

16th February 1942

THE LEGISLATIVE ASSEMBLY DEBATES

Official Report

Volume I, 1942

(11th February to 10th March, 1942)

FIFTEENTH SESSION OF THE FIFTH LEGISLATIVE ASSEMBLY, 1942



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CORRIGENDA

In the Legislative Assembly Debates, Budget Session, 1942,—

- (1) Volume I, No. 1, dated the 11th February, 1942, page 31, line 20, *for* "Muslims" *read* "Muslim";
- (2) Volume I, No. 15, dated the 5th March, 1942, page 708, line 20 from the bottom, *for* "Suppression" *read* "Supersession";
- (3) Volume II, No. 5, dated the 17th March, 1942,—
 - (i) page 1207, line 4, *delete* the full stop *after* the word "statement"; and
 - (ii) page 1265, lines 5 and 22, *for* "The Honourable Sir Homi Modi" *read* "The Honourable Sir Homi Mody";
- (4) Volume II, No. 7, dated the 19th March, 1942, page 1357, line 15 from the bottom, *for* "The Economist news" *read* "The Economist news-";
- (5) Volume II, No. 8, dated the 20th March, 1942, page 1422, line 13 from the bottom, *delete* the second "that" at the end of the line;

- (6) Volume II, No. 9, dated the 23rd March, 1942,—
 - (i) page 1429, line 1, *insert* the word "is" *after* the word "blood"; and
 - (ii) page 1457, line 8 from the bottom, *read* "are" *for* the word "they";
- (7) Volume II, No. 11, dated the 25th March, 1942, page 1539, line 18 from the bottom, *for* the word "who" *read* "why";
- (8) Volume II, No. 13, dated the 1st April, 1942, page 1651, line 21, *for* the word "attacks" *read* "attack";
- (9) Volume II, No. 14, dated the 2nd April, 1942,—
 - (i) page 1688, line 17, *for* "It is given to C class" *read* "I said that A and B class";
 - (ii) page 1693, line 22, *for* "Syed Murtuza Sahib Bahadur" *read* "Maulvi Syed Murtuza Sahib Bahadur"; and
 - (iii) page 1729, line 19 and page 1730, line 9 *for* "Diwan Bahadur Sir A. Ramaswami Mudaliar" *read* "The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar".

LEGISLATIVE ASSEMBLY.

President:

The Honourable Sir ABDUR RAHIM, K.C.S.I.

Deputy President:

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

Panel of Chairmen:

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Sir HENRY RICHARDSON, M.L.A.

Sir COWASJI JEHangIR, Bart., K.C.I.E., O.B.E., M.L.A.

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Assistants of the Secretary:

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Khan Bahadur S. G. HASNAIN.

Marshal:

Captain Haji Sardar NUR AHMAD KHAN, M.C., I.O.M., I.A.

Committee on Petitions:

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

SYED GHULAM BHIK NAIRANG, M.L.A.

Mr. JAMNADAS M. MEHTA, M.L.A.

Sir ABDUL HALIM GHUZNAVI M.L.A.

Mr. N. M. JOSHI, M.L.A.

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LEGISLATIVE ASSEMBLY

Monday, 16th February, 1942.

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.

NEED OF CONTACT BETWEEN THE SUPPLY DEPARTMENT AND THE PROVINCIAL DIRECTORS OF INDUSTRIES.

35. *Mr. Govind V. Deshmukh: Will the Honourable Member for Supply please state:

- (a) if his Department keeps itself in touch with the Directors of Industries of the different provinces; and
- (b) if the Director of Industries in the Central Provinces and Berar supplied, or was asked to supply, a list of the articles that were either manufactured or could be manufactured for the requirements of the army?

The Honourable Sir H. P. Mody: (a) Yes. The Provincial Directors of Industries are members of one or the other of the six Advisory Committees for War Supplies established at the headquarters of Controllers of Supplies. These Committees meet at frequent intervals to consider and advise on the monthly reports furnished to members on the activities of the Supply Organisation in the circle. The monthly reports contain, among other things, full particulars of the articles for which the Department is anxious to find capacity and thus enable the members, including Directors of Industries, to bring to notice existing or potential capacity. In addition, Controllers of Supplies and the Planning staff, both at headquarters and in the Provinces, make periodical tours in search of new capacity. Specific enquiries are also made from Directors of Industries when occasion demands. It has thus been possible to obtain substantial supplies from small manufacturers and the cottage industry with the assistance of Provincial Directors of Industries.

(b) No list of articles that are manufactured or could be manufactured in the Central Provinces and Berar for meeting Army requirements appears to have been called for from, or supplied by, the Director of Industries of that Province. But the Director of Industries is a member of the Bombay Advisory Committee for War supplies and is kept informed of our requirements from time to time.

Mr. Govind V. Deshmukh: May I know why the list of articles which could be manufactured was not called for from the Director of Industries, Central Provinces and Berar?

The Honourable Sir H. P. Mody: The Director of Industries, being a member of the Provincial Advisory Committee, is presumed to know all about the requirements of the department and is in constant touch with it.

Mr. Govind V. Deshmukh: May I take it, Sir, that he did not inform that any of the articles that are required for the army equipment could be manufactured in the Central Provinces and Berar?

The Honourable Sir H. P. Mody: No, that does not follow at all. As a matter of fact, several direct approaches have also been made, despite the fact that the Director of Industries being a member of the Provincial Advisory Committee is supposed to be in constant touch with its activities. For instance, he has recently furnished samples of yarn for parachutes, tussore, etc., to the Controller of Supplies, Bombay, which are under consideration. A little while ago the Deputy Director of Timber approached the Director with regard to capacity for production of tent poles. The Director of Foodstuffs has also been in touch with the Director.

Mr. Govind V. Deshmukh: May I interrupt you for a moment? I am asking about the articles that could be manufactured. Timber is out of question.

The Honourable Sir H. P. Mody: I think that is completely covered by my answer.

CONSUMPTION OF SHORT STAPLE COTTON FOR DEFENCE PURPOSES.

36. *Mr. Govind V. Deshmukh: Will the Honourable Member for Supply please state:

- (a) if, as a result of the decision of the Specification Committee, it has been decided to consume 400,000 bales of short staple cotton for defence purposes; and
- (b) if any quotas, out of the above quantity of cotton, have been fixed for the different provinces growing short staple cotton?

The Honourable Sir H. P. Mody: (a) The Standing Committee on Specifications (Cotton Textiles) has made certain recommendations for changes in the specifications for cotton textiles, which will result, if Defence Services demands continue at the present level, in a substantially increased consumption of short staple cotton annually for the manufacture of cotton textile materials for the Defence Services.

(b) No. Government do not supply any cotton to the mills who buy the cotton they need themselves.

Mr. Govind V. Deshmukh: Sir, I am asking whether any quotas for different provinces have been fixed, because short staple cotton is grown in many provinces.

The Honourable Sir H. P. Mody: Quotas cannot be fixed for the simple reason that it is the mills who make the purchase and not the department for the mills.

Mr. Lalchand Navalrai: Have the Provincial Governments no concern in the purchase by those millowners?

The Honourable Sir H. P. Mody: I do not know whether the Provincial Governments have anything to do with this. It is the middleman, the seller of cotton, who is in constant touch with the mills, and who should know, from time to time, what the mills require in the way of short staple cotton.

RAILWAY ACCIDENTS ON BENGAL AND ASSAM RAILWAY.

37. *Mr. Amarendra Nath Chattopadhyaya: Will the Honourable the Railway Member be pleased to state if there were two railway accidents on the Assam side of the Bengal and Assam Railway during January 1942? If so, will the Honourable Member be pleased to state if he has set up any enquiry about the causes of the accidents? If so, will he lay on the table the report he has received about the enquiries?

The Honourable Sir Andrew Olow: Government have information of two accidents in Assam; one on January 8th, on the Pandu-Tinsukia section of the Bengal and Assam Railway, in which a Mixed Train was derailed involving the death of one person and injuries to twenty others; and another on 15th January, on the Lalmonirhat-Amingaon Section, in which the engine of 3 Up Assam Mail was derailed as the result of running over a buffalo, but no passenger was killed or injured.

An inquiry is being held into the first, by the Government Inspector of Railways and a copy of his report will in due course be placed in the Library. He is not holding any inquiry into the second.

RETRENCHMENT OF STAFF ON BENGAL AND ASSAM RAILWAY.

38. *Mr. Amarendra Nath Chattopadhyaya: Will the Honourable Member for Railways be pleased to state if at this juncture, for the sake of economy, many hands have been retrenched from the staff of the Bengal and Assam Railway? If so, will the Honourable Member be pleased to state in detail how many hands, subordinates and officers, have been retrenched from different departments of each Branch of the amalgamated Railway? What is the total amount of money saved by such retrenchment, and has such retrenchment told upon the efficiency of the working of the Railway?

The Honourable Sir Andrew Olow: I am informed that no staff, gazetted or non-gazetted, have up to now been retrenched as a result of the amalgamation. Six gazetted posts were retrenched and certain other posts, gazetted and non-gazetted, were regraded, and there will be retrenchments of men when the Assam Bengal Press at Chittagong is closed. The savings secured by all these measures should amount to rather over three lakhs a year; there is no reason for expecting a loss of efficiency.

Lieut.-Colonel Sir Henry Gidney: In view of the present position in the Far East and the Eastern borders of India, will the Government state whether or not it is rather a risky proposal to reduce the staff at present?

The Honourable Sir Andrew Olow: I have just explained that except for certain people in a press situated near the borders of India, there has not been and apparently would not be any retrenchment.

Mr. Lalchand Navalrai: May I know, Sir, if these people who have been retrenched or sent away are being provided elsewhere or is any attempt made to absorb them elsewhere?

The Honourable Sir Andrew Olow: I have explained that there has been no staff, gazetted or non-gazetted, retrenched. The press employees who may be retrenched will be placed on a waiting list and endeavours will be made to secure employment for them as vacancies occur.

Lieut.-Colonel Sir Henry Gidney: As opposed to the word "retrenched", may I know if the staff has been "reduced"?

The Honourable Sir Andrew Olow: No, but certain posts have been re-graded.

CATERING CONTRACTORS ON STATE RAILWAYS.

39. *Mr. Amarendra Nath Chattopadhyaya: (a) Will the Honourable Member for Railways be pleased to state the names of the different caterers on the East Indian Railway, North Western Railway, Eastern Bengal Railway, and Great Indian Peninsula Railway, stating also the period they have been doing the catering work, the area allotted to each of them and the food-stuff they cater for passengers?

(b) Does each of the catering contractors work through sub-contractors or through their own menial servants?

(c) Are regular inspecting officers appointed by the Railways to watch the materials they use for catering of food, and cleanliness in the kitchen and if they appoint servants and cooks having infectious diseases?

(d) Are health officers appointed by Railways in their respective lines to look into the quality of food supplied and the ghee used by the contractors?

(e) Have complaints been received by the authorities concerned against the caterers in any area? If so, what are the names of the caterers against whom such complaints have been made?

(f) Is it a fact that the charges made by caterers for food-stuff supplied in the 8 down between Mogulserai and Gaya have been found to be too high for the quantity and quality of food supplied? Has there been any complaint by any passenger?

(g) Is it a fact that no intermediate or third class passengers, however cleanly or finely clothed they might be, are allowed to have their meals in the dining cars? If not, why not?

(h) Will the Honourable Member be pleased to state the names of caterers who have been catering for more than four or five years at a stretch?

(i) Will the Honourable Member be pleased to state what benefit has accrued by changing the old system of catering by local retired railway staff and substituting them by profiteering caterers?

(j) Will the Honourable Member be pleased to state what financial gain has been secured by introducing this system of catering by the State Railways? Will he lay on the table a statement regarding the free passes given

to each caterer, his menials, and if any "salami" or security deposit or rental is paid by the caterer to the Railway Company?

The Honourable Sir Andrew Olow: (a), (c), (d), (e) and (h). I would refer the Honourable Member to the replies given on 11th February, 1941, to parts (a), (b), (c) and (e) of his starred question No. 10.

(b) The sub-letting of catering contracts is prohibited.

(f) No such complaint has come to the notice of Government.

(g) Lower class passengers desiring to have meals in a restaurant car are ordinarily required to pay the extra amount necessary to make up a Second class fare for the distance travelled.

(i) I believe that in the past there were instances of Retired Railway Staff being given isolated contracts, but this certainly did not amount to a system of catering. As the Honourable Member is doubtless aware, the present policy adopted in accordance with the recommendation of the Central Advisory Council is to employ professional caterers.

(j) In view of the reply to part (i), the first portion of the question does not arise. As regards passes, the information is not available with Government and I regret I cannot undertake the compilation of such a statement. As regards fees paid by caterers, I would refer the Honourable Member to the reply given to parts (c) and (d) of Dr. Sir Ziauddin Ahmed's starred question No. 59 of the 12th November, 1940.

Lieut.-Colonel Sir Henry Gidney: Is it a fact that third class passengers are not allowed to enter the dining saloons of the railway carriages?

The Honourable Sir Andrew Olow: I would refer the Honourable Member to the reply to part (g) of the question.

Mr. Lalchand Navalrai: With regard to part (b), the Honourable Member said that no such complaint has come to the notice of the Honourable Member . . .

The Honourable Sir Andrew Olow: That reply was given in reply to part (f).

Mr. Lalchand Navalrai: Then my question is whether any inquiry has been made if the contractors are subletting their contracts or not? There is no question of the information or complaints reaching the Honourable Member. When complaints have been made in this matter, have the railway authorities made any inquiries to find out whether the system of sub-contracting is going on or not?

The Honourable Sir Andrew Olow: I have not heard of any complaints of sub-contracting recently.

Mr. Lalchand Navalrai: How could the Honourable Member expect complaints to be made? When complaints are made by these questions, no inquiry is made. Will the Honourable Member now at least make an inquiry?

The Honourable Sir Andrew Olow: There is no allegation in this question of any specific subletting of contracts. The question was whether

catering contractors work through sub-contractors, and the Honourable Member is referred to the reply to part (b) of the question.

Sir Muhammad Yamin Khan: If it is brought to the notice of the Honourable Member that a contractor is subletting his contract and is not doing his business properly, will he stop that contract after making sary action.

The Honourable Sir Andrew Olow: I do not regard it as my personal duty to interfere with individual contracts; in fact I leave that as far as possible entirely to the railway administrations. But if any person brings specific instances of a breach of the contract to the notice of the Divisional Superintendent concerned, I am sure he will take the necessary action.

Sir Muhammad Yamin Khan: Will the Honourable Member direct the railway administrations to stop the contracts of those contractors who do not carry on the work themselves but simply act as middlemen and make a profit out of the contract?

The Honourable Sir Andrew Olow: The railways are always alive to enforce the contracts into which they have entered.

Lieut.-Colonel Sir Henry Gidney: In view of the reply given by the Honourable Member that a third class passenger who desires to have meals in a restaurant car is required to pay the extra amount necessary to make a second class fare for the distance travelled, will the Honourable Member state if the same imposition is made on a second class passenger?

The Honourable Sir Andrew Olow: No, Sir; the understanding is that the accommodation provided to a second class passenger is of a character which is covered by the second class fare.

Lieut.-Colonel Sir Henry Gidney: In view of the fact that the railways are almost entirely maintained by third class passengers, and also in view of the fact that an imposition is made on third class passengers, why should not the same imposition be made on second class passengers?

The Honourable Sir Andrew Olow: The point is, the accommodation provided is treated as second class accommodation. A second class passenger pays the fare charged for the whole distance and he is not asked to pay anything more if he enters a second class compartment, but if a third class passenger enters a second class compartment, he has to pay the difference.

Lieut.-Colonel Sir Henry Gidney: A second class passenger can sit at the same table as the first class passenger in the dining saloon. Why should the second class passenger have that privilege and not the third class passenger?

Mr. President (The Honourable Sir Abdur Rahim): Sitting at the same table is a different matter. That question does not arise now.

REJECTION OF REVISION PETITIONS ON NORTH WESTERN RAILWAY.

40. *Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state whether any provision exists in the rules known as 'Discipline and Rights of Appeal Rules of Non-gazetted Railway Employees' for revision of a decision if it is complained that certain rules were violated by the original punishing or appellate authority, in dealing with the employee's case? If so, will the Honourable Member please refer to the specific rule?

(b) If the reply to part (a) above be in the negative, is it proposed to insert such a provision in the rules? If not, why not?

(c) If the reply to part (a) above be in the affirmative, how is it that all revision petitions are rejected under the General Manager, North Western Railway, Lahore's circular form No. E. ii (c), dated the 8th September, 1941, on the ground that he would consider an appeal only if such appeals lie to him under the rules?

(d) Is it proposed to take steps to explain to the North Western Railway administration the difference between an appeal and a revision petition based on rules and to issue instructions that where violation of rules or practice is alleged, a revision must be admitted and disposed of on merits? If not, why not?

The Honourable Sir Andrew Olow: (a) and (b). There is no specific rule nor is such a rule considered necessary as appellate authorities are empowered to decide if the prescribed rules have been followed and whether the proceedings should be set aside.

(c) Does not arise.

(d) No, because such action does not appear to be necessary.

Mr. Lalchand Navalrai: May I know from the Honourable Member when there is a question of rules, and according to which certain decisions have been made, if they have been made by the Divisional Officer, an appeal lies to the Divisional Superintendent? Then, after that, will the Honourable Member please say whether the revision can lie with the General Manager when there is a question of rules?

The Honourable Sir Andrew Olow: There is no right of revision. It is open to the General Manager, I believe, to revise the decision, if he so desires.

Mr. Lalchand Navalrai: Then there is no rule saying that he will not revise?

The Honourable Sir Andrew Olow: I would refer the Honourable Member to the reply I have given to parts (a) and (b).

Lieut.-Colonel Sir Henry Gidney: Will the Honourable Member inform this House whether or not it is a fact that in every other department of Government even the most humble subordinate can appeal to His Excellency the Viceroy? If so, why is that privilege denied to the railway subordinate?

The Honourable Sir Andrew Olow: I do not think there is a regular appeal in the sense of a statutory appeal to the Viceroy. There is the possibility of presenting a memorial.

Lieut.-Colonel Sir Henry Gidney: In view of the fact that we in this House have frequently asked the Government to have committees to redress these grievances and in view of the fact that Government have solidly refused to do so, will the Honourable Member inform this House whether Government are prepared to consider, as an alternative, the creation of Whitley committees as they exist in almost every department in England?

The Honourable Sir Andrew Olow: I submit that hardly arises out of this question.

Mr. Lalchand Navarai: May I know if the Honourable Member would draw the attention of the General Manager to the fact that he has discretion for receiving revision applications?

The Honourable Sir Andrew Olow: The Post Office is there and he cannot be prevented from receiving them, but it is for him to decide when he can use that discretion.

Mr. Lalchand Navarai: In view of the fact that generally he has been rejecting almost all applications which he has been receiving, will the Honourable Member at least send the answers to this question to him?

The Honourable Sir Andrew Olow: I have no objection to sending the answers to this question to him.

Lieut.-Colonel Sir Henry Gidney: Sir, in view of the fact that railway officials can appeal in such matters to the Agent and also, if they are not satisfied, to the Railway Board and also to the Federal Public Service Commission, why is this Appellate Court denied to the subordinates when there is really a case of injustice done, as has so often happened?

The Honourable Sir Andrew Olow: There is an Appellate Court provided in practically every case.

DISMISSALS FOR INSOLVENCY OR HABITUAL INDEBTEDNESS ON STATE RAILWAYS.

41. *Mr. Lalchand Navarai: (a) Will the Honourable Member for Railways be pleased to state whether a railway employee is liable to dismissal for insolvency or habitual indebtedness?

(b) How many insolvent or habitually indebted employees have been dismissed on the four State-managed Railways during the financial year 1940-41?

(c) If no such employee has been dismissed, is it because no employee has been involved in (i) insolvency, and (ii) habitual indebtedness? If there are such persons, why have the provisions of the rules not been applied to them?

(d) Do Government propose to issue instructions to the Railways to make use of the rules referred to in part (a) above? If not, why not?

