Pravara*, but there is another large class of Hindus who have nothing to do with *Pravara* and *Gotra*. Those who do not belong to the twice born classes have nothing to do with *gotra* and *pravara*, while the second thing will affect them most, because each caste has within its fold several sub-castes. There is no question of religion. If any reform like that is to be introduced, in what spirit it will be received by them, it will be difficult to say. We have, therefore, to ascertain their opinion. But simply because they are not represented in this House to speak for them we cannot say that they need not be consulted or that their opinions need not be ascertained. In fact, if we want to keep up the show of democracy and if we want to proceed on democratic lines, then we should not hesitate to approach all classes of people and ascertain their opinions,

sift them properly and then come to certain conclusions. For these reasons, I think the Honourable the Home Member's motion for circulation is one which will commend itself to the whole House.

Seth Sundarlal Daga (Nominated Non-Official) : Mr. Deputy President, I rise to oppose this Bill introduced by my Honourable friend, Mr. Deshmukh. It is repugnant to the personal law of the Hindus—Shastric as well as Customary. The wisdom of the prohibition of *Sagotra* marriage is upheld by modern investigations even in Botany and the science of pedigree in animals. Sir, investigations in both the fields have established beyond doubt that fertilization between male and female flowers from the same plant and the crossing of animals which are issues of the same parents, have unsatisfactory results. Why then try to have similar difficulties introduced by *Sagotra* marriage? Sir, I, therefore, with these few words oppose this Bill.

Maulana Zafar Ali Khan (East Central Punjab : Muhammadan) : Sir, I rise to oppose this Bill. With a slight modification I am for its circulation, but on principle I am against it. There is a tendency in this modern age to flout religion and dispense with the necessity of religion. This is a very dangerous tendency, and the sooner we the peoples of India join together in opposing this tendency the better for all of us and for our moral development. Sir, what is the ultimate sanction of law? The ultimate sanction of law is public opinion. Now, in India the overwhelming majority of the Hindus follow the path of Sanatan Dharma, but a band of reformers, honest fellows no doubt

Mr. Govind V Deshmukh: Thank you.

Maulana Zafar Ali Khan: are bent on opposing the Sanatan Dharma, but I think they will never succeed in their attempt. Sir, the Sanatan Dharmā has been in existence in this country for the past six thousand years. During all this time the Shastras have been in existence, the Vedas have been in existence; and, in spite of so many revolutions and changes that have come about, the Shastras have remained the same, the Vedas have remained the same, and my friend, Mr. Bajoria, also remains. Millions and millions of people believe in marriage and that as a sacramental affair. Marriages are made in heaven, as the Christian saying goes, but these amiable gentlemen who want to bring about reform in Hindu religion tell us that the present social order as guided by religion should be changed. If they want a change, then why not, as has been pointed out by Mr. Bajoria, be satisfied with the civil marriage law. Let those who do not believe in the Vedas, or in the Shastras, let those who do not believe in orthodox Hinduism, go to a court of law and declare there : "I do not believe in religion at all, I love this woman, and she shall be mine"

Mr. M. S. Aney: The law is now wide enough.

Maulana Zafar Ali Khan: Not wide enough to satisfy men like my friend, Mr. Deshmukh.

Sir, I am a believer in religion myself, and as respector of the religious sentiments of others,—because you see I believe in Pakistan, and in

[Maulana Zafer Ali Khan.]

Pakistan we shall have to protect the rights, and prerogatives and even the prejudices of Hindus,—we will certainly do it. We cannot get away from the fact that there are thirty crores of Hindus in India, and, therefore, we must respect their sentiments. We must have belief in our faith even against reason. Sometimes reason leads us astray, and it is faith that directs us on to the right path. So I oppose the Bill with the modification that it be circulated for eliciting public opinion.

Mr. Govind V. Deshmukh: Sir, I was thinking that I would get some support at least from my friend, Mr. Bajoria, for my Bill. He may have opposed Dr. Deshmukh's Bill, and there were reasons for it, because it involved a question of money being taken from one person's pocket and put into another's. But here I am not taking money to put into anybody's pocket. This was a simple matter, and I thought my friend, Mr. Bajoria, would certainly support me, but I find he is opposing me. It has been suggested that I am flouting religion. I am certainly not doing anything of the kind. Religion comes in when the relations of man with God are concerned, otherwise it is merely a customary law. Nobody can say that any community's law is immutable for all time. According to the circumstances and conditions that crop up from time to time, if a society does not adapt itself to those circumstances and conditions, it is liable to get extinct. Now, the reason for my bringing forward this Bill is this. I don't wish to read all the books now, but in Banerjee's Hindu law of Marriage or Sirkar's Hindu Law it is stated that these circumstances or restrictions have gone to this extent that amongst the *Kulins* in Bengal it has led to incestuous marriages. You will find it is the same thing in some other communities also, because they find great difficulty to contract marriages according to the rules. There are educated men but they find it very difficult to get suitable girls suited to their standard of education, and *vice versa*. When a society is confronted with a position like that, it is necessary that there should be some relaxation of rules. First of all, what is a *sagotra*? I have already given the meaning of a *sagotra*, but different commentators differ. Of course, I have given what according to one jurist the meaning of it is. If one were to refer to Sarkar Sastri's "Hindu Law", one would find that he gives a different meaning. He says:

"Gotra is derived from 'go' a cow and 'tra' to protect and means that which protects the cow, such as a pasturage."

