

9th September 1937

**THE
LEGISLATIVE ASSEMBLY DEBATES**

(Official Report)

Volume V, 1937

(2nd September to 17th September, 1937)

**SIXTH SESSION
OF THE
FIFTH LEGISLATIVE ASSEMBLY,
1937**



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Legislative Assembly.

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MR. M. GHIASUDDIN, M.L.A.

MR. MATHURADAS VISSANJI, M.L.A.

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LEGISLATIVE ASSEMBLY.

Thursday, 9th September, 1937.

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

STARRED QUESTIONS AND ANSWERS.

(a) ORAL ANSWERS.

BATTALIONS OF THE KUMAON REGIMENT.

402. *Mr. Badri Dutt Pande : Will the Defence Secretary state :

- (a) what is the strength of the first Battalion Kumaonies ;
- (b) why was the Second Battalion of the Kumaon Regiment abolished ;
- (c) whether it is a fact that recruits from Kumaon are attached to several Battalions ; and if so, whether Government will give the names of those Battalions in which Kumaonies are attached and number of the combatants ;
- (d) whether it is the intention of the Defence Department to collect all these Kumaonies soldiers from different Battalions and thus revive the second Battalion Kumaonies ; and
- (e) what is the number of Indian troops engaged *ex-India* at present ?

Mr. C. M. G. Ogilvie : (a) 721.

(b) In consequence of the necessity for reducing the size of the army after the War.

(c) The battalions in which Kumaonies are serving and their numbers in each on the 1st January, 1937, are, apart from the First Kumaon Rifles, as follows :

1st Bn., 19th Hyderabad Regiment	232
2nd Bn., 19th Hyderabad Regiment ..	269
4th Bn., 19th Hyderabad Regiment	225
10th Bn., 19th Hyderabad Regiment	259

(1377)

Besides these, the Kumaonies are in the following corps :

Royal Indian Army Service Corps	235
Royal Indian Army Service Corps (Mechanical Transport)	114
Sappers and Miners	231

Also a certain number in the Indian Hospital Corps.

(d) No.

(e) 3,262.

Mr. Badri Dutt Pande : Is there any prospect in the near future of these Kumaonies being assimilated into the Second Battalion ?

Mr. C. M. G. Ogilvie : I am afraid not.

Mr. Badri Dutt Pande : May I know the reason why ?

Mr. C. M. G. Ogilvie : The reason is that the four existing battalions would be disorganised and also an additional battalions would have to be created.

Mr. Badri Dutt Pande : Why was the second battalion disbanded just after the war ?

Mr. C. M. G. Ogilvie : Many battalions had to be disbanded and the Kumaonies who had not been recruited before the War lost one of theirs.

Mr. T. S. Avinashilingam Chettiar : What is the meaning of " engaged ex-India " ?

Mr. C. M. G. Ogilvie : I think you had better ask the questioner.

Mr. Badri Dutt Pande : Is there any Kumaon battalion in Hong-kong ?

Mr. C. M. G. Ogilvie : I think so.

Mr. Badri Dutt Pande : In the fighting line or in garrison duty ?

Mr. C. M. G. Ogilvie : There is no fighting line.

MUHAMMAD ALI STORES IN ABYSSINIA AND TRADE TRANSACTED WITH ITALY.

403. ***Mr. Badri Dutt Pande :** Will the Foreign Secretary state :

- whether all Muhammad Ali Stores have been disbanded in Abyssinia ; and if so, what loss, if any, this firm has suffered ;
- what is the amount of annual trade that India transacts with Italy ; and
- whether the Italian Government have locked up their money in the Abyssinian Banks ; and if so, are they not allowing them to take it outside ?

Lieut.-Colonel A. E. B. Parsons : (a) All the branches of Messrs. Muhammad Ali's Stores in Abyssinia are being liquidated. Government are unable to estimate the loss the firm has suffered.

(b) Figures for the last three years are :

		1934-35.	Rs.
Exports		5,87 lakhs.
Imports		3,02 lakhs.
1935-36.			
Exports		3,54 lakhs.
Imports		2,00 lakhs.
1936-37.			
Exports		4,68 lakhs.
Imports		1,21 lakhs.

(c) It is understood that the firm is experiencing some difficulty in arranging for the transfer of its funds from Abyssinia, but the matter is under negotiation with the Italian authorities.

Seth Govind Das : Was any compensation paid to the owners of the firm ?

Lieut.-Colonel A. E. B. Parsons : Compensation for what ?

Seth Govind Das : For their losses.

Lieut.-Colonel A. E. B. Parsons : None, I think.

Seth Govind Das : Will the Government press upon the Italian authorities to give compensation because the Muhammad Ali Stores were owned by Indians ?

Lieut.-Colonel A. E. B. Parsons : I do not think it will be possible to obtain compensation from the Italian Government.

Mr. Badri Dutt Pande : Is the money still locked up in the Italian Banks ?

Lieut.-Colonel A. E. B. Parsons : I am afraid I don't know. The firm probably knows.

Mr. Badri Dutt Pande : Was any representation made to the Government of India by the firm ?

Lieut.-Colonel A. E. B. Parsons : The Government are in constant communication with the representatives of the firm through an association called the Indian Citizenship Association, or something of that sort.

Mr. S. Satyamurti : May I know the nature of the difficulty which the firm is experiencing, in connection with the transport of their monies ?

Lieut.-Colonel A. E. B. Parsons : I think, so far as I gather, it is a question of exchange and similar financial matters.

Mr. S. Satyamurti : Apart from the question of exchange, may I know whether Government will find out what is the exact nature of the difficulty which prevents the Italian Government allowing them to export their monies ?

Lieut.-Colonel A. E. B. Parsons : The Italian Government, I do not think, are prohibiting the export of money. They are trying to arrange terms for taking over the business and if they take over the business, the Italian Government would naturally arrange for payment in some form acceptable to the firm.

Mr. S. Satyamurti : What is the nature of the present difficulty ?

Lieut.-Colonel A. E. B. Parsons : I have already referred to the exchange difficulty. Negotiations are still going on.

Mr. Badri Dutt Pande : Is it the intention of the Mussolini Government not to allow the firm to take their money outside.

Lieut.-Colonel A. E. B. Parsons : I am afraid I cannot say what the intention of the Italian Government is.

Seth Govind Das : How will this exchange difficulty be overcome ?

Lieut.-Colonel A. E. B. Parsons : I should imagine, by negotiation. If the Italian Government comes to terms with the firm, they would arrange to pay the firm.

Mr. Badri Dutt Pande : Have the Government entered into a treaty with Mussolini ?

Lieut.-Colonel A. E. B. Parsons : About the Muhammad Ali Stores ?

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

†404* and 405*.

HAND-BILLS THROWN BY AEROPLANES IN THE TRIBAL TERRITORIES IN THE NORTH-WEST FRONTIER.

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

- (a) whether it is a fact that recently hand-bills were thrown by aeroplanes in some tribal territories in the North-West Frontier, warning tribesmen to refrain from their anti-Government activities and bringing home to them that bombing operations will be re-started if they turn deaf ears to the Government demands ; and

†These questions were withdrawn by the questioner.

- (b) what these bombing operations are and whether they include bombing of non-combatants including women and children, and if so, the reasons for this inhuman warfare ?

Mr. C. M. G. Ogilvie : I refer the Honourable Member to the answers I gave on the 27th August, 1937, to Mr. B. D. Pande's starred question No. 153 and the supplementary questions arising from it.

Mr. S. Satyamurti : May I know whether Government have any information that the people for whom handbills are intended know the language in which these handbills are printed ?

Mr. C. M. G. Ogilvie : That question was answered by me several times on the 27th August.

Mr. S. Satyamurti : Have Government taken any steps to see that women and children are not bombed even by accident, when these bombing operations take place ?

Mr. C. M. G. Ogilvie : That question was also answered by me on the 27th August.

Mr. S. Satyamurti : Have Government received any information as to whether any women and children were bombed by these aeroplane bombs ?