The Honourable Sir Andrew Olow: (a) Yes.

(b) None on the Great Indian Peninsula Railway. I am awaiting information from other State-managed Railways and a further reply will be laid on the table of the House.

(c) The answer is in the negative, the rule is not mandatory.

(d) The question will be considered when the information from other railways is available.

Mr. Lalchand Navalrai: Does the Honourable Member know that there are instances in which these insolvents have not been dealt with?

The Honourable Sir Andrew Olow: There are instances when they have not been dismissed. I do not know of instances when they have not been dealt with at all.

Mr. Lalchand Navalrai: Has anything been done to them or are they carrying on?

The Honourable Sir Andrew Olow: As I have said, I am awaiting certain information from other State-managed Railways.

Lieut.-Colonel Sir Henry Gidney: Surely the Honourable Member should know that insolvency is not a crime to be punished always?

The Honourable Sir Andrew Olow: The rules provide that in cases of insolvency or habitual indebtedness the ordinary penalty should be dismissal.

Lieut.-Colonel Sir Henry Gidney: In view of the Honourable Member's reply, can Government deny that there are heaps of such cases in the Government of India and on the Railways and such employees are still working and working very efficiently?

The Honourable Sir Andrew Olow: There are often circumstances in which insolvency may not be due to the subordinate's fault.

Lieut.-Colonel Sir Henry Gidney: But I submit insolvency debt is not a crime.

The Honourable Sir Andrew Olow: It is not a crime in the sense that it is punishable by the Penal Code. It is ordinarily treated as an offence and it will be for the man to show that it is not something for which he is liable to be dismissed.

PUBLICATION OF NEWS ITEMS FROM B. B. C. BROADCASTS IN INDIAN NEWSPAPERS.

42. ***Mr. Lalchand Navalrai:** (a) Will the Honourable Member for Communications be pleased to state whether it is a fact that news items taken from the B.B.C. broadcasts are being published from time to time in certain newspapers in India, particularly the *Hindu* of Madras?

(b) Is it a fact that the Posts and Telegraphs Department took objection to publication of news from the B.B.C. under the same category in the *Sind Observer* of Karachi in 1939 soon after the outbreak of war?

(c) If the answers to parts (a) and (b) be in the affirmative, why is this discrimination being made?

(d) Are Government prepared to see that all newspapers are treated impartially by permitting them to use important news items from the B.B.C. broadcasts when Reuter, whose subscribers they are, fails to send them news in time owing to some difficulty or other?

The Honourable Sir Andrew Olow: (a) A few cases have been brought to the notice of the Director General, Posts and Telegraphs, and action was taken on the merits of each case. The *Hindu* of Madras was alleged to have published news obtained by wireless but no definite evidence has been obtained justifying further action.

(b) Yes. The Editor of the *Sind Observer* admitted having violated broadcast receiver license conditions in this respect and on his expression of regret and assurance not to repeat the offence, the Director General, Posts and Telegraphs, decided to drop the matter.

(c) Does not arise as no discrimination is made and all papers are treated alike.

(d) Government intend to treat all newspapers impartially but not in the way the Honourable Member suggests.

Mr. Lalchand Navalrai: When the Honourable Member knows that formerly the *Sind Observer* was getting information from Reuters and that has been stopped on account of the war, will the Honourable Member make any arrangements so that they may get information for their paper?

The Honourable Sir Andrew Olow: I am not aware that the *Sind Observer* has been denied facilities given to other papers.

Mr. Lalchand Navalrai: That is exactly the question—formerly they were getting from Reuters and that has been stopped; in that case some arrangement should be made; and it should be left to the Director General to see that they do get information from somewhere.

The Honourable Sir Andrew Olow: Why have they not subscribed? That is not my concern.

Mr. Lalchand Navalrai: On account of other work that they are at present doing : on account of the war.

The Honourable Sir Andrew Olow: If they choose to stop subscribing to some particular agency, that is not the concern of the Government.

Mr. Lalchand Navalrai: They are not giving to other papers also; it is not as if this is done only for this paper.

The Honourable Sir Andrew Olow: The question of what a newspaper agency is supplying is not a matter for my department.

Mr. Lalchand Navalrai: I am asking help from the Government in this connection because the agencies are not supplying.

The Honourable Sir Andrew GLOW: As far as I know the agencies are supplying news: I am getting news myself from news agencies.

Mr. Lalchand Navalrai: With respect to some presses they do not give; the Honourable Member may be getting everything, even confidential news; but that is a different question. May I know only this much that the Director General at least should inquire into the matter and give help to these papers that are not getting any information?

The Honourable Sir Andrew GLOW: It is not a matter for the Director General.

Mr. Lalchand Navalrai: It is for the Government to afford some facilities. Is Government going to do that?

The Honourable Sir Andrew GLOW: What facilities?

Mr. Lalchand Navalrai: The facility to get this information, broadcast information, and publish it.

The Honourable Sir Andrew GLOW: Certainly not. That information is copyright and Government will use every means in their power to prevent a violation of that copyright.

Mr. Lalchand Navalrai: It is not violation that I am asking for. I am asking whether they will give certain information which otherwise will not be published in the newspapers. Why should not Government help in that?

(No answer.)

DEPREDACTIONS BY KAZAKS.

42A. *Mr. Govind V. Deshmukh: Will the Foreign Secretary please state :

- (a) if his attention has been drawn to the statement to the press by Pandit Badri Dutt Pande, M.L.A. (Central), regarding depredations by Kazaks;
- (b) what measures Government have taken to prevent further looting by these men of persons living in parts wherever they would be going; and
- (c) whether Government intend to compensate persons whose property is lost?

Mr. O. K. Garoe: (a) Yes.

(b) The Kazaks are living in a camp at Muzaffarabad in Kashmir State under police surveillance. There has been no complaint against them for misbehaviour of any kind since they entered the State. They have been disarmed and there is no reason to suppose that they will not conduct themselves in a law abiding manner.

(c) The Resident in Kashmir has been asked to arrange with the Kashmir State authorities for the search of the Kazaks' camp with a view to restoring to its owners any stolen property which may be identifiable. The Government of India regret that they cannot undertake to pay compensation for property which may have been stolen by the Kazaks outside.

India. It will be readily understood that it would be impossible for the Government of India as a matter of principle to accept responsibility for compensating Indian traders who may suffer loss at the hands of thieves and robbers in foreign countries.

Mr. Govind V. Deshmukh: May I know how are these Kazaks in camp maintaining themselves?

Mr. O. K. Caroe: They are being paid for at the moment; they are more or less destitute.

Mr. Govind V. Deshmukh: By whom?

Mr. O. K. Caroe: By the Government of India.

Mr. Govind V. Deshmukh: May I know the rules, if there are any, which provide for the maintenance of foreigners who come into India?

Mr. O. K. Caroe: No rules.

Mr. Govind V. Deshmukh: I want to know under what rules is this payment made for maintaining the Kazaks.

Mr. O. K. Caroe: I have just said that there are no rules. It is a matter of executive expediency.

Mr. Govind V. Deshmukh: Did they obtain permission or sanction of the Finance Committee or the Finance Member?

Mr. O. K. Caroe: The matter has been discussed and decided by the Government of India.

Mr. N. M. Joshi: May I ask whether the Government of India have taken upon themselves the responsibility of maintaining foreigners who enter India and whether they will undertake the responsibility of maintaining those citizens of India who are starving and who have no means of livelihood?

Mr. O. K. Caroe: I hardly think the question arises.

Pandit Lakshmi Kanta Maitra: What is the number of these Kazaks?

Mr. O. K. Caroe: About 2,800.

Pandit Lakshmi Kanta Maitra: May I also inquire what is the intention of Government? Do they propose to pay them indefinitely or have they got some period before them for which they will make this payment?

Mr. O. K. Caroe: It is not proposed to pay them indefinitely. Payment so far is to be made to them till the end of March.

Pandit Lakshmi Kanta Maitra: May I inquire if the Government realise the danger of encouraging these marauders to come into India—or these

nomads—that if they come in larger numbers and if there is further infiltration, do Government realise the danger which India may have?

Mr. O. K. Caroe: Fully.

Pandit Lakshmi Kanta Maitra: And what is the policy of the Government with regard to the stoppage of further people coming into India?

Mr. O. K. Caroe: It seems very unlikely that they will be followed; this particular horde left its home about five years ago.

Dr. P. N. Banerjee: Is there any provision in the budget for such expenditure?

Mr. O. K. Caroe: Not that I know of.

Sardar Sant Singh: Has the attention of Government been drawn to the news published by the Associated Press of India that Government is thinking of settling them somewhere in Hazara District in the North-West Frontier Province?

Mr. O. K. Caroe: Owing to their being in extremely bad health and the dangers of epidemic and starvation and so on, owing to their long voyaging and the difficulty of administering their camp in an Indian State when the expenditure has to fall on the Government of India, it has now been decided to take them into the Hazara District in the North-West Frontier Province.

Sardar Sant Singh: What are the conditions under which they will be allowed to settle there? Will they be free men like others or will any restrictions be placed upon their movements?

Mr. O. K. Caroe: This will have to resolve itself; no conditions can be laid down in advance.

Maulvi Muhammad Abdul Ghani: May I know that these Kazaks are not dacoits but peaceful residents who have come to take shelter here?

Mr. O. K. Caroe: They are behaving in an entirely peaceful manner at present; they were disarmed when they entered India.

Pandit Lakshmi Kanta Maitra: May I know what is the daily expense on these people?

Mr. O. K. Caroe: I should require notice of that question.

Mr. Govind V. Deshmukh: May I know how long the Government has decided to maintain these people in the camp?

Mr. O. K. Caroe: I have given the answer already.

ENTRY OF KAZAKS INTO INDIA.

42B. *Mr. Govind V. Deshmukh: Will the Foreign Secretary please state how the Kazaks entered India, and whether they did so with Government's knowledge or without it?

Mr. O. K. Caroe: The Kazaks entered India by way of Demchok and Leh in the Kashmir State. On October 4th the Resident in Kashmir reported that Kazaks were 27 miles from the border at Demchok. The Government of India instructed him to consult the Kashmir Government regarding maintenance of troops on the frontier during the winter to prevent the Kazaks' incursion. Demchok being 200 miles from Leh and separated from it by two passes 17,000 feet high, orders telegraphed to Leh take 9 to 10 days to reach it.

On 20th of October the Resident, Kashmir, reported that a clash had occurred between the Kashmir troops at Demchok and the Kazaks in which 6 Kazaks were killed and one wounded. Thereafter the Kazaks leaders announced their readiness to surrender their arms provided they were given free passage into India. The Kashmir officers on the spot faced with the impossibility of maintaining troops at so distant a locality and so high an altitude during the winter made an agreement with the Kazaks under which, subject to the surrender of arms and ammunition and certain other terms, the Kazaks were given permission to enter India. Difficulties of communication made it impossible to negotiate terms after consultation with the Kashmir Government and the Government of India, and in the circumstances it is not possible to impute any blame to the local authorities who were faced with a most difficult situation and could not exclude humanitarian considerations from their minds in arriving at a decision.

Mr. Govind V. Deshmukh: May I know if there are sufficient measures taken or any rules to prevent a number of foreigners from coming to India?

Mr. O. K. Caroe: On this particular frontier this is the first time that anything of the kind has happened. The altitude is over 15,000 ft., the distances are immense, and the foreigners are naturally prevented from coming to India from that direction.

Mr. Govind V. Deshmukh: Do the Government propose to take measures at such places from which entry can be made to India to prevent foreigners from coming into the country in such large numbers?

Mr. O. K. Caroe: The best possible measures have always been taken to prevent unauthorised incursions. This was a very extraordinary occurrence; it has not taken place before, and it is unlikely it will take place in future.

Maulana Zafar Ali Khan: Why are these couple of thousand people entering India to seek an asylum being misunderstood? Why are they looked upon as if they are invaders of India, as if India stood in danger of being destroyed piecemeal by a couple of thousand people?.....

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member is making a speech.

Mr. O. K. Caroe: I think the Government of India must have sympathy with these persons, men, women and children, who have been wandering over the wastes of Asia for about five years and in very extraordinary circumstances, and I agree with the Honourable Member that a certain lack of balance is perhaps shown in referring to these people as invaders of India.

Maulvi Muhammad Abdul Ghani: May I know whether these Kazaks have been paid any compensation for the loss of lives by the Kashmir Darbar?

Mr. O. K. Caroe: No, Sir.

Mr. Govind V. Deshmukh: In view of the fact

Mr. President (The Honourable Sir Abdur Rahim): Order, Order. The matter has been sufficiently discussed.

Mr. Govind V. Deshmukh: Only one supplementary question, Sir.

Mr. President (The Honourable Sir Abdur Rahim): Order, Order.

Pandit Lakshmi Kanta Maitra: May I put one supplementary question, Sir?

Mr. President (The Honourable Sir Abdur Rahim): No. The matter has been fully investigated.

Mr. Govind V. Deshmukh: Only one more supplementary question, Sir.

Mr. President (The Honourable Sir Abdur Rahim): No more supplementary question.

UNSTARRED QUESTIONS AND ANSWERS.

JOURNEY TIME ALLOWED TO RAILWAY EMPLOYEE.

13. Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state whether it is a fact that a railway employee is allowed railway journey time on transfer at the rate of "one day" for every 250 miles?

(b) Is the intention of the limit, referred to in part (a) above, to give an employee reasonable length of journey per day? If not, what is the real intention of fixing this limit of "one day" for 250 miles for rail journey?

(c) Is this consideration of 250 miles rail journey "a day" also shown to employees travelling on duty to a place situated beyond their usual beat? If not, why not?

(d) In what respects is the case of employees travelling on transfer different from the case of those travelling on duty for the purpose of giving the employees conditions of reasonable distance of travelling per day?

(e) Does the Honourable Member propose to introduce a similar rule, as referred to in part (a) above, for persons travelling on duty also? If not, why not?

The Honourable Sir Andrew Clow: (a) Yes, ordinarily, but the competent authority may reduce the joining time of an employee on transfer.

(b) The answer to the first part is in the negative; the rule is designed to give the employee reasonable time to make the essential arrangements involved in the transfer of his home, and to ensure that public time is not wasted.

(c) No, there is no reason why employees travelling on duty should not do so as expeditiously as possible.

(d) Does not arise in view of the reply to part (b).

(e) No, it is not in the public interest to do so.

CONFIDENTIAL REPORTS FOR SUBORDINATE STAFF ON NORTH WESTERN RAILWAY.

14. Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state whether the rules published in section II, Confidential Reports, Chapter XVI, of the State Railway Establishment Code, Volume I, apply to members of subordinate staff on the North Western Railway for whom confidential reports are submitted? If not, will the Honourable Member please lay on the table of the House a copy of the orders that do apply to the subordinate staff?

(b) Is it a fact that the confidential reports for subordinate staff give an off-hand impression in one or two words only? Does the Honourable Member propose to apply the spirit of Rule 1607 of the Code referred to in part (a) above to the members of subordinate staff as well? If not, why not?

(c) Is there any provision for a previous verbal or written warning to a subordinate, pointing out to him the direction in which his work had been found unsatisfactory or the faults in character or temperament which require to be remedied, as laid down in paragraph 1609 of the Code referred to in part (a) above? If not, does the Honourable Member propose to amend the rules and orders so as to introduce similar reforms as laid down in paragraph 1609 of the State Railway Establishment Code, Volume I? If not, why not?

The Honourable Sir Andrew Clow: (a) The answer to the first part is in the negative. The North Western Railway have made rules under the powers vested in them by paragraph 1619 of the State Railway Establishment Code, Volume I, but a copy of these rules is not being laid on the table of the House as Government do not consider them to be of sufficient public importance.

(b) I have not myself inspected many of these reports but understand that they do not take the form suggested by the Honourable Member. The rules already comply with the spirit of paragraph 1607; the last part does not arise.

(c) The answer to the first part is in the affirmative, the other parts do not arise.

STATE RAILWAY STAFF GIVEN CONSOLIDATED OR PERMANENT TRAVELLING ALLOWANCE.

15. Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state whether any categories of staff on the four State-managed Railways are given consolidated or permanent travelling allowance? If so, will the Honourable Member place on the table a list of such categories for each Railway, separately?

(b) Is the permanent or consolidated travelling allowance included in pay for the purpose of determining the class of passes? If so, on which Railways? If not, why not?

(c) If the system is not uniform on the four State-managed Railways, is it proposed to amend Rule 211 of the State Railway Establishment Code, Volume I, and provide for a uniform system of consolidated or permanent travelling allowance being included in the pay for the purposes of passes? If not, why not?

The Honourable Sir Andrew Clow: (a) and (b). Information is being collected and a reply will be laid on the table in due course.

(c) It is not always advantageous to enforce uniformity in matters of this kind, but the point will be examined when information is available.

GUARDS DISCHARGED FOR PHYSICAL UNFITNESS IN LUCKNOW DIVISION, EAST INDIAN RAILWAY.

16. Qazi Muhammad Ahmad Kazmi: (a) Will the Honourable Member for Railways please state whether it is or it is not a fact that the Divisional Superintendent, East Indian Railway, Lucknow Division, in letter No. EID/4/Gd. Vol. V, dated 22nd February, 1940, to some guards on representation of their case against their discharge, said: "You have been found by a Medical Board to be physically unfit to perform your duties in an efficient manner, you have been given a month's pay in lieu of notice in terms of your agreement and it is regretted that in the circumstances your appeal cannot be entertained."?

(b) Is it or is it not a fact that the physical unfitness of these guards was only temporary and not permanent and whether this fact was at all considered by the authorities concerned?

(c) Is it or is it not a fact that most of these guards have since then fully recovered from their ailment and are in a fit condition?

(d) Is it or is it not a fact that the rules provide the right of an appeal against a charge of medical unfitness?

(e) Is it or is it not a fact that, according to rules, persons found unfit for a particular duty but fit for duty requiring a lower standard of health are granted leave pending their appointment to the second category? If so, why was this rule not observed in the case of these guards?

(f) If the replies to parts (a) to (e) be in the affirmative, do Government propose to take action in the case and to see that employment is provided for these guards if their physical unfitness is not of a permanent character? If not, why not?

(g) If the replies to parts (a) to (e) be in the negative, what are the real facts?

The Honourable Sir Andrew Olow: (a), (b) and (g). Information is being obtained and a reply will be laid on the table of the House in due course.

(c) If any information on this point is available with the railway authorities it will be supplied.

(d) Yes, to the Chief Medical Officer of the Railway concerned.

(e) No, there is no specific rule to this effect.

(f) This has not yet arisen but can be considered if necessary.

REFUSAL OF LEAVE TO A RAILWAY EMPLOYEE AT AMBALA STATION.

17. Qazi Muhammad Ahmad Kasmi: (a) Will the Honourable Member for Railways please state whether it is or it is not a fact that the Divisional Superintendent, North Western Railway, Delhi Division, in letter No. 443-E/129/T, dated the 20th September, 1941, in connection with a complaint regarding leave to a member of Ambala Station said: "Story of the above named is a pitiable one and should have been considered sympathetically. The Yard Supervisor is to blame in not allowing him to avail of the sanctioned leave and gave preference to S. P. Jagannath whose case was not as important as compared with Dal Chand."?

(b) Is it or is it not a fact that Dal Chand asked for redress against the hardship but the Divisional Superintendent in letter, dated the 14th December, 1941, said: "Applications have been filed."?

(c) Is it or is it not a fact that in this case the action of the Yard Supervisor resulted in the death of Dal Chand's wife and child, who could not be attended to in time?

(d) If the replies to parts (a) to (c) be in the affirmative, do Government propose either to order the Yard Supervisor (whose guilt is established) to compensate the employee, or to accord sanction to the employee to take legal action against the Yard Supervisor? If not, why not?

(e) If the replies to parts (a) to (c) be in the negative, what are the real facts?

The Honourable Sir Andrew Olow: (a) and (b). I believe this is substantially correct.

(c) I have no ground for believing this to be the case.