After some further discussion, he says:

"Assuming that a single family established a new village, and bearing in mind that pasturage, and a reservoir of water indispensable in a tropical country, are not divisible according to Hindu Law, we may take the words *sagotra* and *samanodaka* to mean all members of the family holding in common the pasturage and the reservoirs of water used for domestic or agricultural purposes."

So, I submit that the interpretation is such that it gives a good deal of latitude for coming to some sort of understanding in these changed circumstances of the Hindu Society, and the interpretation of it is not so rigid as to preclude any interference with it. This rule about prohibition in the case of *sagotra* is only recommendatory and not obligatory. You will find at page 80 Sarkar Sastri in his book on Hindu Law says:

"*Aspinda cha ya matu-rasgotra cha ya pitu*

Sa pradyasta dwijatinam dakarmani maitihuné."

Which means—'She who is non-sagotra also (non-sagotra) of the mother, and non-sagotra also (non-sapinda) of the father, is commended for the nuptial rite and holy union among the twice-born classes.'

According to Sarkar Sastri it is only 'commended', it is not an obligatory rule. Other lawyers have also stated that these are moral precepts. It is a law of Honour that persons may comply with. If it had rested there that these were moral precepts or it would not have invalidated marriages according to the present rulings laid down by the courts, then it would have been a quite different thing. But it is not merely that those are moral precepts, but they render marriages contracted invalid. It is, therefore, that I am suggesting that this reform should be introduced. Of course, as I have said, I am not pressing that this Bill should be referred to a Select Committee, I will not stick to that motion. (Interruption.)

I have already said that a good deal of public opinion should be collected, and I have not the least doubt that public opinion will be in my favour. I do not say that pandits should not be consulted. I forget at present the names of the pandits who belong to a body—this body is at Lonavala—my Leader, Mr. Aney, very likely remembers the name. They have suggested that such a measure should be introduced. It is a body consisting of learned pandits, but because they happen to differ from persons like Mr. Bajoria, it is no use condemning them by calling them reformers. You find fault with a person because he happens to have advanced views, you give a dog a bad name and hang it. He is a reformer and therefore his interpretation should not be accepted—that is the kind of argument that these people use. Examine his views on merits. My submission is that men like Mr. Bajoria, if I may say so, know very little about these laws.

Babu Bajnath Bajoria: What do you know?

Mr. Govind V. Deshmukh: When we rose for lunch, he tells me, "All this is against Vedas". I said to him, "The law of marriage is not to be found in the Vedas at all. It will be found in Manu Smriti, Yagnya Valkya Smriti." (Interruption.) So, his opposition is not an opposition based on what is in the Sastras and what is not in the Sastras. Some have an idea that what they think is in the Sastras, and because Mr. Deshmukh has come out with a Bill with which they do not agree, they say that it is not to be found in the Sastras. As I have said, I accept the amendment for circulation.

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 August, 1941."

The motion was adopted. ✓

THE DISSOLUTION OF MUSLIM MARRIAGES (AMENDMENT) BILL.

Qazi Muhammad Ahmad Kazmi (Meerut Division: Muhammadan Rural): Sir, I move for leave to introduce a Bill to amend the Dissolution of Muslim Marriages Act, 1939, for certain purposes.

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

"That leave be granted to introduce a Bill to amend the Dissolution of Muslim Marriages Act, 1939, for certain purposes."

The motion was adopted.

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

THE PROFESSIONS TAX LIMITATION BILL.

Sir F. E. James (Madras: European): Sir, I move for leave to introduce a 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 employments.

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

"That leave be granted to introduce a 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 employments."

The motion was adopted.

Sir F. E. James: Sir, I introduce the Bill.

THE INDIAN EVIDENCE (AMENDMENT) BILL.

Qazi Muhammad Ahmad Kazmi (Meerut Division: Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill further to amend the Indian Evidence Act, 1872, for certain purposes.

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

"That leave be granted to introduce a Bill further to amend the Indian Evidence Act, 1872, for certain purposes."

The motion was adopted.

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

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Dr. P. N. Banerjea (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I beg to move for leave to introduce a Bill to simplify the procedure in appeals to the Federal Court.

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

"That leave be granted to introduce a Bill to simplify the procedure in appeals to the Federal Court."

The motion was adopted.

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

The Assembly then adjourned till Eleven of the Clock on Saturday, the 22nd March, 1941.