Mr. C. M. G. Ogilvie : That question was also answered by me on the 27th August, 1937.

Mr. S. Satyamurti : Have any women and children been bombed at all ?

Mr. C. M. G. Ogilvie : That question was also answered by me on the 27th August, 1937.

Mr. S. Satyamurti : Have the bombing operations stopped now ?

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

+407* and 408*.

GOVERNMENT ADVERTISEMENTS GIVEN TO NEWSPAPERS.

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

- (a) whether the policy of Government in respect of giving advertisements to the press remains the same, that is to say, based on a distinction between "friendly" and the "unfriendly" press ;
- (b) whether the Government of India propose to consider the desirability of giving advertisements to newspapers, purely on grounds of securing maximum publicity, bearing in mind only the circulation of the newspaper concerned, and ignoring all other considerations ; and
- (c) if not, why not ?

†For these questions and replies thereto, see pages 1400-01 of these debates.

Mr. J. A. Thorne : The present policy of Government is to secure, from a commercial point of view, the maximum value for advertisements ; and the selection of newspapers for advertisements is based on this principle.

Mr. S. Satyamurti : May I ask if this answer covers all the Departments of the Government which advertise in newspapers, such as the Railway Department, the Commerce Department, and so on ?

Mr. J. A. Thorne : I think I can say that it covers the decision of Government in respect of all Departments except in so far as the matter is under discussion with the Railway Department.

Seth Govind Das : What is the definition of a friendly press ?

Mr. J. A. Thorne : I have not used that expression.

Mr. S. Satyamurti : May I inform my Honourable friend that his distinguished Chief, Sir Henry Craik, Governor-designate of the United Provinces, used these words in this House ? These words are not mine, but I have simply taken them from him.

Mr. Mohan Lal Saksena : Have the Government made it a rule that advertisements should not be given to papers having less than a minimum circulation ?

Mr. J. A. Thorne : It follows from the answer that I have given that papers with a negligible circulation will not be selected for the purpose.

Mr. Mohan Lal Saksena : Will the Government fix the number ? What does the Honourable Member mean by 'negligible circulation' ? I know there are certain papers which are published simply for the purpose of getting Government advertisements.

Mr. J. A. Thorne : I do not know if it is possible to fix an absolute number for all purposes and for all advertisements, but the suggestion will be considered.

Seth Govind Das : In view of the fact that Sir Henry Craik has used the expression 'friendly and unfriendly', will the Honourable Member kindly tell the House what is meant by that ?

Mr. President (The Honourable Sir Abdur Rahim) : That is a common expression.

Mr. S. Satyamurti : When does my Honourable friend expect the Railway Board to come to a decision on this question, that is to say, coming into line with the present policy of the Government, namely, commercial considerations alone will count ? And in the meantime, will the Railway Department carry on the past policy of distinguishing "friendly" and "unfriendly" press irrespective of commercial value ?

Mr. J. A. Thorne : I hope that the matter will be settled very soon.

Mr. S. Satyamurti : In the meantime, what is the policy that is being followed by the Railway Department ? Are they following the spirit of "friendly" or "unfriendly" press or are they coming into line with the new policy ?

Mr. J. A. Thorne : I cannot answer that without notice. In the case of the Railway Department many of the advertisements are not put in from headquarters but by Agents themselves. If the Honourable Member wants further information on that subject, I suggest that notice should be given to the representative of the Railway Department.

Mr. S. Satyamurti : Will my Honourable friend press on the Railway Department the expediency of coming to a quick conclusion on this subject ?

Mr. J. A. Thorne : I do not know about "press", but the matter is under discussion with the Railway Department.

Mr. K. Santhanam : Will the Government consider the desirability of stopping the advertisements of the Railway Department till they come into line with the new policy ?

(No reply.)

Seth Govind Das : May I ask what is the amount of money that is spent on these advertisements ?

Mr. J. A. Thorne : I cannot say.

INTERCEPTION OF LETTERS AND TELEGRAMS AND TAPPING OF TELEPHONE CALLS.

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

- (a) whether the instructions with regard to the interception of letters sent by post and addressed to particular individuals, the interception of telegrams of the same category, and the tapping of telephone calls between certain persons, have been recently modified ;
- (b) whether, in view of the acceptance of office by Congress in six Provinces, the Government of India propose to consult the Provincial Governments as regards any necessary changes in such instructions ; and
- (c) if not, why not ?

Mr. J. A. Thorne : (a) It is not in the public interest to give any information as to the measures taken in this regard.

(b) and (c). The Government of India do not consider any consultation necessary ; they no longer control the action of Provincial Governments in such matters.

Mr. S. Satyamurti : With reference to the answer to part (a) of the question, may I ask whether instructions on this particular question are given independently by each Provincial Government, or whether it is the Central Government which lays down the general principles and the instructions are carried out by the various Provincial Governments ?

Mr. J. A. Thorne : Under the present constitutional position it is obviously for the Government concerned—whether the Central Government or the Provincial Government—to give instructions as to what should be done within its own executive sphere.

Mr. S. Satyamurti : May I take it, therefore, that the Central Government comes in in respect of this matter, only in respect of the centrally administered areas ?

Mr. J. A. Thorne : Not necessarily.

Mr. S. Satyamurti : Then, may I know where do the Local Governments come in, and where the Central Government comes in in respect of their respective jurisdictions ?

Mr. J. A. Thorne : It depends on the executive sphere, and for that the Government of India Act is the authority.

Mr. S. Satyamurti : May I ask whether in the provinces which are now administered by autonomous Provincial Governments there is any executive sphere, in respect of the matters mentioned in clause (a), where the Central Government exercises such powers ?

Mr. J. A. Thorne : That is a big question and a constitutional question to which, as I said, a perusal of the Government of India Act will provide the answer. But certainly there are such subjects.

Mr. S. Satyamurti : With reference to the answer to parts (b) and (c) of the question, may I know whether the Government have contemplated that there may be contrary instructions issued by the Central Government and the Provincial Governments ? For example, the Central Government may want to intercept a letter but the Provincial Government may not. In view of that, will the Government consider the desirability of consulting Provincial Governments in respect of all such matters ?

Mr. J. A. Thorne : That is a hypothetical question. I suggest that if any difficulties arise, they would certainly be resolved by consultation and discussion with the Provincial Governments.

Seth Govind Das : Is the private correspondence of the Congress Ministers subject to the interception of the Central organisation ?

Mr. J. A. Thorne : I do not think that arises from this question. But so far as it does arise, it is covered by the general answer I have given to Mr. Satyamurti.

Mr. Mohan Lal Saksena : May I ask if the list of persons whose *dak* is ordered to be censored by the Government is ever revised ?

Mr. J. A. Thorne : That is obviously a question which I cannot answer.

Mr. S. Satyamurti : May I ask if the Government will examine the question of the correspondence of Provincial Ministers not been intercepted by the orders of the Central Government ?

Mr. J. A. Thorne : That will certainly be considered if my Honourable friend thinks that such an occasion is likely to arise.

Seth Govind Das : Because the Government have agreed to consider the question, may I take it that at present the correspondence of the Ministers is being intercepted by the Central organisation ?

Mr. J. A. Thorne : It is not in the public interest to answer any question of that kind.

STATE OF HEALTH OF CERTAIN PRISONERS.

411. ***Mr. Amarendra Nath Chattopadhyaya** : Will the Honourable the Home Member be pleased to state if the following statement about the state of health of the following prisoners is correct ? If not, will he be pleased to give a correct statement ?

The Statement.