(d) No: I understand that the Divisional Superintendent, after further inquiry, was satisfied that the Yard Supervisor was not blameworthy.

(e) Does not arise.

CRITERION FOR APPOINTMENT TO SELECTION POSTS ON EAST INDIAN RAILWAY.

18. Qazi Muhammad Ahmad Kasmi: (a) Will the Honourable Member for Railways please state whether it is or it is not a fact that the General Manager, East Indian Railway, in August 1940 has prescribed that personality should be the criterion for appointments in the selection posts?

(b) Is it or is it not a fact that this criterion is also prescribed for the first appointment to the service?

(c) If the replies to parts (a) and (b) be in the affirmative, what are the reasons for prescribing a second test in personality?

(d) If the replies to parts (a) and (b) be in the negative, what are the real facts?

The Honourable Sir Andrew Clow: (a) No such orders as are referred to in the question have been traced, but personality is a factor that is taken into account in making selections to selection posts.

(b) Yes.

(c) Whether an employee possesses the personality suited to a particular post has to be decided whenever a selection has to be made.

(d) Does not arise.

AVENUES OF PROMOTIONS ON EAST INDIAN RAILWAY.

19. Qazi Muhammad Ahmad Kazmi: Will the Honourable Member for Railways please state whether it is or it is not a fact that the General Manager, East Indian Railway, has prescribed the avenues of promotions which are not mentioned in the recruitment rules? If so, what are they?

The Honourable Sir Andrew Clow: Instructions were issued in 1986 calling the attention of Divisional Superintendents to the fact that the diagrams showing normal channels of promotion were not to be taken as excluding classes, not specifically mentioned which by practice were admitted to any of the groups shown. It was further laid down that there was no restriction to employees in one group who may be in every way qualified for a post in another group being appointed thereto, but that care must be taken to avoid any unmerited supersession in making such appointments. The instructions contained the following paragraph:

There is no reason, therefore, why Trains Clerk should not in accordance with rules be promoted to the post of grade II Guard and, in due course, if he is considered suitable to grade I Guard, eventually working his way through the relieving Guard's list to the posts of Assistant Yard Masters, Train Controllers, Station Masters, etc.

These instructions are not given in full in the East Indian Railway rules themselves but are contained in an annexure to the rules.

CATERING CONTRACTS WITH BALLABHDAS ESHWARDAS ON EAST INDIAN RAILWAY.

20. Qazi Muhammad Ahmad Kazmi: Will the Honourable Member for Railways please state:

(a) the date, nature and duration of the contracts with Ballabhdas Eshwardas on the East Indian Railway;

(b) the date of the last renewal and the date on which next renewal is due;

(c) the name of the stations and Divisions respectively, which are involved in contracts since 1987; and

- (d) whether it is or it is not a fact that the Divisional Superintendents have no authority in dealing with the catering and vending contracts of stations in their Divisions, which are given under the direction of the General Manager to Ballabhdas Eshwardas?

The Honourable Sir Andrew Clow: (a) and (b). These particulars are not maintained by Government or the Railway Board; and the only contract available here is one of indefinite duration. It does not require any renewal but is terminable by either party on giving six months' notice of termination. I presume that this is the normal form, but am making an inquiry on this point. I cannot undertake to furnish a list of the dates of the original contracts. The contracts relate to catering.

(c) I would refer the Honourable Member to the reply given to the first part of Maulvi Muhammad Abdul Ghani's starred question No. 207 of 28th February, 1941.

(d) Inquiries are being made and a reply will be laid on the table in due course.

MONOPOLY OF CATERING CONTRACT TO BALLABHDAS ESHWARDAS ON EAST INDIAN RAILWAY.

21. Qari Muhammad Ahmad Kazmi: (a) Will the Honourable Member for Railways please state whether it is or it is not a fact that the Divisional Superintendents themselves do not hear any complaints against Ballabhdas Eshwardas and have instructions to forward them to the General Manager, East Indian Railway, for disposal?

(b) Is it or is it not a fact that the Divisional Superintendents are not authorized to give the catering and vending contracts at any station, if and when, it falls vacant in their respective Divisions to any person other than Ballabhdas Eshwardas?

(c) Is it or is it not a fact that Ballabhdas Eshwardas has the catering and vending contracts at all the principal stations on the Railway as his monopoly?

(d) If the replies to parts (a) to (c) be in the affirmative, what are the reasons therefor, and do Government propose to curtail the monopoly by ordering the General Manager not to renew the contracts of Ballabhdas Eshwardas for station vending where he has refreshment rooms and for station refreshment rooms where he has the vending contract and on Divisions more than two? If not, why not?

(e) If the replies to parts (a) to (c) be in the negative, what are the real facts?

The Honourable Sir Andrew Clow: (a), (b) and (e). I have called for the information and will lay a reply on the table of the House in due course.

(c) I would refer the Honourable Member to the replies given to the supplementaries on Maulvi Muhammad Abdul Ghani's starred question No. 203 of 28th February, 1941.

(d) The reply to the second portion of the question is in the negative. In conformity with the accepted recommendation of the Central Advisory Council where the services rendered have been satisfactory, contracts will not be terminated.

MESSAGE FROM H. E. THE GOVERNOR GENERAL.

Mr. President (The Honourable Sir Abdur Rahim): Order, order. The following message has been received from His Excellency the Governor General:

"In pursuance of the provisions of sub-section (3) of section 67-A, as set out in the Ninth Schedule to the Government of India Act, 1935, I hereby direct that the heads of expenditure specified in that sub-section, other than those specified in clause (v) thereof, shall be open to discussion by the Legislative Assembly when the Budget for the year 1942-43 is under consideration.

(SD.) **LINLITHGOW,**
Governor General."

THE SPECIAL HAJ INQUIRY REPORT.

The Honourable Mr. M. S. Ansy (Member for Indians Overseas): I lay on the table a copy of the Report* of the Special Haj Inquiry by Mr. J. A. Rahim, I.C.S.

Sir Abdul Halim Ghuznavi (Dacca cum Mymensingh: Muhammadan Rural): May I ask the Honourable the Leader of the House whether he will allow a day to discuss this Special Haj Inquiry Report which he has laid on the table today?

The Honourable Mr. M. S. Ansy: I will consider that suggestion.

Pandit Lakshmi Kanta Maitra (Presidency Division: Non-Muhammadan Rural): We cannot hear a word of what is going on there.

HOME DEPARTMENT NOTIFICATION ISSUED UNDER THE REGISTRATION OF FOREIGNERS ACT, 1939.

The Honourable Sir Reginald Maxwell (Home Member): I lay on the table a copy of the Home Department Declaration of Exemption, No. 1/5/42-Political (E.), dated the 4th February, 1942, issued under the Registration of Foreigners Act, 1939.

No. 1/5/42-Political (E).
GOVERNMENT OF INDIA.
HOME DEPARTMENT.

New Delhi, the 4th February, 1942.

DECLARATION OF EXEMPTION.

In exercise of the powers conferred by section 6 of the Registration of Foreigners Act, 1939, (XVI of 1939), the Central Government is pleased to declare that the provisions of rule 10 of the Registration of Foreigners Rules, 1939, shall not apply to, or in relation to, Dr. N. H. Goss and Dr. D. O. Sendel, so long as they are members of the Mixed Medical Commission appointed by the Defence Department, Government of India.

V. SHANKAR,
Deputy Secy. to the Govt. of India.

*Not included in these Debates, but a copy has been placed in the Library of the House.—Ed. of D.

IMPERIAL COUNCIL OF AGRICULTURAL RESEARCH NOTIFICATION ISSUED UNDER THE AGRICULTURAL PRODUCE CESS ACT, 1940.

Mr. J. D. Tyson (Secretary, Department of Education, Health and Lands): I lay on the table a copy of the Imperial Council of Agricultural Research Notification, No. F. 26(8)/41-G., dated the 31st December, 1941, amending the Standing Finance Committee Regulations framed under sub-section (2) of section 7 of the Agricultural Produce Cess Act, 1940.

IMPERIAL COUNCIL OF AGRICULTURAL RESEARCH.

NOTIFICATION.

New Delhi, the 31st December, 1941.

No. F. 26 (8)/41-G.—The following amendment made by the Imperial Council of Agricultural Research, with the previous approval of the Central Government, under sub-section (2) of section 7 of the Agricultural Produce Cess Act, 1940. (XXVII of 1940), in the Standing Finance Committee Regulations, published with their Notification No. F. 46 (10)/40-G., dated the 10th September, 1940, is published for general information.

For clause (ii) of regulation 9 of the said Regulations, the following clause shall be substituted, namely:—

“(ii) to examine the estimates of all research schemes of the Council.”

B. SAHAY,
Secretary.

ELECTION OF THE STANDING COMMITTEE ON EMIGRATION.

The Honourable Mr. M. S. Anay (Member for Indians Overseas): Sir, I move:

“That this Assembly do proceed to elect, in such manner as the Honourable the President may direct, eight non-official members to serve on the Standing Committee on Emigration during 1942-43.”

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

“That this Assembly do proceed to elect, in such manner as the Honourable the President may direct, eight non-official members to serve on the Standing Committee on Emigration during 1942-43.”

Sir F. E. James (Madras: European): May I raise two matters on this motion? This Committee is called the Standing Committee on Emigration. It deals with all questions relating to Indians Overseas in the Empire countries, but as a result of the heavy tidings of the last few weeks a very large number of Indians Overseas are now actually in enemy occupied country. I think the House would like to know whether the Honourable Member will continue to deal with the new machinery that may be set up for communicating with those Indians, or whether that is now a matter for the External Affairs Department; and whether he or the Secretariat of the External Affairs Department can give any information as to the protecting power in these enemy occupied territories through whose good offices communications may be established with the Indian communities overseas.

That is the first point. The second point is with regard to the effect of the present situation upon the Indian community in Burma and in Ceylon. I refer to Burma particularly because of the recent Indo-Burma Agreement which has been the subject of much discussion in this House—whether the Honourable Member can give the House any information as to the effect of the provisions of that Agreement, if it is to be put into force, on the desire of many Indians now in Burma to leave that country in view of the threat to Burma by the Japanese. So far as Indians in Ceylon are concerned, their position is still, I presume, under negotiation between the Government of India and the Government of Ceylon, and I want to know whether the Honourable Member can give the House any information as to the effect upon those negotiations of the new situation, and whether in view of the developments in the past few weeks, the Government of India intend to continue to maintain their ban upon the emigration of Indians to Ceylon. I appreciate the fact that the Honourable Member may not be able to give the House as full information on these points now as he would wish to give, but I would like to ask him, if he is not in a position to do so at present, whether he will in the near future give the House what information is possible on those points.

Mr. N. M. Joshi (Nominated Non-Official): May I ask the Honourable Member in charge of the Department for information regarding the evacuation of Indians from Burma? I would request him to tell us the present position regarding the evacuation,—how many Indians have been evacuated, how they have been evacuated, how many are anxious to come back to India, and the arrangements the Government of India have made to enable them to come to India. Then, I would like the Government of India to tell us whether the office of the Agent to the Government of India in Burma is able to cope with the increased work which he may have to do on account of the present situation in Burma, and if the Government of India finds that the Agent is not able to cope with the work which falls to him in the present circumstances, whether the Government of India will make special arrangements for helping Indians in Burma at the present time.

Sir Muhammad Yamin Khan (Agra Division, Muhammadan Rural): May I add one word to what Mr. Joshi has said? He wanted to know about Indians in Burma, but I would like the Honourable Member to throw some light also on the Indians who were in Singapore also.

The Honourable Mr. M. S. Aney: With regard to the information that my Honourable friend, Sir Frederick James, wants to have, I can say this much. Ordinarily the jurisdiction of the Indian Overseas Department is confined only to Indians residing in territories which are within the Empire but outside India. When those territories are actually under the administration of the British Government, the Indian Overseas Department is directly responsible for looking after the condition of Indians there. But as soon as they are occupied by the enemy the position really becomes different, but for the present the arrangement that is now accepted in consultation with the External Affairs Department is this. As regards giving information about the Indians to the country and making arrangements for their evacuation, in consultation with the External Affairs Department, the Indian Overseas Department is carrying on that work. The agencies which may be appointed by His Majesty's Government to be in charge of

[Mr. M. S. Aney.]

the interests of the British people in enemy occupied territories will be the main media through which information can be had by us. As regards Malaya, with the fall of Singapore, practically the whole of Federated Malaya is now an enemy occupied territory. It is not yet settled what neutral agency will be in charge of the British residents there, but as soon as that is settled we shall put ourselves in communication with that agency to get the necessary information about the condition of the Indians residing in those parts and we are assured of all co-operation by the External Affairs Department in this matter.

The second question which my Honourable friend raised was with regard to the Burma and Ceylon Immigration Agreements. So far as Burma Immigration Agreement is concerned, I think probably the House is aware that just before the outbreak of the war matters had come to the stage that with the concurrence of the Secretary of State the Government of India and the Burma Government were negotiating with each other to see if suitable amendments could be made. At that stage the matter stood. After the war, of course, the negotiations had practically stopped and attempts are being made to see that at any rate during the war no further negotiations will be made. I am not in a position to make any definite statement as to what exactly the position will be, but I take it for granted that neither the Burma Government nor the Government of India would be anxious to proceed with the negotiations while the present war conditions are subsisting. As regards Ceylon, the old ban is there but we are trying, in view of certain demands made by the Madras Government that the restrictions on Indian labour in coming back to India required to be relaxed, to examine the question. The matter was under our consideration for some time and, therefore, we were thinking of removing the one year ban imposed by ourselves on Indian labour residing in Ceylon. The matter was being proceeded with up to this time on a different basis altogether. The conditions which may arise or which are gradually arising on account of the war coming nearer and nearer are entirely of a different nature. In view of these conditions, I do not think the partial measure that we were considering would meet the requirements of the situation. In view of these changed conditions, probably the question of lifting the ban altogether will have to be considered and no restrictions placed on those Indians who want to come back. That position will have to be considered by the Indian Overseas Department of the Government of India.

As regards Mr. Joshi's question, I can say that Indians who are residing in Burma and Malaya have already begun to evacuate. The number of evacuees, so far as I know, both by sea and land has exceeded 40,000. I am not in a position to give the exact figure as to how many by sea and how many by land. But I believe that not less than 10,000 have come back by land routes also. There are some difficulties in this matter because sufficient shipping is not available. The Honourable Member is aware that almost all the shipping available is requisitioned for defence purposes and we have to get certain ships from them for being used for this purpose. We are also making use of those ships, which are used for the carriage of cargo, for the purpose of taking evacuees back on their return journey. In that way the Defence Department has been co-operating with the Indian Overseas Department in the matter of evacuation to a

great extent. With regard to evacuation by land routes, that has also begun but I learn that there are certain difficulties in the way of those who want to come by land routes, because the roads are not in good condition and the necessary amenities required cannot be easily had on those routes. We are making attempts to get the Burma Government to grant such facilities as are required for those who want to evacuate by land. Matters are under discussion and negotiation between the Government of Burma and the Government of India. We hope that all those persons who are not necessarily required for war purposes or essential war services in Burma may be permitted, if they so choose, to evacuate from Burma. We are taking steps at least to secure that end.

Then, as regards the position of our agent in Burma and Malaya, I may inform the House that we have not heard from our Agent in Malaya since 6th of January, but we have taken it for granted that he is no longer in British territory and he is in enemy occupied territory. We were thinking of appointing another agent and we actually made the appointment before Singapore had fallen. Only two or three days ago we sent orders appointing a gentleman as our Agent there but today, unfortunately, the sad news has come that Singapore has fallen. Therefore, the situation has changed and there is no question of appointing an Agent for Malaya or Singapore at all. It would have to be treated as enemy occupied territory and any communication with regard to Singapore will hereafter have to be made through such agency as might be appointed by His Majesty's Government, as the agency in charge of British interests during the period of hostilities.

Maulana Zafar Ali Khan (East Central Punjab: Muhammadan): May I know what was the total number of Indians in Singapore before the Japanese took hold of it?

The Honourable Mr. M. S. Aney: I cannot give the exact number. I can say that the total number of Indians in the whole of Malaya including Singapore was eight lakhs.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): May I know from the Honourable Member whether any agency is kept in Manila and Phillipines? There are Indians there and what is the arrangement on behalf of the British Government or any other agency to give information.

The Honourable Mr. M. S. Aney: This matter is coming on tomorrow, when the Honourable Member will get a detailed answer. There are certain details which it may not be possible to give accurately now. I trust the Honourable Member will hold himself in patience for a day.

One more point and I have finished. My friend, Mr. Joshi, wanted to know whether the present Agent is in a position to cope with the increased work that he will have to do under the changed conditions. He made a demand once for an addition to his staff. He has been given an Assistant Agent to work with him. Besides he is given permission to engage as many as he likes for doing other work which is necessary. If he feels that his staff is not sufficient to cope with the work, I am sure he will make a demand to this effect and there will be no difficulty on the part of the Government of India accepting any suggestions he may make for augmenting his staff.

Lieut.-Colonel Sir Henry Gidney (Nominated Non-Official): Before you put the motion, may I just ask one question of the Honourable Member with regard to the unfortunate position that exists in Burma. I have information that owing to congestion in the first and second class berths, Europeans and Anglo-Indians have been disallowed to travel third class.

Mr. N. M. Joshi: Quite the other way.

Lieut.-Colonel Sir Henry Gidney: Please do not interrupt me. I know it to be a fact. I especially wrote to one of the shipping agencies in Calcutta and I got an assurance that that will be stopped. I want to ask the Honourable Member if he will kindly see that this sort of thing is not repeated. What I want is that Europeans and Anglo-Indians should be allowed to travel, if they so desire, by third class.

The Honourable Mr. M. S. Aney: I have heard complaints of both kinds and I have informed the Agent to see that no discrimination is made either in favour of Europeans or Indians.

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions: Muhammadan Rural): I think, Sir, there are hundreds of Malaysians in India in different institutions and business places. Has the Government of India thought of making arrangements for their upkeep and education in India now that Malaya has fallen?

The Honourable Mr. M. S. Aney: I do not think that question really arises out of the motion before the House. If my Honourable friend wants this information, he should table a question to that effect and I will make the necessary inquiry.

Mr. President (The Honourable Sir Abdur Rahim): I think that will be the proper course.

Sir Abdul Halim Ghuznavi (Dacca cum Mymensingh: Muhammadan Rural): Sir, as the Chairman of the Muslim Evacuees Sub-Committee in Calcutta, I know from my personal experience how these Indians are evacuated from Rangoon. In steamers which have a capacity of 2,000 passengers 4,500 passengers are squeezed in. During the five days' voyage from Rangoon to Calcutta a glass of water had to be bought for eight annas and I have personally seen, along with Mr. M. A. H. Isphahani when the boats arrived at the Ghat, that there were a number of cases of small children who were practically dying of thirst and water was denied them on the ground of insufficiency of drinking water on board the steamer. We found that the Captain's water was fully intact which he would not allow to be touched. Further, as soon as the boat arrived at the Outram Ghat we forced the Captain to give his water to these thirsty children. We found that sufficient water was stored there which the Captain did not allow to be used on the voyage. Then, Sir, on the voyage a cup of tea was sold for annas twelve and uneatable rotten rice and curry was sold for Rs. 2 per plate. It is in those conditions that we are bringing back our Indians from Rangoon after the services which they had rendered to that country. There was no medical assistance on board the ship except one doctor. There were cases in which we had to telephone from the Jetty for medical assistance to be rendered to those who were almost senseless, and after the medical assistance came, those evacuees could be brought out from the ship. And this is not the only

solitary instance. The same story was repeated in cases of other boats that I visited while I was in Calcutta. Our Evacuees Reception Committee has taken up this matter but I thought it better to bring this matter to the notice of the Government on this motion.

The Honourable Mr. M. S. Aney: What is this General Committee?

Sir Abdul Halim Ghuznavi: It is the General Evacuees Reception Committee and I am the Chairman of its Sub-Committee for the Muslim evacuees.