Name of prisoner.	Year.	Disease.
Biren Roy	1932	Appendicitis.
Mukul Sen	1932	T. B. Lungs.
Satya Bose	1934	Gastric Ulcer.
Bidhu Sen	1934	T. B. Lungs.
Nikhil Guha Roy	1934	T. B. Lungs.
Prafulla Mazumdar	1935	T. B. Lungs.
Nepal Sarkar	1936	Stone in kidney.
Kamal Srimani	1936	Stone in kidney.
Suren Sarkar	1936	Asthma.
Amaar Sutradhar	1937	Rheumatism.
Kartik Deysirkar (he still cannot walk)	1937	Rheumatism.
Dhrubesh Chatterjee	1937	V. D. H.
Fani Nandi	1937	T. B. Lungs.
Sudhir Samajdar	1937	Polyuroa (Heart disease).
Ananta Bhattacharya	1937	Heart disease.
Sudhindra Bhattacharya	1937	Cannot pass motion or make water without douche or catheter respectively.
Hemendu Chakravarty	1937	Dilated stomach.
Mrityunjoy Banerji	1937	Heart disease.
Rebati Saha	1937	Gastric Ulcer.

Mr. R. F. Mudie : None of these prisoners is now in the Andamans, but the statement regarding Biren Roy, Mukul Sen, Bidhu Sen, Prafulla Mazumdar, Kamal Srimani, Suren Sarkar, Dhrubesh Chatterjee and Ananta Bhattacharya is correct. Statement regarding Nikhil Guha Roy, Nepal Sarkar and Sudhir Samajdar is not correct. Government

have no information regarding Satya Bose, Amar Sutradhar, Kartik Dey Sarkar, Fani Nandi, Sudhindra Bhattacharya, Hemendu Chakravarty, Mrityunjoy Banerjee and Rebati Saha.

Mr. S. Satyamurti : The Honourable Member cannot pronounce the names of his own detenus !

DETENTION PERIOD OF ONE KAMAL SRIMANI.

412. ***Mr. Amarendra Nath Chattopadhyaya** : (a) Will the Honourable the Home Member please state if it is not a fact that one Kamal Srimani was operated upon three times and his detention period in the hospital was not counted within the period of his sentence and he had to serve five months more than his period of sentence ?

(b) Was he repatriated while he became insane ?

Mr. R. F. Mudie : (a) The prisoner Kamal Srimani was never operated upon in the Andamans. The rest of this part does not arise.

(b) No.

Mr. Kuladhar Chaliha : Was he wrongfully detained for five months more than his term ?

Mr. R. F. Mudie : No, Sir.

RELEASE OF INVALID POLITICAL PRISONERS IN THE ANDAMANS.

413. ***Mr. Amarendra Nath Chattopadhyaya** : Will the Honourable the Home Member please state whether Government are prepared to release those political prisoners in the Andaman Islands who have become invalids and attacked with tuberculosis ?

Mr. J. A. Thorne : The remission of sentences imposed on prisoners, convicted outside the jurisdiction of the Central Government, is not within the power of the Central Government. But prisoners in the Cellular Jail who suffer from tuberculosis or other serious diseases are returned to their Provinces.

Mr. Mohan Lal Saksena : How many persons have been returned ?

Mr. J. A. Thorne : I cannot say without notice.

PRISONERS IN THE ANDAMANS SUFFERING FROM DYSPEPSIA.

414. ***Mr. Amarendra Nath Chattopadhyaya** : Will the Honourable the Home Member please state whether it is a fact that over 30 prisoners in the Andamans at present have been suffering from chronic dyspepsia in consequence of which they cannot stand food cooked in the prisoners' kitchen and have to depend upon 'Ic-Mic' cooker ? If so, are Government prepared to consider the advisability of repatriating those prisoners ?

Mr. J. A. Thorne : I presume the question relates to the period immediately before the hunger-strike began on July 24th. At that time 24 terrorist prisoners were on a special kind of diet as an experiment.

As I have already stated, the question of repatriation of terrorist prisoners who have given up the hunger-strike is under examination.

Mr. Mohan Lal Saksena : What was the experiment ? Was it done under the advice of the medical doctors ?

Mr. J. A. Thorne : It was certainly done under instructions from the medical staff.

Mr. Mohan Lal Saksena : Were they suffering from any disease ?

Mr. J. A. Thorne : Dyspepsia.

Mr. Bhulabhai J. Desai : I think the Honourable Member said that persons suffering from tuberculosis are generally repatriated and the question I am asking is whether tuberculosis and other similar diseases have attacked the prisoners since they were taken to the Andamans ?

Mr. J. A. Thorne : The answer to which my Honourable friend refers was given on the previous question, but I have no objection to answering this question now.

Mr. Bhulabhai J. Desai : I shall be grateful.

Mr. J. A. Thorne : As a general rule the serious diseases such as tuberculosis had already affected the prisoners to some degree before they came to the prison.

PRISONERS IN THE ANDAMANS SUFFERING FROM CERTAIN DISEASES.

415. ***Mr. Amarendra Nath Chattopadhyaya :** (a) Will the Honourable the Home Member please state whether it is not a fact that out of 316 prisoners in the Andamans, 130 in the sleeping yard are under the treatment of the Senior Medical Officer ? Will the Honourable the Home Member be pleased to lay on the table a comparative chart of their weight taken from time to time since they arrived in the Andamans to serve their terms of sentences ?

(b) Will the Honourable the Home Member lay on the table a statement of the prisoners in the Andamans who are at present suffering from diseases like pyorrhoea, caries, eye diseases, malaria, influenza and piles ?

(c) Will the Honourable the Home Member be pleased to state if Government had sent Miss Cornelia Sorabji to the Andamans in the middle of February, 1937, to visit the political prisoners ? If so, will Government lay on the table the reports she had submitted, and will the Honourable the Home Member be pleased to state if those reports of Miss Sorabji were challenged by the prisoners during her subsequent visits ?

Mr. J. A. Thorne : (a) On the assumption that the question refers to the terrorist prisoners confined in the Cellular Jail the reply to the first part is that on the 23rd July last 41 terrorist prisoners were on the convalescent gang list. As regards the second part, I would refer the Honourable Member to the reply given to Mr. Mohan Lal Saksena's starred question No. 386 on the 15th September, 1936.

(b) The number of terrorist prisoners in the Andamans undergoing treatment for the diseases named on the 17th August, 1937, was as follows :

Pyorrhœa	..	..	35
Dental Caries			Nil.
Eye Diseases			2
Malaria			2
Influenza			Nil.
Piles	..	..	2

(c) Miss Cornelia Sorabji visited the Andamans of her own accord but permission to proceed there was granted her by Government. She has submitted no report to Government and she has made only that one visit to the Andamans.

Pandit Lakshmi Kanta Maitra : Is the Honourable Member aware that some terrorist prisoners made representations to the Government of India alleging that the statements made by Miss Sorabji after her return from the Andamans were inaccurate in material particulars ?

Mr. J. A. Thorne : I am not aware of that. In any case Miss Sorabji made no report or statement.

Pandit Lakshmi Kanta Maitra : Has the Home Department never heard anything from her by way of report or statement after her return from the Andamans ?

Mr. J. A. Thorne : Not after her return.

Mr. S. Satyamurti : Do Government give permits to any person who wants to visit the Andamans, or do they exercise discrimination and if the latter is a fact, may I know the reasons why this Miss Sorabji was allowed to visit the Andamans ?

Mr. J. A. Thorne : Government certainly exercise discrimination. Miss Sorabji has been for many years past interesting herself in questions of penal reform and it was on that footing that she sought and obtained permission to visit the Andamans.

Mr. S. Satyamurti : Is it not a fact that she is notoriously anti-Indian and consistently against Indian aspirations, and was that the reason why she was allowed to visit the Andamans ?

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member cannot cast reflections in putting supplementary questions.

Mr. S. Satyamurti : But she is not a Member of the House.

Mr. President (The Honourable Sir Abdur Rahim) : That question cannot be allowed.

Seth Govind Das : What is the principle on which this discrimination is made for allowing persons to visit the Andamans ?

Mr. J. A. Thorne : It is difficult to say that there is any principle. When applications are received, they are considered on their merits.

Pandit Lakshmi Kanta Maitra : Is it not a fact that Miss Sorabji was induced by the Government of Bengal and the Government of India to undertake that tour to the Andamans and to report in favour of Government ?