The Honourable Mr. M. S. Aney: I am glad that attention has been drawn to the difficulties which the passengers on board the steamers coming from Burma and Rangoon are undergoing. It will have to be admitted that under conditions in which evacuation is being effected there is bound to be some difficulty with regard to the amenities that are usually to be had on board the ships.

Sir Abdul Halim Ghuznavi: Can you call a glass of water an amenity?

The Honourable Mr. M. S. Aney: If the conditions are of the nature as described by my Honourable friend, I am sure the matter requires to be investigated. As this General Committee has taken up the question and as soon as the full details are available, I am sure the matter will be sent to the proper authorities so that they may go into it very carefully and see that better conditions prevail on board those ships on which Indians are brought back.

Pandit Lakshmi Kanta Maitra (Presidency Division: Non-Muhammadan Rural): Sir, I also want to speak on this motion.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member in charge of the motion has replied. The question is:

"That this Assembly do proceed to elect, in such manner as the Honourable the President may direct, eight non-official members to serve on the Standing Committee on Emigration during 1942-43."

The motion was adopted.

ELECTION OF THREE MUSLIM MEMBERS TO THE STANDING COMMITTEE ON PILGRIMAGE TO THE HEJAZ.

The Honourable Mr. M. S. Aney (Member for Indians Overseas): Sir, I move:

"That this Assembly do proceed to elect, in such manner as the Honourable the President may direct, three Muslim Members to sit on the Standing Committee on Pilgrimage to the Hejaz, *vice* Khan Bahadur Shaikh Fazl-i-Haq Piracha, Maulvi Syed Murtuza Sahib Bahadur, and Khan Bahadur Mian Ghulam Kadir Muhammad Shahban."

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

"That this Assembly do proceed to elect, in such manner as the Honourable the President may direct, three Muslim Members to sit on the Standing Committee on Pilgrimage to the Hejaz, *vice* Khan Bahadur Shaikh Fazl-i-Haq Piracha, Maulvi Syed Murtuza Sahib Bahadur, and Khan Bahadur Mian Ghulam Kadir Muhammad Shahban."

Maulvi Muhammad Abdul Ghani (Tirhut Division: Muhammadan):

12 Noon. Sir, the committee which will be elected later on and for which a motion might come later on, I mean the Standing Committee on Pilgrimage to Hejaz, hardly meets. I understand that for the past three years no meetings were held. That is my information. This Committee is called the Standing Committee on Pilgrimage to Hejaz. This is the Central Committee to administer the affairs of Hajis. The condition of the Committee is that it hardly meets. What is the use of having such a Committee elected periodically? If there is any benefit to be derived from the existence of such a Committee, I think some facilities and some powers and privileges should be given to this Committee so that it may be of some use to the pilgrims who go to the Hejaz. The members of this Committee should be asked to visit the ports of Bombay, Calcutta and Karachi to look after the convenience of the pilgrims. I have never known that these members have been asked to be present at the time when the Hajis embark from the ports of Bombay, Calcutta or Karachi. If the Government want to have such a Committee they should come forward to give certain facilities to the members of the Committee so that they may serve some useful purpose.

Sir Abdul Halim Ghuznavi (Dacca cum Mymensingh: Muhammadan (Rural)): Sir, I should first of all like to enquire from the Honourable the Leader of the House as to how many meetings he had of this committee last year?

The Honourable Mr. M. S. Aney: Let the Honourable Member finish his speech; he wants to say something more. I shall then give the answer.

Sir Abdul Halim Ghuznavi: I want to draw the attention of the Honourable the Leader of the House to the fact that we have before us a very important report, the Haj Special Enquiry Committee Report by Mr. J. A. Rahim. My congratulations go to Mr. J. A. Rahim on the excellent report that he has made. I would like to have an undertaking from the Honourable the Leader of the House who has just moved this motion that that Report will be considered first by this Central Haj Committee which he has asked the House to elect. I also want an undertaking from him that that Report will be placed before this House for discussion some day during this Session and not delayed.

Syed Ghulam Bhik Nairang (East Punjab: Muhammadan): Sir, I have in my mind exactly the same matter which my Honourable friend, Sir Abdul Halim Ghuznavi, placed before the House. The report made by Mr. J. A. Rahim is a very important document and although I have not yet had time to go through the whole of it, I can say from what I have read of it that it is a document deserving serious attention. If an opportunity is given to us to discuss that report in this House, I think very valuable results can be obtained and the long and elaborate enquiry made by Mr. J. A. Rahim can be fruitful. But if Government merely content themselves with circulating the report to the Members and never give an opportunity for formal discussion of the report on the floor of the House, I think the report will be consigned to the record room and

will never be productive of any good result. I, therefore, ask the Honourable the Leader of the House to give us an undertaking today that he will find an early day in the course of this Session for a discussion of that report.

The Honourable Mr. M. S. Aney: Sir, I can assure the House and Honourable Members that a meeting of the Haj Committee would be called soon to consider the report. In fact that was the undertaking given when this Haj Enquiry Committee was appointed that members of the Haj Committee will get an opportunity of meeting and discussing that report. As regards the second suggestion that this House should have an opportunity, if that is the general desire of the House, then Government will certainly give some convenient day for discussing the report in this House also.

I do not think there is anything else which has been stated which requires an answer from me. As regards facilities, and other things, I believe those members who reside in the ports from which the Haj pilgrims embark, this year especially they were present when the boats left. They take a good deal of interest in looking after the conditions and comforts of pilgrims, when they are staying in Bombay, Calcutta or Karachi. I was myself present this year at Karachi. So I know the amount of interest which members of the Haj Committee who reside in these ports have taken. I do not think members have not got opportunities to do their duties to the pilgrims as has been said by my Honourable friend, Maulvi Muhammad Abdul Ghani. I am gratified at what they have done and I hope they will be doing their work with greater enthusiasm hereafter.

Maulvi Muhammad Abdul Ghani: Sir, may I know

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member cannot make a second speech.

Maulvi Muhammad Abdul Ghani: I am only putting a question. May I know from the Honourable the Leader of the House whether he means to say that when provincial Haj Committees are formed, there is no necessity for having a Central Haj Committee?

The Honourable Mr. M. S. Aney: I have not stated that. I said that members of the Haj Committee who are members of the Central Committee if they are in these ports, they can certainly go and visit these places. They can do so. In fact they do visit actually.

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

"That this Assembly do proceed to elect, in such manner as the Honourable the President may direct, three Muslim Members to sit on the Standing Committee on Pilgrimage to the Hejaz, *vice* Khan Bahadur Shaikh Fazl-i-Haq Piracha, Maulvi Syed Murtuza Sahib Bahadur, and Khan Bahadur Mian Ghulam Kadir Muhammad Shahban."

The motion was adopted.

ELECTION OF A MEMBER TO THE COMMITTEE ON PUBLIC ACCOUNTS.

The Honourable Sir Jeremy Raisman (Finance Member): Sir, I beg to move:

"That the non-official Members of the Assembly do proceed to elect, in the manner required by Rule 51 of the Indian Legislative Rules, one Member to be a member of the Committee on Public Accounts in place of Lieut.-Colonel M. A. Rahman who has ceased to be a Member of the Assembly."

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

"That the non-official Members of the Assembly do proceed to elect, in the manner required by Rule 51 of the Indian Legislative Rules, one Member to be a member of the Committee on Public Accounts in place of Lieut.-Colonel M. A. Rahman who has ceased to be a Member of the Assembly."

Dr. P. N. Banerjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I wish to say a few words about the constitution of the Public Accounts Committee. The other day one Honourable Member, while the report of the Public Accounts Committee was under consideration, was proceeding to discuss the Report of the Public Accounts Committee when you, Sir, ruled that that was not the proper occasion for raising that discussion, and you observed that the proper time for moving such a motion would be when the motion would be made for election of members to the Public Accounts Committee. I wish to point out, Sir, that the constitution of the Public Accounts Committee is unsatisfactory. This Committee now consists of 12 Members of the Legislative Assembly, two-thirds of them being elected by the Assembly and the remaining one-third nominated by the Governor General in Council while the Chairman of the Committee is the Honourable the Finance Member *ex-officio*. This constitution differs from the constitution of the Public Accounts Committee which is formed in the British Parliament. There the number of members is 15, all the members being elected, and the Chairman of the Committee is by custom a member of the Opposition. I urge that the constitution of the Public Accounts Committee here should be approximated to that in England. In this connection I should like to read out to you an observation made by Sir Basil Blackett many years ago. He said:

"The position of the Finance Member as *ex-officio* Chairman of the Public Accounts Committee is not going to be a very easy one. He will be passing, in his capacity as a Member of the Council of the Governor General, criticisms on the Governor General in Council, which will be rather difficult, and I am not sure that as a permanent arrangement it will really work."

This arrangement has been in existence now for 20 years and the time has come when this arrangement must be ended. I urge, therefore, that this unsatisfactory state of things should no longer continue and that the composition of the Committee should be made the same as that of the Committee in England.

The Honourable Sir Jeremy Raisman: Sir, I do not know whether this is a suitable occasion to take up the question of the composition of the Committee.

Mr. President (The Honourable Sir Abdur Rahim): I understand the Honourable Member has only made a suggestion. Otherwise he would have to table an amendment if he wanted his suggestion to be given effect to.

The Honourable Sir Jeremy Raisman: The constitution is laid down in Rule 51 of the Indian Legislative Rules, and the matter could only be satisfactorily dealt with in a debate on a substantive motion to amend that Rule.

Mr. President (The Honourable Sir Abdur Rahim): He was only making a suggestion. I have allowed him to make it because it is relevant to the motion.

The Honourable Sir Jeremy Raisman: I have taken note of the Honourable Member's observations, but I cannot hold out to him any assurance that I would be prepared to accept his views.

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

"That the non-official Members of the Assembly do proceed to elect, in the manner required by Rule 51 of the Indian Legislative Rules, one Member to be a member of the Committee on Public Accounts in place of Lieut.-Colonel M. A. Rahman who has ceased to be a Member of the Assembly."

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): I may inform Honourable Members that for the purpose of elections of members for the Standing Committee on Emigration, Standing Committee on Pilgrimage to the Hejaz and the Public Accounts Committee the following dates have been fixed for receiving nominations and for holding elections, if necessary, namely:

	Nominations.	Election.
1. Standing Committee on Emigration.	18th February, 1942.	20th February, 1942.
2. Standing Committee on Pilgrimage to the Hejaz.	18th February, 1942.	20th February, 1942.
3. Public Accounts Committee.	18th February, 1942.	23rd February, 1942.

The nominations for all the three Committees will be received in the Notice Office upto 12 Noon on the dates mentioned above for the purpose. The elections which will be conducted in accordance with the principle of proportional representation by means of the single transferable vote will be held in the Assistant Secretary's room in the Council House, New Delhi, between the hours of 10-30 A.M. and 1 P.M.

ELECTION OF MEMBERS TO THE DEFENCE CONSULTATIVE COMMITTEE.

Mr. President (The Honourable Sir Abdur Rahim): I may at this stage inform the Assembly that up to 12 Noon on Saturday, the 14th February, 1942, the time fixed for receiving nominations for the Defence Consultative Committee only two nominations were received. As the number of candidates is equal to the number of vacancies I declare Sir F. E. James and Mr. M. Ghiasuddin to be duly elected.

THE COTTON GINNING AND PRESSING FACTORIES (AMENDMENT) BILL.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudalliar (Commerce Member): Sir, I beg to move for leave to introduce a Bill further to amend the Cotton Ginning and Pressing Factories Act, 1925.

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

"That leave be granted to introduce a Bill further to amend the Cotton Ginning and Pressing Factories Act, 1925."

The motion was adopted.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: Sir, I introduce the Bill.

THE INDIAN PATENTS AND DESIGNS (EXTENSION OF TIME) BILL.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar (Commerce Member): Sir, I beg to move for leave to introduce a Bill to provide for the extension of the time limited by or under the Indian Patents and Designs Act, 1911, for the doing of acts thereunder.

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

"That leave be granted to introduce a Bill to provide for the extension of the time limited by or under the Indian Patents and Designs Act, 1911, for the doing of acts thereunder."

The motion was adopted.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: Sir, I introduce the Bill.

THE WORKMEN'S COMPENSATION (AMENDMENT) BILL.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: (Commerce Member): Sir, I move:

"That the Bill further to amend the Workmen's Compensation Act, 1923, be taken into consideration."

Indian seamen are usually engaged in the following categories of sea-going British ships:—

- (i) Ships registered in the United Kingdom;
- (ii) Ships registered in British India under the United Kingdom Merchant Shipping Act, 1894; and
- (iii) Ships registered in British India and under the Bombay Coasting Vessels Act, 1838 or the Indian Registration of Ships Act, 1841.

Ships in the last category are generally small sailing vessels from 200 to 300 tons which ply along the coast and their personnel are paid very much less than the seamen on ships mentioned in the first two categories which are ocean-going vessels.

On the outbreak of war, His Majesty's Government passed an emergency enactment called the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939. In exercise of the powers conferred by this Act that Government have framed two schemes: First, the War Pensions and Detention Allowances (Mercantile Marine, etc.) Scheme, 1939, which provides for payment by the State of compensation to officers and non-Indian seamen in respect of war injuries or detention suffered by them, while serving on sea-going ships registered in the United Kingdom. Second, the War Pensions and Detention Allowances (Indian Seamen,

etc.) Scheme, 1941, which provides for payment of compensation by the State for war injuries or detention of Indian seamen serving on sea-going ships, referred to above.

His Majesty's Government have at the request of the Government of India agreed to extend the provisions of both the schemes to the personnel of ships registered in British India under the Merchant Shipping Act, 1894.

As regards the compensation for the personnel of ships registered under the Indian Acts, the Central Government have, in pursuance of a Resolution which I had the honour to move in this Legislature during the last Budget Session and which was adopted by the House, framed a scheme called the War Pensions and Detentions Allowance (Indian Seamen) Scheme, 1942, which is based on the United Kingdom compensation Scheme, mentioned by me already.

In September, 1939, the Workmen's Compensation Act, 1923, was first amended with a view to relieve shipowners of their liability to pay compensation to seamen under the Act in respect of injuries for which a payment could be obtained under any scheme of compensation made by competent authorities in the United Kingdom. The names of the scheme were not mentioned in the amendment as they were still under consideration at the time. Further, as those schemes provided for the payment of compensation to seamen serving on ships registered in the United Kingdom and have been extended only to the personnel of ships registered in this country under the Merchant Shipping Act, 1894, the relief provided is not available to owners of ships registered under the Indian Acts of 1888 and 1841, that is to say, those small vessels of 200 to 300 tons which I have referred to and which ply along the coast. The Central Government have now assumed responsibility for the payment of compensation for war injuries or detention of seamen serving on ships registered under the Indian Acts and have framed the necessary scheme. It is therefore necessary further to amend section 15 of the Workmen's Compensation Act in order that a seaman who can obtain compensation under the scheme made by the Central Government cannot claim for the same injury any compensation under that Act from his normal employer. The legislation proposed is intended to secure this object. I have taken this opportunity, Sir, to insert the specific names of the United Kingdom and the Central Government Schemes and to carry out certain formal amendments rendered desirable by the actual provisions of those Schemes. Sir, I move that the Bill be now taken into consideration.

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

"That the Bill further to amend the Workmen's Compensation Act, 1923, be taken into consideration."

Mr. N. M. Joshi (Nominated Non-Official): Sir, the object of the Bill, as was explained by the Honourable Member in charge of the Department, is to relieve the employers of their responsibility for the payment of compensation under the Indian Workmen's Compensation Act. Now, Sir, before we agree to the passing of this measure, it is our duty to see that the Indian seamen do not lose anything on account of passing of this measure. The Indian Workmen's Compensation Act provides a certain amount of compensation. Now, this Bill is being passed in order to relieve the employers of their responsibility under that Bill. It is obvious that during war times the risk taken by the Indian seamen is greater and

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the injuries inflicted also are more serious. Therefore, it will be accepted by the Government of India that the compensation to be paid under any scheme which may be made for the war period should not be less than the compensation available under the ordinary Indian Workmen's Compensation Act.

Sir, although this Bill looks to be a small Bill, if we have to consider the effects of the new Schemes it is not very easy. In the first place, I am suffering from a little disadvantage inasmuch as I have not yet been able to secure a copy of the Scheme first mentioned in section 2, namely, War Pensions and Detention Allowances (Mercantile Marine, etc.) Scheme, 1939. I have been able to secure from the Commerce Department the Schemes referred to after that, i.e., the second scheme and the third scheme. You will, therefore, see that it is difficult for us to consider this Bill in detail.

Sir, I have no desire to delay the passing of this measure as I do not know what will be the effect of delaying, but I would like the Government of India either to delay this measure and enable us to consider it in detail or, if they think that on account of the war emergency the Bill should not be delayed, I would like the Honourable Member to give an assurance to the House that after the passing of this measure the Schemes which are referred to in this Bill will be considered by the Government of India in consultation with the representatives of the Indian Seamen's organizations. The Bill was introduced only recently. The Honourable Member is asking the House to take it into consideration today, after only a few days. The organizations of Indian Seamen have had no opportunity of either seeing the Bill or seeing the Schemes which have been put forward under this Bill and under the British legislation. My first suggestion, therefore, is that either the Bill should be delayed and we should be supplied with copies of all the schemes, and the Bill should be circulated and organisations of Indian seamen should have an opportunity of seeing these Schemes, or, if the Honourable Member thinks that the passing of the Bill cannot be delayed, I would like him at least to assure the House that he will take steps to consult the organizations of Indian seamen as regards all the Schemes which are referred to in this Bill.

Sir, the Honourable Member has already explained that the Indian seamen are affected by this Bill as regards the three schemes which have been made either by the Government of the United Kingdom or by the Government of India. Now, there are Indian seamen who serve on ships registered in the United Kingdom. A Scheme called the War Pensions and Detentions Allowances (Indian Seamen) Scheme 1941 has been made by the British Government—the Board of Trade in Great Britain. The first point which I would like to know is this, whether the British Government have made any discrimination between the compensation paid to the British seamen and that paid to Indian seamen by British companies. Unfortunately, a copy of the scheme under which the British seamen are paid is not at present available here, and I cannot really compare what is paid by the British shipping companies to British seamen with what they pay to Indian seamen. Of course, I have got some information about the scheme for paying compensation for loss of effects, but that will come when the Honourable Member moves his second Bill—I shall not deal with that subject on this Bill.

Then there is the second point which I would like to make as regards seamen who are serving on ships registered in the United Kingdom. That point is as regards the administration of the schemes. From the scheme it appears that the administration of the scheme is in the hands of the Board of Trade. I would like the Government of India to tell the House what facilities the Indian seamen will have to secure compensation under those schemes in India. It is not easy for Indian seamen to secure compensation or pensions or whatever benefits the scheme may be giving to Indian seamen. The question of administration of the scheme is of great importance and it is necessary that if the Indian seamen are to get the real benefit of this scheme, there must be some facilities given for Indian seamen to secure benefits from the scheme made by the Government in the United Kingdom.

Then I come to the question of the benefits provided under these schemes. The first point which it is necessary to take into consideration is whether the benefits given, as I have mentioned, are at least equal or greater than the benefits given under the Workmen's Compensation Act. The second point to be considered is whether the benefits or compensation promised is sufficient for protecting the interests of the Indian seamen. From that point of view I would like to make a few remarks on the schemes made by the British Government and by the Government of India.

The first point is a very small point as regards the age of children. The children of seamen get certain benefits and the age in the scheme is laid down at 14. Under the Indian Factories Act and in some other labour legislation in India, the age of children is generally laid down as 15 and not 14. I would suggest to the Government of India to consider this question, that a child should be defined under the scheme as one who has attained the age of 15 and not 14.

The second point which I notice in the new scheme is, that the compensation to be paid to Indian seamen is based upon pre-war rates of wages. I think this is not quite a fair provision. Under the ordinary Workmen's Compensation Act, the Indian seamen is paid compensation not on pre-war rates of wages but on the existing rates of wages. The Indian seamen have since the war secured a permanent increase in their wages by 25 per cent. If rates of compensation or benefit are based upon pre-war rates, the Indian seamen will lose. I would, therefore, like the Government of India to consider this question of pre-war rates of wages. The compensation to be paid must be based, not upon pre-war rates of wages, but upon the existing rates of wages. Then, under the scheme, the scales of compensation laid down, in my judgment, are not adequate. They pay some compensation for certain injuries to certain classes of people. I would like the Government of India to revise these scales in consultation with the organisations of Indian seamen.

I do not wish to go into further details, but I would urge upon the Honourable Member in charge of the Department that the schemes referred to in this Bill should be discussed by him with the representatives of organisations of Indian seamen and if they find out any defects in this Bill, the Honourable Member should try his best to secure amendments of those schemes. It is true that the schemes for paying compensation and pensions, etc., to Indian seamen serving on ships registered in the United Kingdom will have to be made by the Government in the United Kingdom, but I would like the Honourable Member in charge of the

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Department as the protector of Indian seamen to make representations to the British Government so that the schemes made by them would be amended suitably in the case of Indian seamen.

I do not wish to take up more of the time of the House. I hope the Honourable Member will take my suggestions into consideration and see that the schemes are amended suitably so that the Indian seamen serving on ships registered in the United Kingdom as well as on ships registered in India, will get proper and adequate benefits under these schemes.

Maulvi Muhammad Abdul Ghani (Tirhut Division : Muhamnadan) : Sir, I hardly think that there is any necessity for passing this legislation. As is mentioned in the Statement of Objects and Reasons, it is to prevent the possibility of double claims—that if a number of seamen or any particular seaman are paid compensation under the British Act or under the Act of 1841, then he should not be paid any compensation under the Act of 1923. It is a reflection on the character of Indian seamen. In our daily life we see thousands of cases in the railways and other departments where refunds are made. Here, in this case, if anybody is paid double, he should only be asked to make a refund and that would have been enough. Then there would be no necessity for having this legislation. This is nothing but a reflection on the character of Indians and I am, therefore, of the opinion that such kind of legislation should not be passed.

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions : Muhamnadan Rural) : Sir, at the outset I may say that my experience in this House about these compensation and pensions to disabled soldiers and seamen has been very sad indeed. Perhaps the Honourable Member who has moved this motion will himself remember, and perhaps it will be in the recollection of this House that I moved in this very House a Resolution on this subject and it was then accepted by the Government. I am afraid, however, as my friend, Mr. Joshi, has pointed out, there will be very great difficulty for these seamen individually to apply and get compensation. It is said that they can apply through their organizations, but as Mr. Joshi points out, those organizations should be consulted in regard to payment of compensations and pensions to individual seamen. My experience is that even if these disabled soldiers and seamen were to start organizations or agencies of their own, it will be very difficult to get compensations or pensions even through those organizations, inasmuch as the agent or the person who will run the organization will be harassed by the police or the magistrate, with the result that thousands will be denied their pensions. This has happened before, and it will happen again after the war is over. It is very easy to pass legislation for the benefit of disabled seamen or soldiers, but in the practical working of such Acts, the interests of these poor people are always ignored. So, as my friend, Mr. Joshi, has suggested, this matter ought to be very carefully considered, and the advice of the representatives of the Unions should be sought.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : Mr. President, as regards the point raised by Mr. Abdul Ghani, this is a legislation which, if passed, would remove the liability from the employer to pay the compensation, otherwise there will be a double liability, one of

the State to pay compensation and another on the employer to pay compensation. It is obvious that legislation of this kind should be passed.

I now turn to my friend, Mr. Joshi's suggestions and arguments. I may at once say that though the Board of Trade is legally the administrative body, the administration is carried on and has necessarily to be carried on by the Government of India on behalf of the Board of Trade. We are the persons who know all the details of the seamen,—I may incidentally say that the term 'Indian lascars' is no longer in use,—we are in a position to get all the materials, and the administration of the fund virtually is being done by the Government of India. Sir, Indian seamen are first engaged in the ships registered in the United Kingdom. They are also serving in the ships registered in India, but under the Parliamentary Act, and therefore under the legislative control of the United Kingdom. Now, with reference to the first category, the compensation is paid by His Majesty's Government. With reference to the second category, the compensation is paid by the Government of India. It is obvious that a different system of compensation cannot be adopted for Indian seamen serving in Indian registered ships. The United Kingdom Government has published a scheme of compensation and we have adopted it *in toto* in this country. The question of revising that scheme is obviously a very difficult one.

The third scheme refers to vessels registered in India under Indian Acts where the Indian seamen serve under different conditions altogether, and the Central Government has framed a scheme as far as possible keeping the spirit of the scheme applicable to Indian seamen serving in the first two categories. There are two questions—one is the question of the extent of compensation, and the other is the question of administration and administrative details. With reference to the extent of compensation, I may at once say that it will be exceedingly difficult, especially with reference to the first two categories, to have the scheme revised. At the best we can only make recommendations to His Majesty's Government if such a course is considered desirable. I should like to add that the scheme of compensation provided is, of course, better than the scheme of compensation under the Workmen's Compensation Act, 1923, so that any delay in applying the scheme will be detrimental to the interests of the seamen.

My Honourable friend has suggested that I may get the benefit of consultations with representatives of Indian seamen. I shall certainly do so. I shall certainly invite the representatives of Indian seamen to meet the representatives of the Commerce Department particularly to consider the question of administrative details on which I should like to have their valuable help. The scheme has been published, and in the light of their representations regarding any difficulties in administration, I am prepared to consider what amendments can be carried out, but with reference to the amount of compensation itself, I am bound to say that it will be very difficult to get the scheme revised, particularly as this is a scheme which has been framed by His Majesty's Government. I certainly will be glad to hear what they have to say, but I should not like the impression to go abroad that at the conference suggestions for the improvement of the rates under the scheme can be made or what is more important can be adopted by the Government of India.

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

"That the Bill further to amend the Workmen's Compensation Act, 1923, be taken into consideration."

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Diwan Bahadur Sir A. Ramaswami Mudaliar: Sir, I move :

"That the Bill be passed."

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

"That the Bill be passed."

Mr. N. M. Joshi: Sir, I do not wish to detain the House long, but I would like to say a few words with regard to the remarks made by the Honourable the Commerce Member that we should not expect changes in the scales of compensation provided by the British Government for seamen serving on ships registered in Great Britain. I do not know, Sir, why the Honourable Member made that remark. It seems that in his opinion the British Government are not willing to consider reasonable proposals. The British Government have made a scheme for compensation to Indian seamen serving on British ships, and this scheme has been framed without consulting the Indian seamen who are serving on British ships. It was wrong for them to make a scheme without consulting the Indian seamen, but I am sure the British Government will not be so unreasonable as to say that, although they have done a wrong thing in framing the scheme without consulting the organization of the Indian seamen, they will not even consider the suggestions made by the representatives of Indian seamen. If the British Government is not willing to take the trouble of knowing what views of the Indian seamen are regarding the scheme, they can do without the services of the Indian seamen. I am sure under the present circumstances the Indian seamen will not be so very enthusiastic to serve on British ships when the British Government may not be willing to consult Indian seamen in considering under what conditions Indian seamen should serve on British ships. I therefore feel that if the Honourable Member makes a proper representation to the British Government regarding all matters, not only regarding the administration of the scheme, but also regarding the question of the suitability of the rates of compensation, pension and other matters, they will be ready to consider the suggestions made by the organizations of Indian seamen.

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

"That the Bill be passed."

The motion was adopted.

THE INDIAN MERCHANT SHIPPING (AMENDMENT) BILL.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar (Commerce Member): Sir, I move:

"That the Bill further to amend the Indian Merchant Shipping Act, 1923, be taken into consideration."

This Bill refers to compensation for loss of effects of various Indian seamen whose effects are lost by enemy action on the sea. Here also there are the three categories of seamen to which I have already referred in connection with the previous Bill. In the United Kingdom an emergency legislation has been passed—the Act to which I have already referred—the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939. Under section 6 of that Act His Majesty's Government have framed a scheme called the Compensation to Seamen (War Damage to Effects) Scheme, which provides for the payment of compensation by the State for loss of effects sustained as a result of enemy action by seamen while serving on ships registered in the United Kingdom. The scheme applies to Indian seamen also and the compensation payable ranges from Rs. 367 for carpenters to Rs. 80 for lascars, greasers, etc. The same scale at the request of the Government of India has been applied by His Majesty's Government to the personnel employed on ships registered in this country but under the Merchant Shipping Act of England. As regards seamen employed in the coasting vessels registered under the Indian Acts a similar scheme has been drafted by the Government of India and has been published. Naturally, the rates payable for compensation under this scheme are less than the rates under the previous scheme because the effects carried by seamen in small boats ranging from 2 to 200 tons are much less in value than the effects carried on the sea going vessels either registered in this country or registered in the United Kingdom. Sir, I move that the Bill be taken into consideration.

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

"That the Bill further to amend the Indian Merchant Shipping Act, 1923, be taken into consideration."

I find that there is a motion in the name of Maulvi Muhammad Abdul Ghani, asking for circulation. Does he want to move it?

Maulvi Muhammad Abdul Ghani (Tirhut Division: Muhammadan): I am not moving it.

Mr. N. M. Joshi (Nominated Non-Official): I would like to make a few remarks on this Bill. I would like to know whether the scheme as regards seamen serving on ships registered in the United Kingdom makes any discrimination between the British seamen and the Indian seamen as regards scales of compensation. When I made my speech on the previous Bill I said that I did not have a copy of the scheme which applied to

[Mr. N. M. Joshi.]

British seamen, but as regards this Bill which contains a scheme for paying compensation for loss of effects, I have got a copy, and I find that there is discrimination made between the rate of compensation paid to British seamen and that paid to Indian seamen. Under this scheme which is called the War Damage to Effects Scheme, 1939, there are separate rates given for British seamen and Indian seamen although doing similar work. For instance, I shall take the category of chief steward. The chief steward, if he is a Britisher, gets £40 as compensation for loss of his effects. If he be a native rating—the Honourable Member told us that Indian seamen will hereafter be called by the honourable title of “Indian seamen” but in Great Britain they have still the old word “native rating”. I am not ashamed of being called a native of India, but unfortunately, I do not like an Englishman in England calling me a native. Sir, there is a difference. The British chief steward is given a compensation at the rate of £40 and the Indian chief steward is given a compensation at the rate of £15. I would not like the Govt. of India to accept a scheme in which this racial discrimination is made. The Honourable Member said as regards compensation to be paid to Indian seamen serving on ships registered in India, that they should “naturally” be paid a smaller rate of compensation. I do not see much naturalness in paying a smaller rate of compensation, and I would repeat the suggestion which I have made as regards the other Bill, namely, that he should take into consultation representatives of organisations of seamen in India as regards the scheme for payment of compensation for loss of effects, and whatever suggestions the representatives of Indian seamen may have to make should be taken into consideration by the Government of India.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: I am afraid my Honourable friend has entirely misunderstood the nature of this Bill. This is not a provision for compensation for any work done. It is not compensation which has anything to do with the rate of pay even. It is compensation for the loss of effects, and therefore the question is, what are the effects which are usually carried by different kinds of seamen,—what are the effects which a British chief steward carries with him, that is to say, what sort of movable things he carries with him on board the steamer, what is the movable property that an Indian seaman has got on board the steamer, what is the movable property that an Indian seaman serving in 2 to 200-ton boats plying between Bombay and Karachi carries,—and the compensation has been fixed on the basis of that. Elaborate investigations have been made. The principal mercantile marine officers of our department have gone into the question of effects and the value of these effects with each class of seamen, and compensation has been based on that. There is no discrimination whatsoever. If there is discrimination, it starts at the stage when the Indian seaman carries less effects on board than a British seaman.

Mr. N. M. Joshi: Who is to prove?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: I have no objection if representatives of Indian seamen want to make any observations on this. I should be glad to have them considered at the conference which I have already said may be convened.

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

"That the Bill further to amend the Indian Merchant Shipping Act, 1923, 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.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: I move:

"That the Bill be passed."

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

"That the Bill be passed."

Mr. N. M. Joshi: The only remark I want to make as regards the speech of the Honourable the Commerce Member is this. He thought that I was under a wrong impression or I had misunderstood the effect of this Bill. So far as I can see, I have not misunderstood the scope of the Bill or the effect of the Bill. The only misunderstanding is that he thinks a British seaman necessarily carries effects more valuable than an Indian seaman. I consider that an Indian seaman requires effects as valuable as those required by the British seamen.

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

"That the Bill be passed."

The motion was adopted.

THE INDUS VESSELS (AMENDMENT) BILL.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar (Commerce Member): Sir, I move:

"That the Bill further to amend the Indus Vessels Act, 1863, be taken into consideration."

Section 8 of the Indus Vessels Act, which was passed in the year 1863, provides for the establishment of pilots and pilot boats near the mouths of the river Indus and accordingly a pilotage service was set up at the Thursian mouth of the river at the request of the merchants of Ketu Bunder. The service was intended mainly for the convenience of country craft, and was financed out of a fund called the Sea Pilotage Fund built up from the pilotage fees levied on the vessels using the Thursian mouth. The Fund was originally under the control of the Indus Conservancy and Registration Department and was handed over to the Port Officer, Karachi, in 1898. Later on, in 1906, its administration was transferred to the Collector of Customs, Karachi. The pilotage service was more or less self-supporting till the year 1932, when, owing to the growing disuse by country craft of this mouth of the river as a result of the diversion of trade from Ketu Bunder to Shah Bunder, the Fund began to show signs of deficit and all efforts to improve its position proved of no avail. The Government of Sind, who were formally in control of the Sea Pilotage Fund, asked the Collector of Customs, Karachi, to consider the desirability of

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[Diwan Bahadur Sir A. Ramaswami Mudaliar.]

abolishing it and of discontinuing the pilotage service. Various commercial bodies were consulted on this suggestion. The Indian Merchants' Association, the Buyers and Shippers Chamber and the Karachi Chamber of Commerce who were consulted were unanimously of the opinion that there could be no objection to the closing down of this pilotage service and, therefore, to the suspension of the collection of this Fund. The majority of tindals were fully conversant with the navigation of the various mouths of the Indus and the need for compulsory pilotage no longer existed. The Government of Sind were willing to have legislation on these lines moved, because that was within their competence; but in the meanwhile the Government of India Act, 1935, was passed and, under the Adaptation Act, this legislation became a Central responsibility. It is under these circumstances, Sir, that I find myself in the position of having to move in this Honourable House an amendment to this Act. The present Bill is designed to repeal so much of that Act as relates to the levy of pilotage fees, the maintenance of pilotage establishments and other connected provisions. Sir, I move.

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

"That the Bill further to amend the Indus Vessels Act, 1863, be taken into consideration."

I understand there is a motion in the name of Maulvi Muhammad Abdul Ghani.

Maulvi Muhammad Abdul Ghani (Tirhut Division: Muhammadan): I am not moving it.

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

"That the Bill further to amend the Indus Vessels Act, 1863, be taken into consideration."

The motion was adopted.

Clauses 2, 3 and 4 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: Sir, I move:

"That the Bill be passed."

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

"That the Bill be passed."

The motion was adopted.

THE INDIAN MEDICAL COUNCIL (AMENDMENT) BILL.

The Honourable Mr. N. R. Sarker (Member for Education, Health and Lands): Sir, I move:

"That the Bill further to amend the Indian Medical Council Act, 1933, be taken into consideration."

This, Sir, is a very short and simple measure and I am not sure that I should take up the time of the House in adding to what is set out in the

Statement of Objects and Reasons. One of the most important functions of the Medical Council is to provide for the inspection of the conduct and sufficiency of examinations held in the medical institutions of the country for conferring medical qualifications. Under section 16 of the Act, the Executive Committee of the Council appoints Inspectors for this purpose and the Inspectors are paid for their work. The Council has represented to the Government that it would be advantageous if it could occasionally have the benefit of the advice of members of its own body on the conduct of these examinations. It is doubtful whether under the Act members of the Council itself could be appointed as Inspectors, and even if this is so, it would probably not altogether be suitable that the Executive Committee appoint a member of the parent body to hold the paid posts of Inspectors. That is why the Medical Council has approached us to see that this power is given to them, for which they shall not be entitled to any remuneration. In view of the importance of the responsibility which has been given to the Council, I recommend that, to implement that responsibility, this power should be given to them. I commend this measure to the House.

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

"That the Bill further to amend the Indian Medical Council Act, 1933, be taken into consideration."

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

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st August, 1942."

Sir, there is no hurry about the passing of this legislation. Besides, the Statement of Objects and Reasons makes mention that this Bill is needed to see that the medical examinations are up to the standard. Papers are set and written, questions are given to the examinees and the Executive Committee of the Medical Council appoints Inspectors to watch and conduct the examinations. That is enough but here one machinery is going to be added and the new machinery is termed 'visitors'. The members of the Executive Committee of the Indian Medical Council cannot be the Inspectors and, therefore, it is their desire that there may be visitors and this piece of legislation expressly provides that the members can be visitors. So, it appears that this Bill has been brought for the advantage of the members of the Executive Committee of the Indian Medical Council. So much for the proper standard of the medical degree and here it is mentioned that the visitors will be honorary persons but what about their travelling expenses. They will be paid more than what is needed for a salaried person. I think that under this shelter this piece of legislation should not be passed without being referred to the experts and those interested in the medical education. I hope the Honourable the Mover of the Bill will accept my amendment and he will not lose anything by circulation. On the other hand, he will be benefited by the suggestions that will be made hereafter. With these few words I move my amendment and hope that the Honourable Members in the House will support it.

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

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st August, 1942."

The debate will now be on the main motion and the amendment.

Lieut.-Colonel Sir Henry Gidney (Nominated Non-Official): Sir, I support the principle underlying this Bill whole-heartedly. The amendment has not appealed to me in the slightest degree because I think the Bill relating to the Medical Council, when it was first introduced, was circulated to such an extent that the public opinion necessary was obtained at that time. Since then, I think, this measure is one of a very necessary improvement rather than one for further inquiry. Apart from that, I do remember when the Indian Medical Council Bill was passed by this Honourable House at a time when all Medical Institutions in India were subjected to an examination by an Inspectorate that came from England, a serious and quite justifiable objection was raised by the Indian Universities against that practice. The desire for the Council now to have its own Inspectors meets with my entire approval and I am glad to know that it will be done. But how they are going to do it free of charge is a puzzle which I cannot solve. But there is another aspect which, I think, I must mention and bring to the notice of the Honourable Member. How will these Inspectors inspect these institutions and these examinations when the profession of medicine, to which I have the honour to belong, one that is considered to be the most scientific profession in life is so compartmented? It is the only Department in this country which compartments itself into certain segregated classes such as, sub-assistant surgeons, assistant surgeons, civil surgeons, the old L.M.S., M.B.'s, Membership of Faculty of Medicine and other qualifications. You have a heterogeneity of degrees and qualifications and, instead of progressing as England has done and bring all the doctors under one register, we are dividing ourselves and refusing to allow Licentiates to be registered on the same registers as graduates. Besides, you insist on this Medical Council that only graduates should be enrolled. In India the treatment of the sick is done mainly by the thousands and thousands of sub-assistant surgeons or those men who have qualifications and not degrees and yet to these thousands you deny registration. May I tell the Honourable Member that the degree does not make the doctor; the doctor makes the degree. These hundreds and thousands of qualified men who have qualifications of a very high order and who have had five years continuous training are deprived of being taken on this register. Why? In the name of these thousands and thousands of Indian medical men I protest against it and I think it is time the Government took a very firm attitude and put them on one register instead of having two separate registers. I consider that this Bill requires serious modification and I bring this to the immediate notice of the Honourable Member that it is high time we stopped this division and brought all medical men in the country on one register and so conform to what obtains in all medical registers and councils in the whole world.

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

The Assembly reassembled after Lunch at Half Past Two of the Clock, Mr. President (The Honourable Sir Abdur Rahim) in the Chair.