Mr. J. A. Thorne : It is certainly untrue that the Government of India.....

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member already said that she went of her own accord.

Pandit Lakshmi Kanta Maitra : I have information at my disposal that she was made to go to Andamans by the Government.

Mr. President (The Honourable Sir Abdur Rahim) : That may be the information of the Honourable Member, but the information of the Government is apparently to the contrary.

Pandit Lakshmi Kanta Maitra : I want to elicit an answer to my question whether she has been sent by the Government.

Mr. President (The Honourable Sir Abdur Rahim) : He has already answered that.

Mr. S. Satyamurti : With reference to part (a), may I know what is the latest report available to the Government, with regard to the health of these prisoners—30 or 40, I do not know—who are now in the convalescent list ?

Mr. J. A. Thorne : I have no information later than that relating to the 17th August, 1937, and the number which I have already given to the House was 41 which appears to be the same as the number under treatment on the 23rd July last.

Mr. S. Satyamurti : Are Government satisfied that these men are given adequate and prompt medical treatment ?

Mr. J. A. Thorne : Yes, Sir ; entirely.

Pandit Lakshmi Kanta Maitra : I understood the Honourable Member to say that Miss Sorabji made an application to the Government of India. May I know how many other applications did his department receive from other persons intending to visit Andamans ?

Mr. J. A. Thorne : I want notice.

Seth Govind Das : The Honourable Member just stated that the decision of the Government of India is taken after the applications are received. May I ask the Honourable Member to state whether only such Indians are permitted to go there who are definitely anti-Indian in their views ?

Mr. President (The Honourable Sir Abdur Rahim) : That contains allegations.

Mr. S. Satyamurti : Why was the application of Mr. Mohan Lal Saksena, a Member of this House, rejected ?

Mr. J. A. Thorne : I have already answered that question.

Pandit Lakshmi Kanta Maitra : Several Honourable Members of this House sought permission to visit the Andamans, but they were all refused !

Mr. President (The Honourable Sir Abdur Rahim) : Next question. The Honourable Member, Mr. Amarendra Nath Chattopadhyaya, has exhausted his quota of questions and so answer to question No. 416 will be treated as written answer.

†416*.

PROPOSED SLAUGHTER HOUSE IN THE LAHORE CANTONMENT.

417. ***Mr. Sham Lal** : (a) Will the Defence Secretary be pleased to state whether it is a fact that Government contemplate the establishment of a big slaughter house at Lahore Cantonment ?

(b) Is it intended to slaughter all kinds of animals at this place ? If not, will Government inform this House what particular kinds of animals and cattle will be slaughtered here ?

(c) How many animals are likely to be slaughtered daily at this place ?

(d) How many people are likely to be employed in this slaughter house ?

(e) How far has the construction of this slaughter house proceeded, and what is the estimated total cost of the entire scheme, including construction of buildings, purchase of machinery and stores ?

(f) Is this scheme of establishing a slaughter house to be combined with that of cold storage ? If so, what is this cold storage scheme to cost ?

(g) Is it a fact that animals at this proposed slaughter house are intended to be killed at one stroke by big sharp-edged bars worked by electricity ? If so, are Government aware that this method of slaughtering animals is in India known by the name of *Jhatka*, a process which is very offensive to the Muslims ?

(h) Are Government aware that in the Punjab *Jhatka* or slaughtering at one stroke has led to many communal riots ?

(i) Are Government aware that the slaughtering of a large number of bovine animals at this place will wound very much the feelings of the Hindus and the Sikhs, and that the electrical method of slaughter by one stroke will offend the Muslims ?

(j) Did Government before deciding to construct this slaughter house at Lahore Cantonment consult public opinion in this matter ? If not, why not ?

†For this question and the reply thereto, see pages 1401-02 of these debates.

(k) Are Government aware that the news about the establishment of this proposed slaughter house has agitated very much the minds of the Hindus and the Sikhs in the Punjab ?

(l) In view of this strong agitation against the establishment of this slaughter house, do Government intend to abandon this scheme ?

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

(b) No. Cattle only.

(c) An average of 83 per day.

(d) 236.

(e) About one-fifth of the work on the buildings has been finished and most of the steel work had been manufactured. Orders have been placed for the whole of the machinery. The total estimated cost of the complete scheme is rupees 28½ lakhs.

(f) Yes. The Government have made a contract with the Cold Storage Company of India, Limited, for hire of the necessary cold storage space at a cost of Rs. 4,63,680 per annum for a period of 15 years.

(g) No. Slaughter will be carried out by Muslim butchers by the method known as "halal".

(h) Does not arise.

(i) The answer to the first part is, that Government had no reason to believe that the establishment of the abattoir would injure the feelings of Hindus and Sikhs owing to the fact that less cattle will be slaughtered than formerly and that better conditions generally will obtain. Government were confirmed in this view by the fact that local opinion, which was consulted, was unanimously to the effect that no injury to religious sentiments could, in the circumstances, be apprehended.

The second part of the question does not arise.

(j) Public opinion was consulted by the Government of the Punjab.

(k) Yes, but it is believed that their agitation is due to misunderstandings and misrepresentations.

(l) I refer the Honourable Member to the answer given by me on the 6th instant to Sardar Mangal Singh's starred question No. 320.

Seth Govind Das : Are Government aware that a similar slaughter-house was to be built in Ratana in Saugor district in the Central Provinces in 1919 and the building of that was stopped on account of public agitation there ?

Mr. C. M. G. Ogilvie : I have no knowledge of that.

Seth Govind Das : Will Government do the same thing with regard to this slaughter-house ?

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member said he has no information.

Seth Govind Das : I am telling him that a similar thing was done there. Will they do the same thing here ?

Mr. Abdul Qaiyum : Knowing the strong feelings of the Hindus and the Sikhs on the point, are Government prepared to give up the futile arguments which they have been advancing and respect the sentiments of these communities by giving up the construction of this slaughter-house ?

Mr. C. M. G. Ogilvie : I have already answered that question.

Mr. Sham Lal : How long will it take for the Central Government to come to a final decision ?

Mr. C. M. G. Ogilvie : I am not yet in a position to say that.

Mr. Sham Lal : Are Government aware that the delay aggravates the situation ?

Mr. C. M. G. Ogilvie : Government, on the other hand, hope that delay may ease it.

Mr. Mohan Lal Saksena : What animals will be slaughtered there ?

Mr. C. M. G. Ogilvie : Cattle ; I have already answered that.

Pandit Lakshmi Kanta Maitra : When and with whom did this idea of constructing a slaughter house at Lahore originate ? Was it the Provincial Government or the Defence Department of the Government of India ?

Mr. C. M. G. Ogilvie : It originated with the Defence Department.

Sardar Mangal Singh : Was any public body consulted in this matter, e.g., the Hindu Sabha or any other body ?

Mr. C. M. G. Ogilvie : I think that is a question which ought properly to be put to the Punjab Government.

Mr. Sri Prakasa : Have the feelings of the animals also been consulted ? (Laughter.)

Mr. Badri Dutt Pande : Are Government aware that there was a *hartal* in Simla also ?

ABANDONMENT OF THE IDEA OF OPENING SLAUGHTER HOUSES IN CERTAIN PROVINCES.

418. ***Mr. Sham Lal** : (a) Will the Defence Secretary be pleased to state if it is a fact that Government intended to open a slaughter house at first in the Central Provinces, then in Shahjahanpur in the United Provinces, and then at Delhi, before it was decided to have it in the Punjab ?

(b) If so, why was the idea to have these slaughter houses in the Central Provinces, United Provinces and Delhi, abandoned ?

Mr. C. M. G. Ogilvie : (a) and (b). It was first intended to erect the abattoir in the Punjab after obtaining the sanction of the Punjab Government. Later, however, certain advantages of Shahjahanpur came to light and the United Provinces Government agreed to its location there, but owing to subsequent opposition the proposal was dropped and it was decided to return to the Punjab. The possibilities of the Central Provinces were briefly examined but Delhi was never considered.

Mr. Sham Lal : Why was the Punjab selected ?

Mr. C. M. G. Ogilvie : Because the Punjab welcomed the scheme.

Mr. Sham Lal : Who welcomed it ?

Mr. C. M. G. Ogilvie : The Punjab Government.

Mr. Sham Lal : What is the view of the new Punjab Ministry ?

Mr. C. M. G. Ogilvie : I am not prepared to say what the present view of the Punjab ministry is.

Mr. Sham Lal : Does not Punjab Ministry represent the views of the Punjab ?

Mr. C. M. G. Ogilvie : Presumably, certainly.

Mr. Sham Lal : And if it is against the scheme, does it not mean that the Punjab is against it ?

Mr. C. M. G. Ogilvie : That is a hypothetical question which I cannot answer.

Mr. Mohan Lal Saksena : When was the consent of the Punjab Government obtained ?

Mr. C. M. G. Ogilvie : I think I have already answered that but, as far as I remember, it was in May, 1937.

Sardar Mangal Singh : Is it not a fact that the Punjab Government has recently asked the Government of India to drop it ?

Mr. C. M. G. Ogilvie : I have several times said that I am not prepared to answer that question.

Mr. Mohan Lal Saksena : Has the attention of the Honourable Member been drawn to a statement to that effect appearing in the press ? Is he prepared to contradict it ?

Mr. C. M. G. Ogilvie : My attention has been drawn to the statement in the press but I am not prepared either to affirm or to contradict it.

PROPOSED SLAUGHTER HOUSE IN THE LAHORE CANTONMENT.

419. ***Mr. Sham Lal :** (a) Will the Defence Secretary be pleased to state the amount of tinned beef and other kinds of meat imported into India from Australia and other countries for Military Department ?

(b) Will the establishment of the proposed slaughter house at Lahore Cantonment affect this import of beef and other kinds of meat from foreign countries ? If so, to what extent ?

(c) How many slaughter houses in the Punjab, the Frontier Province, Sind and Baluchistan are at the present moment maintained by the Military Department ?

(d) Will the establishment of the proposed slaughter house at Lahore Cantonment mean the closing down of the existing slaughter houses ? If so, to what extent ?

Mr. C. M. G. Ogilvie : (a) 55 tons of tinned meat and 1-1 $\frac{1}{3}$ tons of meat extract are imported annually.

(b) It will be possible to produce all requirements for the Army and Air Force at the central abattoir at a much lower cost.

(c) Punjab	..	..	..	17
North-West Frontier Province	..	..	..	9
Sind	..	..	..	1
Baluchistan	..	..	..	2
				29
			Total	29

(d) All the 29 butcheries referred to above will be closed.

PROPOSED SLAUGHTER HOUSE IN THE LAHORE CANTONMENT.

420. ***Mr. Sham Lal :** Will the Defence Secretary be pleased to state the number of animals that are at the present time slaughtered in the Government slaughter houses in the four provinces mentioned in the preceding questions and the extent to which this number will be increased by the establishment of the proposed slaughter house at Lahore Cantonment ?

Mr. C. M. G. Ogilvie : The average number of animals slaughtered every day are as follows :

Punjab	..	..	..	48
North-West Frontier Province	..	..	..	24
Sind	..	..	..	9
Baluchistan	..	..	..	4
				85
			Total	85

The establishment of the proposed abattoir will not cause an increase but a reduction of cattle slaughtered to the extent of approximately 1,000 to 1,100 per annum.

Mr. Sri Prakasa : Are the requirements of the army judged from the amount which the soldiers *should* eat or *can* eat ? (Laughter.)

Mr. C. M. G. Ogilvie : I should require notice of that. (Laughter.)

Seth Govind Das : Among the cattle slaughtered, are there any milch cows also ?

Mr. C. M. G. Ogilvie : No, Sir.

Mr. Badri Dutt Pande : Cannot this abattoir be banished to the Andamans ? (Laughter.)

PROPOSED SLAUGHTER HOUSE IN THE LAHORE CANTONMENT.

421. *Mr. Sham Lal : (a) Will the Defence Secretary be pleased to state whether Government have calculated the effect the establishment of the slaughter house at Lahore Cantonment will have on the agriculture of these provinces ?

(b) Did Government make any enquiries in this matter ? Were the Punjab Ministers consulted in this connection ? If so, what was the result of these enquiries ?

Mr. C. M. G. Ogilvie : (a) and (b). I refer the Honourable Member to the Press communiqué issued on the 6th September, 1937, on the subject.

DISEASE CALLED THE "ORIENTAL SORE" PREVAILING IN QUETTA.

422. *Mr. C. N. Muthuranga Mudaliar : Will the Defence Secretary be pleased to state :

- (a) if there is a disease called the " Oriental Sore " prevailing in Quetta ;
- (b) if so, how long it has been prevalent there ; who are the people commonly affected, and if any remedy has been found to cure the disease ;
- (c) whether any medical officer or officers have been specially deputed to study this disease ;
- (d) whether this disease is due directly to the ' sealing up ' of Quetta after the last earthquake and the fact that many corpses are allowed to rot without being properly disposed of ; and
- (e) whether Government will issue a full *communiqué* on this subject without any loss of time ?

Lieut.-Colonel A. E. B. Parsons : (a) Yes ; at certain seasons of the year.

(b) The disease has been endemic in Quetta for many years. All classes of people are affected. The infection is caused by sandfly bites. Its treatment has proved very difficult and so far no satisfactory remedy has been discovered.

(c) Yes. In 1936 an officer of the Medical Research Department was specially deputed to study the question.

(d) No. The Honourable Member will remember that the closing of Quetta was for a short time only, and that as soon as arrangements could be made, the disposal of corpses was undertaken and prosecuted continuously and at high pressure until it was complete.

(e) No communiqué seems to be required.

Mr. Sri Prasad : Is this disease so called because orientals suffer from it in the orient or occidentals suffer from it in the orient ?

Lieut.-Colonel A. E. B. Parsons : It is simply because it is an eastern disease.

USE OF THE BARA WATER BY THE MILITARY AT PESHAWAR.

423. ***Mr. Abdul Qaiyum** : (a) Will the Defence Secretary please state whether Government are aware that the use of the Bara water in Peshawar District by the Peshawar Cantonment and other military posts in Peshawar Tehsil is causing great hardships to the agriculturists in the Peshawar Tehsil ?

(b) Are Government aware that the use of such water by the military has resulted in considerable land being thrown out of cultivation owing to scarcity of water ?

(c) Have Government considered that water for the said cantonments can be obtained from other sources, *e.g.*, the several rivers which flow in the Charsadda Tehsil ?

(d) Do Government propose to take immediate steps to release Bara water for irrigation by agriculturists and tap fresh sources for the use of the cantonment ?

Mr. C. M. G. Ogilvie : There is not sufficient material available at headquarters of Government to answer the Honourable Member's question. A full statement of the case has been called for and the information will be laid on the table in due course.

Mr. Abdul Qaiyum : May I know, Sir, if Government will consider sympathetically this case if the facts turn out to be as stated, *viz.*, that these agriculturists have been suffering great hardship ?

Mr. C. M. G. Ogilvie : The matter, so far as I have been able to understand it at present, is one of extreme complication and its history goes back to beyond Sikh times. I am not prepared, therefore, to give an answer off-hand.

Mr. Abdul Qaiyum : Will Government try to straighten out these complications, because the diversion of the Bara water for the use of the military cantonment means that the lands of the agriculturists have gone dry ?

Mr. C. M. G. Ogilvie : Government always try to straighten out all complications.

Mr. Abdul Qaiyum : Will they try to straighten out this great complication ?

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

INDIANS AND EUROPEANS IN SHANGHAI.

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

- (a) the number of Indians and Europeans in Shanghai and other areas of the present Sino-Japanese war ;
- (b) whether proper arrangements have been made to protect them ;
and
- (c) whether they have suffered any injuries in the war, or their properties any loss ?