Mr. Jamnadas M. Mehta (Bombay Central Division: Non-Muhamadan Rural): Sir, I was glad that my Honourable friend, Lieut.-Colonel Sir Henry Gidney, lent the weight of his name and authority as a

medical gentleman to the proposal which he made to the Honourable Member in charge of the Bill. I am not against the Bill at all. Nor am I necessarily inclined to favour the amendment for the circulation of the Bill, if the Government think that it is important to pass it here and now. I want to draw the attention of the Government to the fact that while these visitors may be useful and probably will be useful, the whole thing is vitiated by the fact that a large number of qualified medical men are excluded from registration—I mean the Licentiates. Under the Medical Council Act, you do not permit these qualified medical men who are now declared to be thoroughly competent to be on the register. Therefore, in the appointment of the Council who in its turn will appoint the visitors there is a gap, namely, a very large number of Indian qualified medical men have no share in the appointment of the Council which will appoint the visitors. I would, therefore, suggest, to the Government that they should take immediate steps to amend the Act by allowing the registration of these men so that the medical Council may be complete from all points of view and it may appoint the right kind of visitors as is visualised under the Act. Government are probably aware that this has been done in England, and under the pressure of war, the British Medical Council has done that. This recognition of the licentiates by the authorities in England is a pointer to the Government here that they should no longer delay doing the same thing here. I may add that the Indian Medical Association and other Medical Associations in this country have favoured the inclusion of these licentiates on the register and your Medical Council will be complete only when these people are registered because they are equally competent with the rest of the medical men in this country. Today they are a kind of depressed classes among the medical practitioners. They possess the qualification, but the law does not recognise them and I think at least so far as the war is concerned, no further delay should take place in making them qualified and in allowing them to register their names under the Act. I hope the Government will give proper consideration to this.

The Honourable Mr. N. R. Sarker: Sir, in moving his motion my Honourable friend, Maulvi Muhammad Abdul Ghani, advanced three reasons for circulation of this Bill for eliciting public opinion. First, he said what is the hurry about passing this legislation and he has counselled delay so that experts may be consulted. Sir, the Medical Council is an expert body appointed by the Government and they want for the due discharge of their responsibilities this power of appointing visitors to satisfy themselves that the examinations are carried on keeping the proper standard. So by delaying we cannot meet that position. The Medical Council has made this request to us after an experience of five years after the establishment of the Medical Council. In October 1939, they represented to the Government that they should be vested with this power. Sufficient time has also elapsed in consulting the Provincial Governments and also the various Universities who have got medical faculties under them and they overwhelmingly favour legislation on the lines suggested by the Indian Medical Council. Sir, I am grateful to my Honourable friends, Col. Sir Henry Gidney and Mr. Jamnadas Mehta for supporting this Bill. I have got every sympathy for the Licentiates whose cause

[Mr. N. R. Sarker.]

they are advocating. I have not yet had time to look into the matter. This is a very complicated matter hotly debated in the Legislature. I can only say that I will look into the matter with some interest.

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

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st August, 1942."

The motion was negatived.

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

"That the Bill further to amend the Indian Medical Council Act, 1933, be taken into consideration."

The motion was adopted.

Clauses 2, 3 and 4 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Mr. N. R. Sarker: Sir, I move:

"That the Bill be passed."

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

"That the Bill be passed."

The motion was adopted.

THE INDIAN PENAL CODE (AMENDMENT) BILL.

The Honourable Sir Sultan Ahmed (Law Member): Sir, I move:

"That the Bill further to amend the Indian Penal Code be taken into consideration."

Sir, the object of the Bill is to provide a definition for the word "harbour" in the various sections of the Indian Penal Code. There are two sets of sections in the Indian Penal Code where the word "harbour" has been used. The first set is sections 130, 136 and 157. The second set consists of sections 212, 216 and 216-A. Under section 130 provision has been made with respect to punishment for harbouring an escaped prisoner of war, etc. Under section 136, provision has been made for harbouring an Army and Navy or Air force deserter. Under section 157 provision has been made for harbouring persons hired for unlawful Assembly. Sections 212, 216 and 216-A refer to harbouring an offender or harbouring of escaped offender or harbouring robbers or dacoits. Until 1894, there was, however, no definition of 'harbour' anywhere in the Indian Penal Code. In 1894, by Act III of that year, section 216-B was enacted which provided for the definition of the word 'harbour' under sections 212, 216 and 216-A. By a mere omission no reference was made to the first set of sections, that is sections 130, 136 and 157. The result was that while section 216-B gave the definition of 'harbouring', as the word occurred in sections 212, 216 and 216-A, the definition of "harbour" under sections 130, 136 and 157 remained the dictionary meaning of the word. There was absolutely no reason for this irrational distinction made between these two sets of sections and it appears to us that it was a mere omission, i.e., these sections were overlooked.

As Honourable Members of the House will be pleased to see, section 216-B defines the word 'harbour' as supplying a person with shelter, food, drink, money, clothes, arms, ammunitions or means of conveyance or assisting a person in any way to evade apprehension. This definition of 'harbouring' which is fairly comprehensive could not be applied to the word 'harbouring' as used in the earlier sections to which I have already referred. The dictionary meaning, however, of the word 'harbour' is simply giving shelter, refuge, that is all. The question arises whether giving of food or drink, money, clothes, arms and ammunitions or means of conveyance, as given in the definition of 'harbour' under section 216-B, can possibly relate to earlier sections. In our view the very fact that sections 212, 216 and 216-A were explicitly referred to in section 216-B repelled any interpretation of the word 'harbour' in the earlier sections by this definition. Therefore, this difficulty had to be got over and we, therefore, have thrown the definition of 'harbour' in Chapter II, the Definition Chapter as a new section 52-A and have not only given the definition as given in section 216-B but have also resolved the difference of opinion between the Calcutta and the Lahore High Courts on the one side and the Allahabad High Court on the other with respect to the last few words of section 216-B. It was held by the Allahabad High Court that " 'assisting' a person in any way" did not include some other acts which were not *ejusdem generis* with the earlier words used. On the other hand the Lahore and the Calcutta High Courts held that it did.

In order to resolve that conflict of judicial opinion, we have, as Honourable Members will see, inserted in the definition the following words "whether of the same kind as those enumerated in this section or not to evade apprehension". By clause 3 of the Bill we have accordingly omitted section 216-B of the Indian Penal Code. I suggest to the House that this amendment is absolutely necessary in order not only to resolve the conflict of judicial opinion between the different courts in India as regards the interpretation of section 216-B, but also to provide a definition which may be an all-embracing definition for the earlier sections of the Code, that is, section 130 and the other sections which I have just mentioned. During these times of war, Honourable Members of the House will fully appreciate that when we have got thousands and thousands of prisoners of war in different places, a provision like the one which we submit for the consideration of the House should at once be enacted without any further delay. Indeed cases have come to light which demand this amendment being put through immediately because prisoners have escaped from some of the centres and they have been helped before escape and after escape. Therefore, the House, I feel almost certain, will not wait for any unnecessary circulation of this Bill or for reference to Select Committee. I may add that the Bill was sent to the different Provincial Governments and all the Provincial Governments and the High Courts whose opinions have been received are unanimous in their support of the Bill. Sir, I move.

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

"That the Bill further to amend the Indian Penal Code be taken into consideration."

Mr. K. O. Neogy (Dacca Division: Non-Muhammadan Rural): Sir, I move:

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

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

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

Mr. K. O. Neogy: Sir, the Bill has been introduced by the Honourable Member with two different objects as has just been explained by him. The first is to extend the definition of 'harbour', which at the present moment applies only to three sections of the Indian Penal Code, to three others which are not governed by the definition as it obtains in the present enactment. The second object is to expand this definition itself by the addition of certain expressions. I may at once make it clear that it is not my intention to raise any debate with regard to the second one. But as regards the first point, namely, whether the definition of the word 'harbour' as given in section 216-B should be made to apply to sections 130, 136 and 157 of the Indian Penal Code, I should like to make some remarks.

My Honourable friend has said that when this section 216-B was added to the Code by way of amendment in 1894,—it was actually passed in 1893, the enactment being dated 1894,—the Legislature of the day made an omission in not referring to the three earlier sections, and the definition which was provided was made to cover only the subsequent three sections. So far as this point is concerned, I would like to point out that although in those days the Legislature was a very much smaller body, it did not certainly lack in legal talent; and when I refer to the proceedings of the Imperial Legislative Council of 1893 which dealt with this question, I find among others the name of Dr. Rash Bihari Ghose as having been present and participated in the proceedings of that Council. When I turn to the proceedings, I am led to think that they had a very lively sense of importance of making a distinction between these two categories of sections, namely, the earlier three sections and the subsequent three sections. It is not that they made a specific reference to this distinction, but when one goes through the proceedings of the debate one is struck by the fact that all the time the members were conscious of the fact that the standard that could be applied for the purpose of judging the guilt of a person who would harbour an offender and a criminal, would certainly be different from the standard to be applied to the conduct of a person who would afford asylum to one who could not strictly be called a criminal or a felon,—if we could borrow that word from the English law. If one looks at the definition itself as provided in section 216-B one cannot help being struck with the resemblance which this has with the definition of a felony with which an accessory after the fact can be charged under the English law. This is what Stephen, for instance, says while describing the elements that would go to make up the offence with which an accessory after the fact can be charged: "Receives, relieves, comforts or assists the felon".

If one were to look at the wording of section 216-B, one would see that the definition is substantially a paraphrase of these expressions.

Now, under the English law one can be guilty of being an accessory after the fact, and, thus, be charged with felony himself, if one assists the felon in these various ways. If one now goes through the three sections to which this section was made applicable, one would see that these three sections really dealt with actual offenders or criminals. If, however, one were to turn to the earlier three sections one would find that the people affording harbour to whom would be an offence, could not certainly be described as felons according to the English law or as criminals in any sense of the term. Let us look at section 180:

"Whoever knowingly aids or assists any State prisoner or prisoner in escaping from lawful custody," etc. "or harbours or conceals any such prisoner", etc.

I do not think my Honourable friend would contend that an escaped State prisoner can be described as a felon in the sense in which that expression is used in English law, or as a criminal according to our own Code. The next is section 186:

"Whoever, except as hereinafter . . . knowing or having reason to believe that an officer, soldier, sailor or airman in the Navy, Army or Air Force . . . has deserted, harbours such officer, soldier, sailor or airman. . . ." etc.

It is not "harbours such offender". Here again if we look to the somewhat analogous provision in the Indian Army Act we find that there also the word "harbour" is used. I am referring to section 30A of the Indian Army Act:

"Any person subject to this Act who commits any of the following offences, that is to say, knowingly harbours any deserter . . ." etc.

As is well-known, the Indian Army Act applies to people who are subject to military discipline, and certainly if a person like that were to be guilty of harbouring a deserter, the seriousness of that offence would be greater than in the case of a man in the street who might be harbouring a deserter. My Honourable friend says there is no reason why we should have two different definitions for the same word in the same Code. But what about this particular clause in the Indian Army Act which employs the very same word and which word obviously is interpreted according to its dictionary meaning?

Now, Sir, as regards the question of interpretation, I think it will not be disputed by the Honourable Member that in interpreting the provisions of the Indian Army Act, the corresponding provisions of the British Army Act are likely to be referred to. If we refer to the corresponding provision of the British Army Act, the provision being contained in section 153 (3), we find the following as constituting an offence:

"Knowing any officer or soldier to be a deserter conceals such officer or soldier or aids or assists him in concealing himself, or aids or assists in his rescue".

This is all that we find. Therefore, it will not do for my Honourable friend to say that the term "harbour" as used in the Indian Army Act, may be amended to bring it into line with the definition as contained in this Bill, because so far as the Indian Army Act is concerned, it cannot be amended, as far as I can see, so as to make it wholly inconsistent with the corresponding provision of the British Army Act which is in operation in India side by side with the Indian Army Act, because these two Army Acts govern the British and the Indian sections of the Army in India respectively, and the provisions of law cannot conceivably be very different in regard to these two cases.

[Mr. K. C. Neogy.]

Now, Sir, the next section is 157. This deals not with criminals at all, but potential criminal:

"Whoever harbours or receives or assembles in any house or premises in his occupation or charge or under his control any person, knowing that such persons have been hired, engaged or occupied or are about to be hired, engaged or occupied to join or become members of unlawful assembly, and so on."

Now, I would draw the attention of this House to the words "in any house or premises in his occupation or charge". These words really furnish the key to the object which this section has in view. It won't do for my Honourable friend to say that here again the definition of "harbour" as he has in mind would be appropriate, because the real stress is on "in any house or premises in his occupation or charge", the idea being actual concealment or provision of asylum, not the question of a provision of drink, because it does not matter whether a drink is provided in the house or outside the house. The real stress is to be laid on "in any house or premises in his occupation or charge or under his control". This really is a sort of preventive section and we have a corresponding section in the British Prevention of Crimes Act, 1871. There again the expression "harbour" occurs. It is in section 10 of the British Prevention of Crimes Act of 1871 which also is a sort of preventive section more or less on these lines. It reads:

"Every person who occupies who knowingly lodges or knowingly harbours thieves or reputed thieves, or knowingly permits or knowingly suffers them to meet or assemble therein."

So section 157 is analogous to this section where also the expression "harbour" occurs, and which expression I maintain has to be interpreted according to its dictionary meaning and not according to the interpretation which my Honourable friend seeks to give to this expression in the Bill.

Now, Sir, I would refer to another provision, and that is in the Official Secrets Act. I am referring to the Indian Official Secrets Act, 1923, in the first instance, section 10—"If any person knowingly harbours any person whom he knows or has reasonable ground"
(This is really harbouring a spy)—has committed an offence under section 3, that is espionage. The expression used in this law is also "harbour"—harbours a spy. And the corresponding section in the British Official Secrets Act is section 7:

"If any person knowingly harbours any person whom he knows or has reasonable ground to be"

So it is not a mere question of making the definition uniform so far as the Indian Penal Code is concerned. How are you going to interpret all these various provisions in the connected legislative measures?

Now, Sir, my Honourable friend has stated that there have arisen certain definite cases which require the tightening up of the law.

The Honourable Mr. M. S. Aney (Leader of the House): May I ask whether those Statutes to which reference is made do not contain the definition of the term "harbour"?

Mr. K. C. Neogy: No, Sir. The dictionary meaning applies to these cases, and I have also pointed out that so far as the Indian Army Act is

concerned, the corresponding provision of the British Army Act uses the word "conceals". So the intention is perfectly clear. It could not include the offering of a drink.

Now, Sir, my Honourable friend has referred to the emergency of the matter in view of the fact that there have arisen certain cases where prisoners of war have been assisted otherwise than by what would be strictly called "harbouring" in the dictionary sense of the term. Now, if Government think that due to the present extraordinary circumstances the law needs to be tightened up for the purpose of dealing with such extraordinary cases, there is an alternative method of doing it. They have already amended some of the enactments of the Statute Book by making certain special provisions in the Defence of India Act. For instance, if my Honourable friend refers to the Government of India Act

The Honourable Sir Sultan Ahmed: Do you mean the Defence of India Act or the Government of India Act?

Mr. K. C. Neogy: Defence of India Act—sections 5 and 6, for instance. Section 5 deals with enhanced penalties, that is to say, certain penalties provided under the normal legislation have been enhanced under the provisions of the Defence of India Act for purposes of war offences. Similarly, under section 6 of the Act, certain enactments of the Indian Legislature have been temporarily amended. Now, here is a method by which the object which the Government have in view could easily be met. What I object to is really the permanent disfigurement of the Indian Statute. I do not mind giving the Government certain extraordinary powers to meet certain extraordinary circumstances. What I do maintain is that the legislators of 1893 and 1894 had very good reasons to distinguish between the two sets of cases—the three earlier sections and the three later sections—so far as the definition of the word "harbour" is concerned, and I should not be a party to any tampering of that definition, at this stage, so as to extend it to the earlier three sections, having regard to the principle which I have enunciated, namely, that you may provide a definition of this kind in regard to harbouring of actual offenders, but it would not do for you to apply the same standard for the purpose of judging of a man who harbours people who are not offenders, who cannot be called offenders or criminals in the strict sense of the term. I would again repeat that if the Government still think, on the basis of certain facts that a particular provision of the Penal Code requires to be tightened up to meet certain extraordinary circumstances, there is an alternative method of doing it.

Then, Sir, my Honourable friend stated that this Bill had been sent round to the Provincial Governments and they have all approved; and not merely that, the different High Courts have also expressed their opinion in its favour. I should very much like to know whether in regard

to both the points these opinions have been unanimously favourable, and if so, it is perhaps not too late to expect that the Honourable Member will at least take the Bill to Select Committee where these opinions can be scrutinised; but I should very much like that the public at large should have an opportunity of examining this question

3 P.M.

[Mr. K. C. Neogy.]

and particularly the learned societies of lawyers should have an opportunity of examining the question from the point of view of principle which to my mind is involved in it.

Pandit Lakshmi Kanta Maitra (Presidency Division : Non-Muhammadan Rural): Mr. President, I rise to support the motion for circulation. This Bill raises a very important question of legal principle. It seeks in the first place to extend the interpretation of the word 'harbour' to a set of sections of the Indian Penal Code to which it had not been applicable heretofore and also wants to lay down a definition or rather a fresh explanation of the expression 'harbour'. This raises important considerations which should not escape the attention of Honourable Members of this House.

In the first place I want to emphasise that the expression 'harbour' was never sought to be defined or explained before in the way in which it is being done now. As a matter of fact, up to the year 1894, there never occurred to the Legislature the necessity of having a specific definition of the expression 'harbour'. Even when it came to the Legislature for such a definition, it was given a specific explanation, and it came to be embodied as section 216B of the Penal Code. The present section 216B was added by Act III of 1894 and it reads as follows:

"In sections 212, 216 and 216A the word 'harbour' includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance or assisting of a person in any way to evade apprehension."

It is the last part which is of importance in connection with the consideration of the present Bill. This provision of section 216B is sought to be deleted in the proposed Bill by clause 3, and a new section is sought to be added to chapter II of the Indian Penal Code which deals with "general explanations". At the present moment that chapter of general explanations has only 52 sections and there is going to be a further addition, by the proposed Bill, in the shape of a new section 52A.

Two points have been mentioned by the Honourable the Mover of this Bill as calling for the consideration of this House. The first is that there has not been any uniformity in the interpretation of the word 'harbour' in the different sections of the Penal Code where the word occurs. Secondly, that in view of the exigencies of the situation it should be given a wider interpretation than has been given to it by the different High Courts in India. In the Statement of Objects and Reasons, the Honourable the Mover States that there is absolutely no rational justification for retaining this difference in the interpretation of the expression, but that there should be one explanation which would apply equally to all the sections where this expression occurs. With great respect to the Honourable the Mover of this Bill, I beg to point out that the fact that there is a fundamental difference in the scheme of the two sets of provisions is overlooked. One set of sections deals with one specified class of cases, and the other with cases of an entirely different category; and it is well worth the consideration of the House as it has an important bearing on the implications of the proposed Bill. Sections 130, 136 and 157 of the Indian Penal Code deal with classes of cases which call for one interpretation: section 130 deals with aiding escape of or rescuing or harbouring a State prisoner—or a prisoner of war. Section 136 deals with cases of harbouring deserters. Here it is well to bear in mind

that this section came in for amendment in 1927, where certain specific words were added by the Repealing and Amending Act, Act X of 1927. In this section it is provided that:

"Whoever knowing or having reason to believe that an officer, soldier, sailor or airman in the Army, Navy or Air Force of the Queen has deserted, harbours such officer, soldier, sailor or airman shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both."

Now, Sir, section 157 deals not with criminals or offenders, but with prospective offences and offenders, and also with cases of harbouring persons hired for an unlawful assembly. Again, Sir, the three sections 212, 216 and 216A deal with cases of actually harbouring offenders. Section 212 deals with harbouring offenders, section 216 deals with harbouring offenders who have escaped from custody and whose apprehension has been ordered. Now, here, to this section, the Legislature of 1894 thought fit to add section 216A and it clearly defined what was sought to be meant by the word 'harbour', in this connexion, and it gave expression to it by the enactment of section 216B of the Indian Penal Code. But, there has been some difference in judicial opinion on the interpretation of the word 'harbour'. The very fact that the different High Courts in India have differed in the interpretation of the word 'harbour' should set us thinking that the matter is not so very simple or that it cannot be lightly dealt with. . . .