Lieut.-Colonel A. E. B. Parsons : (a) and (c). Information on these points, is I regret, practically impossible to obtain in present circumstances. The situation is changing daily and British officials are fully occupied with the pressing problems of the spot.

(b) His Majesty's Government are taking all possible steps to protect the life and property of all British subjects.

Mr. T. S. Avinashilingam Chettiar : May I know whether the Government of India are in daily communication as to the happenings there ?

Lieut.-Colonel A. E. B. Parsons : The cable to Shanghai has unfortunately been cut.

Mr. T. S. Avinashilingam Chettiar : For how long has it been cut

Lieut.-Colonel A. E. B. Parsons : I got news of it this morning.

Mr. T. S. Avinashilingam Chettiar : Were they getting communications before this ?

Lieut.-Colonel A. E. B. Parsons : May I ask the Honourable Member if he has ever been in an engagement ? Does he think that it is possible, when people are trying to save lives on the spot, that they should answer questions about the number, religions, occupations, etc., of people in China ?

Mr. Mohan Lal Saksena : May I know if a representative of India was present at the conference recently held at Downing Street of the representatives of the dominions to consider this ?

Lieut.-Colonel A. E. B. Parsons : I do not think that arises out of this question.

Mr. M. Ananthasayanam Ayyangar : Are any efforts being made for the repatriation of Indians there ?

Lieut.-Colonel A. E. B. Parsons : I think that like all other British subjects Indians are being sent to Hong Kong out of the danger zone, as shipping and other circumstances permit.

Mr. S. Satyamurti : Are the Government of India in touch with the Indian nationals in the theatre of war, and are they satisfied on the information which they have themselves, that the interests of the Indian nationals are protected, just as much as they can be protected by adequate steps ?

Lieut.-Colonel A. E. B. Parsons : The Government of India are entirely satisfied that His Majesty's Government are looking after the interests of Indians just as much as those of any other British subjects.

Mr. S. Satyamurti : May I know whether this answer is based upon any definite knowledge, or on a mere assumption of faith in His Majesty's omnipotence and omniscience ?

Lieut.-Colonel A. E. B. Parsons : It is founded on the invariable practice of His Majesty's Government.

Mr. S. Satyamurti : May I take it that in this case the Government of India have made no inquiries, and have obtained no information ?

Lieut.-Colonel A. E. B. Parsons : The Government of India receive a certain amount of information, but as I have already explained, it is practically impossible to get detailed information on such matters during the present state of hostilities in Shanghai, Peiping, Tientsin and Nanking.

Mr. S. Satyamurti : Have the Government of India obtained any information, or will they obtain any information as to what is being done to protect the interests of the Indian nationals there ?

Lieut.-Colonel A. E. B. Parsons : The Government of India have no particular information as to Indians only, but they are aware that His Majesty's Government are protecting with all the means in their power all British subjects.

Mr. S. Satyamurti : Will the Government of India take steps to obtain this information, with regard to Indians particularly committed to their charge ?

Lieut.-Colonel A. E. B. Parsons : The Government of India will not do so.

Mr. S. Satyamurti : Why not ?

Lieut.-Colonel A. E. B. Parsons : Because Indians also are British subjects, and that is sufficient.

Mr. Mohan Lal Saksena : Is it a fact, Sir, that most of the Parsi residents have returned to India leaving behind their property ?

Lieut.-Colonel A. E. B. Parsons : I am afraid I cannot give an answer. I saw in the papers that a few Indians from there have returned, but I do not know even if that is correct.

CREATION OF A POST OF RESIDENT TO DEAL WITH TRIBAL AREAS IN THE NORTH-WEST FRONTIER PROVINCE.

425. ***Mr. Abdul Qaiyum :** (a) Will the Foreign Secretary please state whether it is a fact that a new post of a Resident to deal with all the tribal areas in the North-West Frontier Province has been created ?

(b) If so, when was it first created ?

(c) What is the official style and designation of the said officer ?

(d) How much pay per month does the said officer draw ?

Lieut.-Colonel A. E. B. Parsons : (a) Yes.

(b) April, 1937.

(c) Political Resident on the North-West Frontier.

(d) Rs. 3,500 a month.

CREATION OF A POST OF RESIDENT TO DEAL WITH TRIBAL AREAS IN THE NORTH-WEST FRONTIER PROVINCE.

426. ***Mr. Abdul Qaiyum :** (a) Will the Foreign Secretary please state whether the newly created post of Resident in the North-West Frontier Province is a temporary or a permanent one ?

(b) If temporary, for what length of time has the above post been created ?

(c) What were the reason or reasons which led to the creation of this post ?

Lieut.-Colonel A. E. B. Parsons : (a) and (b). Permanent.

(c) To help the Governor of the North-West Frontier Province in the discharge of his responsibilities as Agent to the Governor General for the tribal areas on the North-West Frontier.

Mr. Abdul Qaiyum : May I know, Sir, if after the introduction of provincial autonomy, the work of the Governor in the N. W. F. P. with respect to settled areas has decreased considerably and there was absolutely no necessity for the creation of an altogether new post for the tribal areas when the Governor could devote more time and leisure to the work ?

Lieut.-Colonel A. E. B. Parsons : I am interested in the Honourable Member's views.

Mr. S. Satyamurti : May I know, Sir, whether the Government of the N. W. F. P. was consulted before the creation of this post ?

Lieut.-Colonel A. E. B. Parsons : Of course.

Mr. S. Satyamurti : May I know, in view of a change in the Government of the Province, whether Government will consult the present Government, as to the necessity of continuing this post ?

Lieut.-Colonel A. E. B. Parsons : I have explained before in answer to previous questions that the administration of these tribal areas is a matter for the sole consideration of the Governor General in Council.

Mr. S. Satyamurti : I am asking whether, in view of my Honourable friend's answer that the Government of the Frontier Province was consulted.....

Lieut.-Colonel A. E. B. Parsons : I am sorry, I thought you said the Governor, not the Government ; the Government was not consulted.

Mr. S. Satyamurti : May I know since the creation of this post if all matters connected with the tribal areas are now disposed of by him, or whether he simply acts as adviser to Governor ?

Lieut.-Colonel A. E. B. Parsons : I imagine, Sir, that he disposes of some himself ; in other cases he refers them to the Governor.

Mr. S. Satyamurti : Does he correspond with the Government of India directly, or only with the Governor of the Province ?

Lieut.-Colonel A. E. B. Parsons : Not directly so far, but there would be no objection, I think.

Mr. Abdul Qaiyum : May I know, Sir, if after the creation of this post for all the tribal areas, the post of Resident in Waziristan will be abolished ?

Lieut.-Colonel A. E. B. Parsons : That is the proposal.

CREATION OF A POST OF RESIDENT TO DEAL WITH TALBAL AREAS ON THE NORTH-WEST FRONTIER PROVINCE.

427. ***Mr. Abdul Qaiyum** : Will the Foreign Secretary please state the estimated cost per annum of the new establishment in connection with the newly created post of a Resident in the North-West Frontier Province ?

Lieut.-Colonel A. E. B. Parsons : About Rs., 3,000 a year.

Mr. Abdul Qaiyum : Does that include the pay of the Resident ? I want to know the total expenditure, the pay of the Resident plus the cost of his establishment.

Lieut.-Colonel A. E. B. Parsons : If the Honourable Member will add Rs. 3,500 to Rs. 3,000, he will get the total which is Rs. 6,500.

Sir Muhammad Yamin Khan : Who will bear this expenditure, the Government of the Frontier Province or the Government of India ?

Lieut.-Colonel A. E. B. Parsons : Central Revenues.

Mr. Abdul Qaiyum : May I know if the pay of the Resident is Rs. 3,500 per annum or per mensem ?

Lieut.-Colonel A. E. B. Parsons : I have already answered that.

(b) WRITTEN ANSWERS.

CLAIMS FOR DISABILITY PENSIONS.

407. ***Seth Haji Sir Abdoola Haroon** : (a) Will the Defence Secretary be pleased to state whether Government are prepared to apply the ratio of 1s. 4d. to the rupee instead of the ratio of 1s. 6d. to the rupee, which ratio came into force some time after the year 1920, in consonance with recommendation No. 9 of the War Pensions Committee published with India Army Order No. 560 of the 25th September, 1933, and the decision of the Government thereon ?

(b) Is it correct to say that disability claims of those retiring on pay of Rs. 200 per month and over and which are payable in sterling are to be converted at the rate of 1s. 4d. to the rupee, if the pensioner was in Government service from 1902, i.e., long before the present ratio of 1s. 6d. came into force ?

(c) With reference to the reply given in this House to parts (a) and (b) of starred question No. 376 on the 16th September, 1935, will the Defence Secretary be pleased to state the total percentage of disability that will be taken in assessing the disability pension of a civil officer or subordinate who is assessed 60 per cent. disability on account of post war service ?

(d) Is it correct that the total percentage arrived at with reference to the preceding part for the individuals' disability pension claim will be taken for calculating the allowance payable to the individuals' wife and children ?

(e) Is it correct to say that minor children of an individual on the date of his final invalidment from Government service on account of Field Service disability are entitled to children's allowance, according to the rules in force from 1902 to 1914 ?

(f) Is it correct that the children born nine months after the termination of the Great War 1914—1918 are not eligible to any children's allowance ? If so, under what paragraph of that regulation, and when was this order first introduced, that is the year and the month of the introduction of this order may kindly be stated ?

(g) Will the Defence Secretary be pleased to state the weekly rate of allowance admissible respectively to the wife and three minor sons of a civil officer retiring with the relative rank of a sub-conductor and assessed 100 per cent. disability on account of Field Service ?

Mr. C. M. G. Ogilvie : I am collecting the necessary information and will lay it on the table as soon as possible.

EXEMPTION OF DISABILITY PENSIONS FROM INCOME-TAX.

408. ***Seth Haji Sir Abdoola Haroon :** With reference to the reply given in this House to starred question No. 1066 (b), dated 10th March, 1936, will the Defence Secretary be pleased to state whether it is correct that the disability as well as the ordinary pension of a Civil Officer or subordinate admissible under paragraph 738 of Chapter 38 Civil Service Regulations are both exempted from the Income-tax ? If not, will the Defence Secretary be pleased to state whether Government are prepared to exempt the total pensions of civil officers and subordinates in the same way as that of military officers as intimated in Government reply to starred question No. 375 of 16th September, 1935 ?

Mr. C. M. G. Ogilvie : (a) The ordinary pension of a civil officer or subordinate admissible under paragraph 738 of Chapter 38, Civil Service Regulations, is *not* exempt from income-tax.

On the other hand, the disability pension granted to those members of His Majesty's Naval, Military or Air Forces, British or Indian, or the Auxiliary Force (India) or of the Indian Territorial Force, who have been invalided from service on account of bodily disability attributable to, or aggravated by, the service are totally exempt from income-tax.

(b) Does not arise.

HUNGER-STRIKE BY POLITICAL PRISONERS IN THE ANDAMANS.

416. ***Mr. Amarendra Nath Chattopadhyaya :** (a) Will the Honourable the Home Member please state if it is a fact that a considerably large number of political prisoners have resorted to hunger-strike in the Andamans ? If so, what is the exact number of such strikers ?

(b) Did they petition the Government before their strike, demanding certain things to redress their grievances ? If so, will the Honourable the Home Member state the items of their grievances and what steps have been taken by Government to redress their grievances ?

(c) Do Government propose to repatriate them without delay ?

Mr. J. A. Thorne : (a) and (b). I would refer the Honourable Member to the replies which I gave to Mr. Mohan Lal Saksena's short notice questions Nos. 1 to 4 on the 23rd August. Eight terrorist prisoners are still on hunger-strike in the Andamans.

(c) As I have already stated, the question of repatriation of terrorist prisoners who have given up the hunger-strike is under examination.

APPLICATIONS FOR ADMISSION TO EXAMINATIONS CONDUCTED BY THE FEDERAL PUBLIC SERVICE COMMISSION.

428. *Sardar Sant Singh : (a) Will the Honourable the Home Member please state if it is a fact that all applications for admission to examinations conducted by the Federal Public Service Commission are invited through the District Magistrate or Deputy Commissioner of the district from which the applicant comes ? If so, what is the policy behind the procedure prescribed ?

(b) Is it a fact that such District Magistrates or Deputy Commissioners endorse on the application submitted through them the political views of the parents of the applicants or describe the services rendered to the State by the family of such applicants ? Why are such remarks permitted by the Federal Public Service Commission ?

(c) Is it a fact that in some examinations the marks allotted for interview far exceed those allotted for written subjects ? Is it a fact that many applicants have plucked in interview who had secured very high marks in written papers ?

Mr. R. F. Mudie : (a) and (b). Not in all cases. Submission through local authorities is required primarily in order that the Federal Public Service Commission may be enabled to discharge the obligation placed on them of satisfying themselves that the candidate is of good character and suitable in all respects for the public service to which he aspires. In some cases the statements in the application forms also require to be checked locally. In forwarding applications, Collectors or Deputy Commissioners naturally include information on all points bearing on the candidate's general suitability, including at times mention of the matters referred to by the Honourable Member.

(c) (i) The maximum marks that can be awarded for interview vary in the different examinations from 13.79 per cent. to 23.26 per cent. of the total marks. The maximum interview marks may exceed the maximum marks for an individual written paper, but as stated above, in no case does it exceed 23.26 per cent. of the total maximum marks for any Examination.

(ii) In some cases this may have happened in the case of the Indian Military Academy and Royal Indian Navy for which services a minimum qualifying mark must be obtained at the interview.

UNSTARRED QUESTION AND ANSWER.

FIRST BATTALION KUMAONIES STATIONED AT HONGKONG AND KUMAONIES IN THE BURMA MILITARY POLICE REGIMENTS.

67. Mr. Badri Dutt Panda : (a) Has the Defence Secretary received reports on the general health of the first Battalion Kumaonies, at present stationed at Hongkong ?

(b) Has the health of the soldiers suffered in any way by living in a damp climate ?

(c) How many Kumaonies are there in the Burma Military Police Regiments ?

(d) Is it a fact that these Regiments are composed mainly of recruits from the eastern parts of the Almora District, viz., Pithoragarh and Lohaghat circle ?

(e) with the advent of the separation of Burma, will recruiting from the areas mentioned above stop or will it continue ?

(f) Will the rights and titles of all combatants be protected as hithertofore ?

Mr. C. M. G. Ogilvie : (a) Yes the last report received was dated the 27th April, 1937.

(b) No, the report states that the general health of the 1st Kumaon Rifles, 19th Hyderabad Regiment, stationed at Hong Kong, was excellent.

(c) 804 on the 1st January, 1937.

(d) Of the 804 mentioned above, 798 belonged to Almora District. Government have no details regarding different parts of the district.

(e) There is no intention at present of closing the recruitment.

(f) The matter lies between the Government of Burma and the individual recruit as being the two parties to the contract.

Mr. T. S. Avinashilingam Chettiar (Salem and Coimbatore *cum* North Arcot : Non-Muhammadan Rural) : Sir, yesterday certain questions which were to be answered by the Honourable the Home Member were not answered. I now ask him to give answers according to your ruling. Only one question has come for answer.

Mr. President (The Honourable Sir Abdur Rahim) : That list is not yet before the House.

THE MUSLIM INTESTATE SUCCESSION BILL.