The Honourable Sir Sultan Ahmed: Not the word 'harbour', but the definition of 'harbour' in section 216.

Pandit Lakshmi Kanta Maitra: What I am saying is that the interpretation which has been given of the expression 'harbour' by the different High Courts is not uniform, and your one object in bringing forward this Bill, as you say, is to bring about a uniformity in its explanation.

Now let me deal with one or two cases in which there has been a difference in the interpretation of the word 'harbour'. Take the case reported in I. L. R. 25, Allahabad, the case of *Emperor vs. Husan Baksh* in 1903. In that case certain persons were convicted because they told lies to the police. Their alleged object in telling lies was to induce the police to desist from their pursuit of the offenders. The accused simply told lies, and their Lordships held that in view of the explanation of the word 'harbour' given in the body of the Act itself, they could not convict the accused. In their Lordships' opinion, the words at the end, 'assisting a person in any way to evade apprehension', must be meant to point some method *ejundem generis* with those that have been specified in the previous part of the section itself, and therefore the conviction should not be sustained. So this was one interpretation put on the word 'harbour'. Then let us take another case, the Lahore case, which is reported in I. L. R. 7, the case of *Taras Singh vs. the Crown*. The facts of the case were as follows: A person gave false information to the police with respect to a proclaimed offender and warned him of the approach of the police in order that the offender might escape. The question arose whether the fact of giving this kind of information which ultimately turned out to be false, brought the accused within the ambit of section 216B. There of course their Lordships held: "Yes, this was a leading piece of information given to the police, and as such the accused should be convicted". In the Calcutta Case reported in 21, Calcutta Weekly

[Pandit Lakshmi Kanta Maitra.]

Notes,—in the case of *Muchimia vs. the Emperor*, their Lordships held that offering an offender any assistance would come within the ambit of the definition 'harbouring'. Their Lordships held, 'the ways in which assistance may be rendered need not for the purpose of section 216 be restricted to methods which may properly be regarded as *ejusdem generis*: or of a like nature, like supplies of food or other necessary articles'. Thus, we find that in India the opinion of the High Courts is divided on the question of the interpretation of the word 'harbour'.

I now ask the Honourable the Mover what is the necessity for rushing this Bill through? If a clarification of the interpretation of the word 'harbour' is all that is desired, we can certainly get public opinion elicited on it so that we may benefit by it. The Honourable the Mover suggested there was apparently a drafting omission in the year 1894. I do not see how it strengthens his case. It means that during the last 48 years from 1894 to 1942 it never occurred to the Law Officers of the Crown to bring about an amendment by which this lacuna in legislation could be filled up. If during the last 48 years this gap could not be filled up, and if you could carry on in spite of this for nearly half a century, could not the Honourable Member wait for a couple of months more to have the opinion of the Bar Associations and other public organizations in this country. He could then see what the legal profession or the highest judicial authorities in the country or the public had to say about it, whether or not in their opinion, an extension of the interpretation of the word 'harbour' to sections to which it had hitherto been inapplicable was desirable in the very interests of the administration of justice.

It has been complained that only one narrow interpretation of the expression has been embodied in the judicial enactment which holds the field since 1894? In Wharton's Law Lexicon I find that the expression "harbour" has not been uniformly defined. For different statutes, for different provisions there have been different interpretations. For instance, in 1 Q. B. page 918, in *Sherras v. deRutzen*, there has been one interpretation put on it. It relates to harbouring by constables on duty. Again, for "deserters from merchant ships—see section 236 (British ship) and section 238 (foreign ship) of the Merchant Shipping Act, 1894: (3) felons with a view to their concealment from justice; and (4) thieves or reputed thieves under sections 10 and 11 of the Prevention of Crimes Act, 1871"—for all these provisions, the expression "harbour" has different definitions in English Law.

Besides, the reason for not providing in the Indian Penal Code an elaborate definition of the word "harbouring" in connection with cases of desertion and the like is very simple. There has been already in existence a body of penal provisions in the Army Act and other Acts. When, therefore, section 216B was enacted in 1894, the Legislature did not think it necessary to make any specific or separate provision in the Penal Code itself for harbouring with respect to cases of desertion, of prisoners of war, of State prisoners and so on and so forth, because they were governed by penal provisions contained in different legislative enactments. So the reason is not that the Legislature forgot to make special provision for those cases, and had only in view cases of thieves, dacoits and prospective offenders. From all these points of view I think that the Honourable the Law Member will be well advised to have public

opinion elicited on this matter. If he presses it now on the ground of the exigencies of the war situation, I think he will agree with us that there are numerous other provisions in the law to deal with such cases. In fact, the Defence of India Act is so comprehensive, so elastic that any conceivable case under the sun can be covered by it.

The Honourable Sir Sultan Ahmed: Is that so?

Pandit Lakshmi Kanta Maitra: That is so.

The Honourable Sir Sultan Ahmed: Will this case come under the Defence of India Act?

Pandit Lakshmi Kanta Maitra: Ordinarily speaking, it was not the intention of the Legislature to make the Defence of India Act applicable to cases of this description, but in its actual operation all over India it has become a cloak for covering everything, I can assure the Honourable the Law Member that it is being so used. Place any set of cases before me and I will twist the rules in such a way,—the executive officers will twist them in such a way that they would fit in with them.

The Honourable Sir Sultan Ahmed: You will have to twist it.

Pandit Lakshmi Kanta Maitra: Not I, but the executive officers know very well to twist it in such a way; they would not say that it is twisting the law but they would claim that what they do is the most natural interpretation that can be put on it.

Maulana Zafar Ali Khan (East Central Punjab: Muhammadan): The latest victim of the Defence of India Act is the Punjab.

Pandit Lakshmi Kanta Maitra: We call it twisting. As lawyers we challenge that this is the natural interpretation that the Defence of India Act can bear, but that has been the unfortunate experience of all of us. With such a formidable weapon, with such an elastic weapon, you can never fail to achieve your object if you are minded to use it. Take, for instance, rule 129 of the Defence of India Rules. On suspicion you can arrest any man and you need not bring him before any court of justice, you can straightaway send him to a detention camp.

Mr. M. Ghiasuddin (Punjab: Landholders): Do you approve of that rule?

Pandit Lakshmi Kanta Maitra: We do not approve of it, but when that has come to stay, when the Act is being so used, what is the use of piling measure on measure? Your armoury is already overstocked. You can meet the exigencies of the war situation by the provisions of the Defence of India Act, the Criminal Law Amendment Act and so on. We can make a dreadful catalogue of all such penal measures which are in the hands of the executive to deal with such a matter.

The Honourable Mr. M. S. Aney: It is better to have two strings to the bow than one.

Pandit Lakshmi Kanta Maitra: As regards penal measures, I for one would not add to those already in existence. I would therefore suggest that the Bill may be circulated for eliciting public opinion so that we may have the considered opinion of the legal profession, of the judiciary of the country and of the public. We may benefit by their views and act accordingly. There is no need for this haste.

Mr. Lalchand Navalrai (Sind: Non-Muhaminadan Rural): It seems to me that in this motion three questions are involved. One is whether this Bill should be considered and passed at once, or whether it should be circulated for the opinions of the public, of the members of the bar and of the judiciary. The second one is, if the definition of the word "harbour" which is contained at present in section 216B should be extended to three other sections, namely, 180, 186 and 157. The third question is whether the last two lines of section 216B should be explained in the manner suggested in the Bill. As regards the first question, I entirely agree with those who have advocated that this Bill should be circulated for opinion. It can be said that this Bill makes a provision in the Penal Code which has to remain on the Statute as a permanent one. When it is a legal question on which already there have been some differences of opinion by certain High Courts, as shown in the Statement of Objects and Reasons, it is very necessary that full consideration should be given to the amendments that are contained in this Bill. I think it is only fair that no legislation should be enacted in a hurry without giving those who are concerned with the interpretation of laws an opportunity to give their opinions. I submit that in all important Bills, the first stage should be the circulation and in practice also we have seen that whenever there are any Bills which are important and in which matters like the interpretation of laws are involved, they are taken into consideration only after opinions have been received and considered. In this case no one has been consulted except some provincial Governments and some judges. But where are those opinions? They have not been placed before the House. We must have those opinions before us to consider and the argument should not be brought forward that because this is war time therefore we should pass this Bill like an ordinance. This Bill should not be passed like ordinances which have been condemned by the country. We should not be a party to a thing which we have ourselves disapproved and which the country has condemned.

Then again it has been mentioned that in 1894 when it was found that the definition of 'harbour' should be enacted, it was enacted in section 216B. Yes, it was done so. They knew that this definition was required at that time. Why was it then that they did not extend it to the other sections? It may be said that they overlooked it. But where is the evidence that they overlooked it? When they were going to provide a definition in the Penal Code, we must presume that they considered the whole of the Penal Code for the purpose of introducing a definition of 'harbour'. Considered from that point of view, this Bill requires to be circulated. It is said that they want this definition at once to apply it to State prisoners and prisoners of war who have been helped and harboured. In the first place we have not been given any such instances in which it has become necessary to such an extent that the Honourable Member could not even wait for a month or two in order to have this matter fully considered by the country. There are many other provisions and there is no reason why

the same kind of definition should be applied to them. I will presently show that this definition will be too much to apply to a man who is not an offender.

Now, considering the question we find that there are two sets of sections. Three sections are for those who have committed an actual offence. They are criminals, as has been explained by my Honourable friend, Mr. Neogy. Their case must naturally differ from those who are not criminals but who are deserters or State prisoners. In their case, to put a definition so wide as that would not appeal to the country and even to the lawyers. Now, the difference has been maintained between these two sets of sections and for a very long time. It being so, it is not as if the Act when it is passed today or tomorrow will be applied to certain persons who are deserters or State prisoners and otherwise the whole thing will go off. It is not so. Now, another point in this connection is that we are not going to pass a temporary provision but a permanent provision. From that point of view also further consideration is necessary. We find that in section 216B they say 'harbour' includes the supplying of a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance or the assisting of a person to evade apprehension. Now, in those other three sections, it would be seen that there is no question of apprehension. They are not going to evade or run away. Those sections do not show that they are persons who are going to run away. Now, a State prisoner or a prisoner of war happens to be hungry. He wants only food. We should not give him food or drink, so that he may die. This definition which is so extensive should apply to an offender as well as to non-offender. There is no sense in that. Then we will consider another provision also. That has to be considered along with it. We find, as has been said, that in the British Army Act there has been no definition and there, by giving a State prisoner, food or drink he is not helping that man to run away. Therefore, to apply such an extensive definition to that man is certainly not just and right.

Then, Sir, I find that in the definition in clause 216B we must refer to section 216 first. The Honourable Member will see that 'harbour' by a husband or by a wife is not punishable under the Indian Penal Code (section 216), as there is a provision and exception in it. Section 216 is also harbouring a person who is charged with an offence or being in lawful custody for the offence or for whose apprehension an order has been made by a Magistrate. In that case, if that person goes to his wife and she gives him food, drink or something of that kind, then it has been held that it will not be an offence. What is going to be said now when a deserter as a State prisoner goes to his wife and she gives him only food or drink and she may have even thought that people will come and take him away. What I am going to say is this that this is also a very serious point on which opinions should be elicited from the public and even from the Judges and the members of the Bar. The case for circulation, therefore, becomes even more strong by these arguments and I will submit to the Honourable the Law Member that he should not be in a hurry to pass this measure. He may get the Bill passed in no time especially these days when the House is not only empty but we are passing through critical times.

The point then is that the Honourable the Law Member should yield and allow this Bill to be circulated. If we are going to apply such an

[Mr. Lalchand Navalrai.]

extensive definition, we should try to find out whether an exception should be made or not or any other exceptions should be made to differentiate it from an offender and non-offender.

Then, I come to my third point with regard to the last few words which are required by this Bill to be explained. Now, what do we find there? Section 216B says:

"In sections 212, 216 and 216A the word 'harbour' includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance"

Now, I find that in the present Bill 'the means of conveyance' has not been put in. It has been taken away.

Sardar Sant Singh (West Punjab: Sikh): It is there. They have added something and have not taken away anything.

Mr. Lalchand Navalrai: I am sorry these words are there. Further on, section 216B says: "or the assisting a person in any way to evade apprehension".

Now, I will agree that the words 'no doubt' are susceptible to different interpretations. Now, let us see what is actually being done by this amendment? It has left the section as vague and as liable to different interpretations as the words 'in any way'. Now, the words used are 'any means' instead of 'anyway'. I do not know whether it makes any difference if we say 'whether of the same kind as those enumerated in this section or not, to evade apprehension'. Now, these are the words that are going to be put in the section in order to explain whether the meaning of the words 'evade in any way' is clear or not. But when they add the words 'whether enumerated in this section or not', the words 'or not' again leave it very vague and liable to all kinds of interpretations. My Honourable friend has not been able to tell us what are the other kinds of the means which he wants to restrict. At any rate, we should know if there are any other ways. If there are any other means, why not put them very clearly just as other things are being mentioned such as conveyance and other things. Therefore, I submit that this Bill ought not to be passed at once but it should be circulated and opinions elicited thereon. With these words, I support the motion.

Qazi Muhammad Ahmad Kazmi (Meerut Division: Muhammadan Rural): Sir, with due deference to the learning and legal acumen of the learned Member who has proposed this Bill, I am sorry I have got to differ from him from the very outset. In the Statement of Objects and Reasons he has said:

"There is no rational justification for differentiating between the meaning of the word as used in different sections of the Code, and the fact that the word is used in sections other than sections 212, 216 and 216A appears to have been overlooked when section 216B was inserted by Act III of 1894."

The reasoning is that because other sections are not mentioned in this, therefore, it may be presumed that it was overlooked that the word 'harbour' has been used in other sections also. I argue just the other way round. In the Indian Penal Code there is a Chapter (Chapter II) which gives definitions of most of the words that are used in the Indian Penal Code, and if it was intended to be a general definition it was only proper to put the word 'harbour' in that Chapter as the Learned Member wants

to do now. What was the reason for the legislators at that time to think of adding to section 216B and not having this section 52-A? If they wanted to have a general meaning for the word 'harbour', they would have done it by bringing it to Chapter II and adding it up as is being done now. That was the only proper thing to do. But the very fact that instead of bringing it under Chapter II, they introduced a new section 216B goes to show that they wanted to put this meaning to the word 'harbour' only for the purpose of these sections. Therefore, to say that it was only a mistake made at that time is not correct. It was really the intention at that time and it was in pursuance of that that this was done. But it can be very well argued by Government that it might not be a mistake; that it is only an academic question as to whether it was done through mistake or intentionally, but what is necessary is that it should be applied to all the sections now. Let us, therefore, look at it from that point of view also. As regards section 216-B I submit that it is so wide already that it was time we ought to consider whether this meaning of "harbour" should not be curtailed. The words are, "includes the supplying of a person with shelter, food or drink or money".

Here, Sir, I will give you an example. Some Italian prisoners of war were passing in a railway train by day and at Delhi Railway station another train with ordinary passengers came and stopped opposite to it. The Italian prisoners stretched their hands through the small openings left in the windows and begged for cigarettes and some of the passengers in the train opposite offered them cigarettes and fruits and oranges. It may be said that it is misplaced mercy but people sometimes do yield to the temptation of being merciful. All the persons who offered them these things would be guilty under the section, because offering food and drink, according to the extended definition now, would be an offence, being offered to a prisoner of war. It is not that the shelter or food or drink must be offered for evading arrest or apprehension; the mere fact of giving them to a prisoner of war is an offence in itself which is punishable with a certain term of imprisonment.

Now what are the courts which are going to try these cases? When we frame any law we must also consider the mentality of the gentlemen who will try these cases. It is not the High Court which will try them and no person of the legal acumen of the Law Member will go to argue them. I will give the House an incident from my own experience. When I started practice I asked a senior and renowned lawyer as to whether I should do civil or criminal practice. About criminal practice he told me that an old friend of his, a Deputy Magistrate, once called him and said, "Maulvi Saheb, every day from morning to evening these pleaders are harassing me and asking me to let off this man and that man; but I have read the whole of the Indian Penal Code and I do not find any where that a man has to be let off. There are only provisions about punishment in the shape of fines or imprisonment but nothing about letting off. So how can I acquit these people?" That is the mentality.

The Honourable Sir Sultan Ahmed: Was he not given a copy of the Criminal Procedure Code?

Qazi Muhammad Ahmad Kasmi: It only deals with the procedure. So, what I mean is that the present generation might be considered to be more

[Qazi Muhammad Ahmad Kazmi.]

learned, but still the standard of the Honourable Members of this House is not to be found in the mofussil and many other places. I will just cite an example about giving food and drink, which is within my personal knowledge and which happened in Aligarh. Some gentleman belonging to some political party was passing in a car through Aligarh district outside a village and one of his friends, coming to know that he was passing, offered him some food. Subsequently it transpired that this gentleman was suspected of being implicated in a political dacoity or murder, and the result of it was that his friend who had offered him food was arrested and prosecuted. He was sentenced to two years by the trying magistrate and the sentence was upheld by the lower appellate court. He was a man with enough money and he went up to the High Court, where the judges held that no offence had been committed. You are providing that the mere offering of food or shelter to a person who is suspected of having committed a dacoity is a sufficient offence under the present section and innocent persons are likely to be entrapped. There is no reason why you should make the law so extensive as to make it likely for innocent people to be entrapped. Now what is being attempted by this amendment is not only that. Food or shelter is not the only thing which is contemplated by this Act, but the interpretation of the Allahabad High Court is to the effect that things of similar nature would also be covered by this section. But by the amendment which is proposed Government want to extend the meaning still further so as to cover the offence of telling lies. Now, it is, of course, very difficult for me to understand how telling lies is to be converted into an offence of harbouring. It is difficult for a common man to understand how

The Honourable Sir Homi Mody (Supply Member): Telling lies is harbouring untruth!

Qazi Muhammad Ahmad Kazmi: You are dealing with impersonal matters. Now, what right have you got to extend the meaning so far? They say it is only for the purpose of reconciling the views of several High Courts. I say it is not reconciling but overruling the view of one and upholding the view of the other. But, as a matter of fact, if you only go a little further, you will find that the court which is being over-ruled was correct. The facts of the cases were different. Here in this case it is a lie about a particular person who wanted to evade arrest and it was held that telling of lies was not covered by this section. But in other cases the matters were different. But any way without entering into the merits of any justification for the particular High Court which held that telling of lies is not covered by the word 'harbour', I maintain that a person who is really to be charged with this crime—an ordinary man; people of ordinary understanding—will he understand any difference? Anyway whether they understand it or not, let us see whether it is a proper thing (Interruption). Let it be circulated and I will finish. So my submission is that we have no justification for keeping these words in the section itself, and there is no question of extending them to other sections. With these observations I question the motion.

Kunwar Hajeer Ismael Ali Khan (Nominated Non-Official): Sir, the question may now be put.

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

"That the question be now put."

Qazi Muhammad Ahmad Kazmi: May I just submit that they are in a position to dictate in that way. I finished up my speech because they were anxious that I should finish

Mr. President (The Honourable Sir Abdur Rahim): Order, order. What does the Honourable Member want to say? Is it a point of order?

Qazi Muhammad Ahmad Kazmi: Yes, Sir. On a point of order. I am talking of the attitude of the opposite Party. They wanted that I should finish

Mr. President (The Honourable Sir Abdur Rahim): That is not a point of order. The question is:

"That the question be now put."

The Assembly divided:

AYES 38.

Abdul Hamid, Khan Bahadur Sir.
Ahmad Nawaz Khan, Major Nawab Sir.

Aiyar, Mr. T. S. Sankara.
Aney, The Honourable Mr. M. S.
Bewoor, Sir Gurnunath.
Bhandarkar, Mr. K. Y.
Caroe, Mr. O. K.
Chapman-Mortimer, Mr. T.
Clow, The Honourable Sir Andrew.
Dalal, Dr. Sir Ratanji.
Dalpat Singh, Sardar Bahadur Captain.

Dehejia, Mr. V. T.
Gopalaswami, Mr. R. A.
Griffiths, Mr. P. J.
Gwilt, Mr. E. L. C.
Ikramullah, Mr. Muhammad.
Imam, Mr. Saiyid Haider.
Ismael Ali Khan, Kunwar Hajee.
James, Sir F. E.
Jawahar Singh, Sardar Bahadur Sardar Sir.

Jehangir, Sir Cowasji.
Kamaluddin Ahmed, Shams-ul-Ulema.
Khurshid, Mr. M.
Lawson, Mr. C. P.
Maxwell, The Honourable Sir Reginald.

Miller, Mr. C. C.
Mody, The Honourable Sir Homi.
Mudaliar, The Honourable Diwan Bahadur Sir A. Ramaswami.

Pillay, Mr. T. S. S.
Prior, Mr. H. C.
Raisman, The Honourable Sir Jeremy.

Richardson, Sir Henry.
Sarker, The Honourable Mr. N. R.
Spence, Sir George.
Stokes, Mr. H. G.

Sultan Ahmed, The Honourable Sir.
Thakur Singh, Captain.
Tyson, Mr. J. D.

NOES 19.

Abdul Ghani, Maulvi Muhammad.
Azhari Ali, Mr. Muhammad.
Banerjee, Dr. P. N.
Chattopadhyaya, Mr. Amarendra Nath.

Dam, Mr. Ananga Mohan.
Deshmukh, Mr. Govind V.
Eesak Sait, Mr. H. A. Sathar H.
Ghiasuddin, Mr. M.
Lalchand Navalrai, Mr.
Laljee, Mr. Huseenbhai Abdullabhai.

The motion was adopted.

Ma'tra, Pandit Lakshmi Kanta.
Mehta, Mr. Jamnadas M.
Muhammad Ahmad Kazmi, Qazi.
Murtuza Sahib Bahadur, Maulvi Syed.
Neogy, Mr. K. C.
Sant Singh, Sardar.
Siddique Ali Khan, Nawab.
Zafar Ali Khan, Maulana.
Ziauddin Ahmad, Dr. Sir.

The Honourable Sir Sultan Ahmad: Sir, if I do not speak at great length, I hope the Honourable Members who had asked for circulation will not consider me disrespectful. I will, however, deal fully with the arguments advanced by my Honourable friend, Mr. Neogy. His argument was fairly full and covered all the grounds put forward by those who followed him. Mr. Neogy, in his characteristic way, has dealt with the Bill very fairly and, if I may say so respectfully, very logically; and I would like to offer him my congratulations. I will deal with the few points which he raised.

My submission was that in 1894 when Act III of that year was passed, there was clearly an omission, so far as section 216B was concerned, when it did not refer to the earlier set of sections—180, 186 and 157, in which the word 'harbour' was used. Mr. Neogy's view was that when that Act was passed there were members of the calibre of Sir Rash Behari Ghose in the council, and it was unlikely that a man of that legal eminence would have overlooked the other provisions of the Code. I would ask him to go through the whole debate, as we have done, and he will find no reference at all to the earlier sections throughout the debate. And while I yield to none in my respect and admiration for that great jurist of India, I am sure, my friend, Mr. Neogy, will agree with me, that criminal law was not his strong point. I know he never appeared in any criminal case in his life.

I am grateful to Mr. Neogy for having given me one relief, and that is, when we wanted to add a few words to section 216B in the definition in order to reconcile the two conflicting judicial opinions of the courts in India. The Lahore High Court and the Calcutta High Court held the view that the words, "or the assisting a person in anyway" were not of the same kind as those enumerated before, but that they would cover all cases. The Allahabad High Court took a different view; and we are trying to reconcile the conflicting opinions of these courts. I am glad to find that at least one Member of this House has given us the credit for it. Mr. Maitra says that the very fact that there has been a difference of opinion with respect to the interpretation of this word 'harbour' in section 216B should suggest itself to us as the ground for circulation. I confess I have not been able to understand that argument at all. There was no conflict of opinion with respect to the definition of the word 'harbour'. The difference was as regards what would be covered by the phrase "assisting a prisoner by any means" whether that would cover the cases which the Calcutta, Lahore, or Allahabad High Courts had before them. That was the conflict, and we are trying to resolve that conflict.

My friend, Mr. Kazmi, was very sorry that we were trying to reconcile the conflicting decisions because that would certainly put a stop to further quibbling in courts on that point and there will be no further discussion with respect to what the meaning of the words "assisting a prisoner by any means" would be

Qazi Muhammad Ahmad Kazmi: I said you were over-ruling them.....

The Honourable Sir Sultan Ahmed: We do not over-rule anybody at all. So far as the extra words that we have added to this section, I am glad I have the support of my Honourable friend, Mr. Neogy. His main objection, however, is that we should not apply section 216B along with the added phrase we have put into the definition of the word 'harbour'

to the earlier sections. Now, section 180 refers to aiding the escape or rescuing or harbouring a prisoner of war or a state prisoner. Honourable Members will please observe that cases which were tried by the Calcutta High Court or the Lahore Court or the Allahabad Court or the case which I have given to you, where a prisoner escaped from one of the concentration camps and was afterwards given Rs. 200 as help with the knowledge that he was an escaped prisoner, would not be covered by any section at all. Now, should there be or should there not be any provision of law to catch hold of the person who is harbouring, concealing or helping such an escaped prisoner? If you come to the conclusion that there should be no provision, then your opposition is sound. On the other hand, if all of you feel as I do, that such assistance, should be made penal, then there is no reason why you should not support this motion. Now, my Honourable friend has suggested that there should be circulation. Circulation where? We have consulted all the Provincial Governments, and all the High Courts, and the opinions received so far have been unanimous in support of the Bill. My learned friend, Mr. Navalrai, wanted me to produce evidence of the receipt of these unanimous opinions

Maulana Zafar Ali Khan: May I ask whether the Calcutta and Allahabad High Courts, which differed in their interpretation of these words, on account of which this amending Bill has been brought in, have been consulted?

The Honourable Sir Sultan Ahmed: All of them.

Mr. Lalchand Navalrai: I never doubted that the opinions had been received what I wanted was that the opinions should be put before the House.

Pandit Lakshmi Kanta Maitra: Why are we not given those opinions here?

The Honourable Sir Sultan Ahmed: I do not think it is necessary to do that. With the responsibility that I have in this matter I tell you that the opinions are unanimous on this point. All the High Courts have been consulted; and if the lawyers had to be consulted, I am glad to say that the House has had the advantage of all the arguments that could be advanced by lawyers, because so far the opposition came from Mr. Neogy who is undoubtedly one of our legal luminaries, Mr. Maitra, Mr. Navalrai and Mr. Kazmi, not to speak of others; and, therefore, we have got all the opinions possible and no useful purpose will be served by simply circulating it for the opinions of members of the bar.

My learned friend, Mr. Neogy, referred to section 136 and tried to show that there was no necessity for applying the new definition to the word 'harbour' in that section by reference to the Indian Army Act. I confess I could not follow that because so far as the Army Act is concerned, that would not apply to cases which we have got in view. That Act will apply to any person "subject to that Act who commits certain offences". Therefore, the cases that we have got in view will not be covered by the Army Act at all

Mr. K. O. Neogy: I am afraid I could not make myself properly understood by the Honourable Member. What I wanted to point out was that in the case of any person who is accused under section 136, the set of circumstances which would constitute an offence would be

[Mr. K. C. Neogy.]

different from the set of circumstances that would constitute an offence in an analogous case under the Indian Army Act; that was my point.

The Honourable Sir Sultan Ahmed: Up to that it is all right. Therefore, we are making provision in respect of those cases to which the Army Act would not apply. I suggest that it is no argument to refer to the Indian Army Act, or for the matter of that, to the Indian Official Secrets Act, to show what we are doing is not at all required.

As regards section 157, I admit that the Bill was not really necessary, but you will please observe that the word 'harbour' as used there is related to harbouring 'in any house', and no harm will be done by the new definition I am giving.

Mr. K. C. Neogy: So the definition is not needed?

The Honourable Sir Sultan Ahmed: But there is no harm at all, because the harbouring will be confined in the house. I quite admit it is not really necessary for the purpose of my case to put in the definition of 'harbour' in 157 as I have done, but my definition will not in any way militate against the spirit or letter of that section, because the harbouring must be 'in the house'. I, therefore, suggest that not only is my Bill absolutely necessary under the circumstances which exist at present, but as a matter of fact a very big lacuna which is wanting in the Penal Code will be cleared up if you pass my Bill into an Act.

The reference to the Defence of India Act, in my view, is very inappropriate coming as it does from my friends who in season and out of season, every morning and every afternoon, have condemned that Act, and if we tried to make a similar provision in the Defence of India Act, there will be a cry all over the country that—here was another arrow which had been brought out from the armoury of the Government, to oppress people. My friend, Pandit Maitra, says that the practical way in which we have used the Defence of India Act would justify our putting in another amendment in that Act. Why should we do it when we know that in the Penal Code there is enough provision to deal with a case of this kind, and a slight modification of the definition is all that is required, and therefore there is no reason why we should go to the Defence of India Act for the purpose.

Mr. Lalchand Navalrai: What about harbouring a husband by a wife? Is that going to be accepted by the Government?

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st July, 1942."

The Assembly divided:

AYES 18.

Abdul Ghani, Maulvi Muhammad.
Azhar Ali, Mr. Muhammad.
Banerjee, Dr. P. N.
Chattopadhyaya, Mr. Amarendra Nath.
Dam, Mr. Ananga Mohan.
Deshmukh, Mr. Govind V.
Essak Sait, Mr. H. A. Sathar H.
Lalchand Navalrai, Mr.
Laljee, Mr. Huseenbhai Abdullahal.

Maitra, Pandit Lakshmi Kanta.
Mehta, Mr. Jagnadas M.
Muhammad Ahmad Kazmi, Qazi.
Murtuza Sahib Bahadur, Maulvi Syed.
Neogy, Mr. K. C.
Sant Singh, Sardar.
Siddique Ali Khan, Nawab.
Zafar Ali Khan, Maulana.
Ziauddin Ahmad, Dr. Sir.

NOES 88.

Abdul Hamid, Khan Bahadur Sir.
Ahmad Nawaz Khan, Major Nawab Sir.

Aiyar, Mr. T. S. Sankara.
Aney, The Honourable Mr. M. S.
Bewoor, Sir Gurunath.
Bhandarkar, Mr. K. Y.
Caroe, Mr. O. K.
Chapman-Mortimer, Mr. T.
Clow, The Honourable Sir Andrew.
Dalal, Dr. Sir Ratanji.
Dalpat Singh, Sardar Bahadur Captain.

Dehejia, Mr. V. T.
Ghiasuddin, Mr. M.
Gopalaswami, Mr. R. A.
Griffiths, Mr. P. J.
Gwilt, Mr. E. L. C.
Ikramullah, Mr. Muhammad.
Imam, Mr. Saiyid Haider.
Ismail Ali Khan, Kunwar Hajee.
James, Sir F. E.

Jawahar Singh, Sardar Bahadur
Sardar Sir.
Kamaluddin Ahmed, Shams-ul-Ulema.

Khurshid, Mr. M.
Lawson, Mr. C. P.
Maxwell, The Honourable Sir Reginald.
Miller, Mr. C. C.
Mody, The Honourable Sir Homi.
Mudaliar, The Honourable Diwan Bahadur Sir A. Ramaswami.
Pillay, Mr. T. S. S.
Prior, Mr. H. C.
Raisman, The Honourable Sir Jeremy.

Richardson, Sir Henry.
Sarker, The Honourable Mr. N. R.
Spence, Sir George.
Stokes, Mr. H. G.
Sultan Ahmed, The Honourable Sir.
Thakur Singh, Captain.
Tyson, Mr. J. D.

The motion was negatived.

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

“That the Bill further to amend the Indian Penal Code be taken into consideration.”

The Assembly divided:

AYES 39.

Abdul Hamid, Khan Bahadur Sir.
Ahmad Nawaz Khan, Major Nawab Sir.

Aiyar, Mr. T. S. Sankara.
Aney, The Honourable Mr. M. S.
Bewoor, Sir Gurunath.
Bhandarkar, Mr. K. Y.
Caroe, Mr. O. K.
Chapman-Mortimer, Mr. T.
Clow, The Honourable Sir Andrew.
Dalal, Dr. Sir Ratanji.
Dalpat Singh, Sardar Bahadur Captain.

Dehejia, Mr. V. T.
Ghiasuddin, Mr. M.
Gopalaswami, Mr. R. A.
Griffiths, Mr. P. J.
Gwilt, Mr. E. L. C.
Ikramullah, Mr. Muhammad.
Imam, Mr. Saiyid Haider.
Ismail Ali Khan, Kunwar Hajee.
James, Sir F. E.

Jawahar Singh, Sardar Bahadur
Sardar Sir.

Jehangir, Sir Cowasji.
Kamaluddin Ahmed, Shams-ul-Ulema.
Khurshid, Mr. M.
Lawson, Mr. C. P.
Maxwell, The Honourable Sir Reginald.
Miller, Mr. C. C.
Mody, The Honourable Sir Homi.
Mudaliar, The Honourable Diwan Bahadur Sir A. Ramaswami.
Pillay, Mr. T. S. S.
Prior, Mr. H. C.
Raisman, The Honourable Sir Jeremy.

Richardson, Sir Henry.
Sarker, The Honourable Mr. N. R.
Spence, Sir George.
Stokes, Mr. H. G.
Sultan Ahmed, The Honourable Sir.
Thakur Singh, Captain.
Tyson, Mr. J. D.

NO. 16.

Abdul Ghani, Maulvi Muhammad.
 Azhar Ali, Mr. Muhammad.
 Banerjee, Dr. P. N.
 Chattopadhyaya, Mr. Amarendra
 Nath.
 Dam, Mr. Ananga Mohan.
 Deshmukh, Mr. Govind V.
 Essak Sait, Mr. H. A. Sathar H.
 Lalchand Navalrai, Mr.

Maitra, Pandit Lakshmi Kanta.
 Mehta, Mr. Jagnadas M.
 Muhammad Ahmad Kazmi, Qazi.
 Murtuza Sahib Bahadur, Maulvi
 Syed.
 Neogy, Mr. K. C.
 Sant Singh, Sardar.
 Zafar Ali Khan, Maulana.
 Ziauddin Ahmad, Dr. Sir.

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): The House will now consider the Bill clause by clause. Clause 2. An amendment has just been handed in by Mr. Lalchand Navalrai. Why did not the Honourable Member comply with the standing order?

Mr. Lalchand Navalrai: It was only two days ago that the Bill was introduced and it has come up to-day for consideration. Again these points arose in the discussion now.

Mr. President (The Honourable Sir Abdur Rahim): The Bill was introduced five days ago. The Chair cannot accept the amendment. The question is:

"That clause 2 stand part of the Bill."

Sardar Sant Singh: I want to say a few words on this clause. I am sorry that the Government are not taking that broad view for circulation of the Bill as we had expected the present Government would take. However, as we are faced with this Bill now, I shall say a few words on the scope of clause 2 of the Bill. It has not been realised that the present clause not only strengthens the present penal provision but goes much further. The original section, 216B, which contained the definition of 'harbour' covered only three sections, 212, 216 and 216A of Indian Penal Code. This Bill proposes to transfer the definition of 'harbour' by repealing section 216B and adding section 52A in the chapter dealing with definitions. The general definitions to the Penal Code are in Chapter II of the Indian Penal Code and the last section of that Chapter is 52. It is proposed to add this 52A. That is the last definition in the Penal Code in the Chapter on General Explanations. By transposing this clause as section 52A of the Indian Penal Code, the effect would be that this definition will govern all the subsequent sections of the Indian Penal Code, which 216B did not do. So, actually it is enlarging the scope of the definition of 'harbour' to a very great extent. When I say that this amendment of the Penal Code means an additional repressive measure in the hands of the executive Government, I mean that where section 216B simply provided a punishment or restricted the meaning of the word 'harbour' to three sections of the Penal Code the present definition will cover all the sections of the Penal Code wherever harbouring is mentioned. The need for this Bill has been disclosed by the Honourable the Law Member by saying that in 1894 according to him there was a drafting omission.

Now, I have got the discussion which took place in 1894 about this Bill. The discussion appears on page 301 of the Proceedings of the Council of the Governor General of India and in those proceedings I find in the speech of Sir Philip Hutchins these words when he moved for leave to introduce that Bill:

"Harbouring or concealing an offender is indeed punishable under sections 212 and 216 of the Code; but an offender can only mean a person who has committed an offence, and the word 'offence' is defined in the Code in so technical a manner that it does not cover any kind of crime committed in a Native State."

Then the discussion proceeds about the meaning of the word 'offence'. My point in this debate is that when the Honourable the Law Member says that there was a drafting omission at the time when 216B was drafted it does not appear to be a correct interpretation of the proceedings of that Council.

Now, at the end of the same speech, it was said:

"The other main object of the Bill which I shall now lay on the table is to explain what is meant by harbouring, and to provide for the punishment of persons affording the same sort of protection or assistance to what I may call prospective dacoits—to gangs, that is to say, which have assembled together to commit dacoity but have not yet carried out their purpose. It is proposed to declare that the supplying of offenders with food, clothes, arms or ammunition, or giving them any sort of assistance to enable them to avoid apprehension, amounts to 'harbouring'."

Now, in plain language it was considered by the then Council and by Honourable gentleman who was in charge of this Bill that the definition of 216B, as it was proposed to be enacted at that time, was to apply only to harbouring of offenders and to nobody else. Similarly, later on when the Bill came to be passed on the 22nd February, 1894, the speech that the Honourable Dr. Lethbridge made makes the scope of the definition very clear that it was intended to apply merely to offenders. The Bill was then circulated for opinion and it is clear from the proceedings of that date. Dr. Lethbridge then said: "I am glad to find from the replies and opinions which have been received that it has met with a favourable reception". Then the Bill was referred to a Select Committee. From these proceedings it is clear that there was no drafting omission. There could not be a drafting omission at that time. The thing was quite clear to the gentleman who was in charge of the Bill and he made it clear to the Council before which the Bill was placed. Further on at the end of the same speech we find:

"The Select Committee accepted this view of the subject and decided to omit all reference to section 216 of the Code of Criminal Procedure in the Bill now before the Council. In respect to the further suggestion made by many of the officers consulted, that a clause similar to that passed in Act X of 1886 amending section 216 should be added to section 212, the Select Committee was asked to consider whether there was not a substantial difference between section 212, which refers to harbourers of offenders not yet arrested or ordered to be arrested, and section 216, which refers to harbourers of escaped prisoners or offenders specifically ordered to be arrested, and, if there was a substantial difference, whether it would not be well to limit the term 'offence' in the amending clause of section 212 to the more heinous offences. The Committee considered that there was a difference, and we have endeavoured to give effect to this suggestion and to the desire for uniformity by enumerating in the amending section 7 of this Bill, which is to be added to section 212 only those offences which have been entered in all the other sections."

From this quotation, it will be clear that the gentleman who was in charge of this Bill was not unaware of the difference which is now being enlarged upon by this Bill.

[Sardar Sant Singh.]

Again it is said that on account of certain circumstances that have arisen due to war conditions in the country it has become necessary to enlarge the scope of this clause. Probably this is an argument which has some force. If it was intended merely to reconcile the views of the Allahabad High Court and the Lahore High Court, I may submit that about 14 or 15 years would not have been allowed to elapse for the reconciling of these views. Seven Lahore, where this different view was taken from Allahabad, was a ruling which was given about 1925 or 1926. Seventeen years have elapsed and so you cannot say that this Bill is intended merely for the purpose of reconciling the views of the Allahabad High Court and those of the Lahore High Court

Mr. President (The Honourable Sir Abdur Rahim): I think the Honourable Member may stop now.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 17th February, 1942.