Mr. President (The Honourable Sir Abdur Rahim) : The House will now resume consideration of the following motion moved by Sir Muhammad Yakub on the 2nd September :

“ That the Bill to declare that properties of a Muslim dying intestate and without any heir devolve upon the Muslim community be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable the Home Member, Qazi Muhammad Ahmad Kazmi, Mr. Abdul Qaiyum, Syed Ghulam Bhik Nairang, Maulvi Syed Murtuza Sahib Bahadur, Khan Bahadur Sir Abdul Hamid, Maulana Shaukat Ali, Mr. Muhammad Azhar Ali, Maulvi Zafar Ali Khan, Khan Sahib Nawab Siddique Ali Khan, and the mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five.”

Khan Sahib Nawab Siddique Ali Khan (Central Provinces and Berar : Muhammadan) : Sir, before I deal with the merits of the bill, I feel it necessary to make a few introductory remarks with respect to the history of this proposed legislation. In Bhandara district of the province, to which I belong, there is an estate called the Rajoli Zemindari. It belonged to a prominent Muslim family, whose last holder died, as held in judgment of the late Judicial Commissioner's Court, without

[(Khan Sahib Nawab Siddique Ali Khan.)]

leaving any heir or making any bequest. The result was that the Government took possession of the estate claiming it as escheated to the Crown. The situation thus created led Mr. Abdul Razzaque Khan, M.L.A., a prominent Advocate of Nagpur, to start, in 1935, an India-wide movement against this supposed right of escheat which was being exercised by Government without a proper appreciation of the true principles of Muslim law for which the Muslim public and the generations to come will ever remain grateful to him. The result is this Bill which I had sought to introduce in 1935 and which is now being piloted through the worthy hands of my Honourable friend, Maulvi Sir Muhammad Yakub.

Sir, the true rule of Muslim law is that the estate of an heirless and intestate Muslim devolves on the Muslim community which holds it in trust for the Muslim poor and the destitute. But as there is a tendency in British Indian courts to decide otherwise and hold that such a property escheats to the Crown, it is necessary that the law on the subject should be clarified and declared to be in consonance with the real principles of Islamic law. The necessity becomes all the more imperative when we find that the income from such properties is spent on objects which are of no benefit to the Muslim community and are sometimes repugnant to its best interests. In applying the rule of escheat, the British Indian courts seem to resort to the application of English common law to Indian or Muslim conditions. But in the matter of inheritance or succession, the law to be applied to the Muslim community is their personal law according to which there is no vacant inheritance and the "final heirs" are the Muslim poor. The Privy Council had once created a confusion in regard to private Waqfs of the Muslims and the law had to be cleared up by the Mussalman Waqf Validating Act of 1913. A similar occasion has now arisen in respect of estates of Muslims dying heirless and intestate and the Muslim community strongly feels that in this matter their personal law should be made applicable. The Bill embodies the real principle of the *Shariat*. The late Mr. Syed Amir Ali says in his *Muhammadian Law* at page 147 in the last paragraph :

"It is clear, therefore, that the British Government in India is not entitled under the Muhammadan Law to the property of the Musalmans dying heirless and intestate in that country. The claims advanced on its behalf are consequently not warranted according either to the Shiah or to Sunni doctrines. The only ground on which the claim could be based would be that the property would remain in trust in the hands of the officers of Government for the benefit of the poor. But the Mussalman Law insists that such property should be applied exclusively to the benefit of the Moslem poor; whereas the claim advanced on behalf of the Government does not entertain this object."

Sir, before I resume my seat I wish to make a fervent appeal to the Honourable Members of the Congress Party to support this motion. I am told that the Congress Party decided yesterday to remain neutral. I am further told that several Members of the Congress Party have decided to support the *Shariat* Bill. I wish they had not made any distinction between these two Bills. The reason is obvious. *Shariat* holds that the property of the Mussalmans dying heirless and intestate should be applied exclusively to the benefit of the Muslim poor. It is, therefore, clear, that this Bill is also governed by *Shariat*.

Sir, it is a universal belief that the Indian National Congress is the champion of the poor.....

Mr. T. S. Avinashilingam Chettiar (Salem and Coimbatore *cum* North Arcot : Non-Muhammadan Rural) : Do you accept that ?

Khan Sahib Nawab Siddique Ali Khan : Yes, that was my belief, but now I have begun to doubt. May I appeal in the name of the poor to the Congress Members to reconsider their decision and to support this motion so that a large number of the poor Muslims may be benefitted by it.

Finally, may I sound a note of warning that it is not desirable to oppose or remain neutral on such an important legislation which is wholeheartedly supported by entire Muslim Press and Muslim community. To oppose or to remain neutral on a popular measure like this is sure to create uneasiness amongst the Muslims and is bound to create a suspicion in their minds that they cannot expect justice and fairplay at the hands of the majority community. May I, therefore, appeal once more to the Congress Members to support this motion ? Sir, I support the motion.

Sir Muhammad Yamin Khan (Agra Division : Muhammadan Rural) : Sir, this is an obvious Muhammadan law that when a Muslim dies heirless and intestate, then the property must devolve on the Muslim community ; and if it has not been the law in practice in this country, then it is time it is made law now. There are certain circumstances in which a Muslim may not get an opportunity before dying to leave either a will or appoint successors. For instance, when plague prevails in a locality or in the influenza epidemic of 1918, a father might lose all his children and yet might not know the fact in time. If he had any knowledge he might probably make some kind of arrangement for his property by waqf or otherwise. Under these circumstances it is hard on the Muslim community who would have got the benefit of the property. For this reason it was believed and interpreted as Muhammadan law that when people died in the war or left no heirs because the heirs died in the same war, then the property left by those people devolved on the whole community. I know that some kind of objection might be raised as how it will be managed, to whom will it revert, how will the Muslims as a community get it and who is going to profit by it and on what questions of Islamic importance the income of this property will be spent. But the motion now is to refer to Select Committee, which will certainly see to all these matters and will take into consideration all points which may be pressed before it. Certain rules might have to be framed and Local Governments might have to be authorised in this behalf and so forth. This motion to refer the Bill to Select Committee is the proper motion, because the Bill is not properly drafted and it leaves a great deal of loophole : it requires to be overhauled, and I think with the help of the members named here and the help of the Government departments, it will be put into proper shape.

From the beginning I have been consistently averse to Muslims taking part in voting on issues which relate to the social reforms of the Hindus amongst themselves : I oppose it on this principle that neither should the Muslims have any voice in standing in the way of any reforms suggested by the Hindu members for their own community, nor should we stand against the orthodox members of the Hindu community who do not like any change

12 Noon.

[Sir Muhammad Yamin Khan.]

in their social customs. In the same way I would not like that the Hindu members who do not want to help the Muslims or stand in the way of their social reforms should vote one way or the other : but this is not social reform. This Bill does not seek to do away with any social custom or bring about any change in the law which is opposed by one section and supported by the other. There is no difference of opinion amongst Muslims on this issue, and I do not see what the idea is of any party in this House saying that as a party they will remain neutral on a question like this. Of course they have their free opinion and they can do whatever they like, but if it is for political considerations, that is a different matter, and I have got no appeal to make to them to go against their political ideas as the Muslim community will have to judge on their merits political issues which may come before the country later on as advanced by one party or other. If the objection to this is on the ground that it relates to social reform, then I think any party which abstains from voting on this issue does not do the right thing, and they must come forward and give their vote one way or the other. We do not want that they should support the Muslims against their will, whatever their free opinion may be on the merits of the case they must record it. That appeal has already been made by Nawab Siddique Ali Khan, and I hope it will not go in vain and will be taken up in a good spirit by all the members. It is really doing some kind of injustice to the Muslim community if the properties of a Muslim dying intestate and without any heir are not allowed to devolve upon the Muslim community. I support the motion for the Select Committee.

The Honourable Sir Nripendra Sircar (Law Member) : Sir, every Member who does not belong to the Muslim community finds himself in a rather delicate and embarrassing situation, because, whenever a question like this arises and the *Shariat* is appealed to, even if any objection is quite legitimate, it is likely to be misconstrued. I can assure the Muslim Members of this House that I propose to be as conciliatory as possible, and that I do not want any heat to be brought into this controversy. We shall be quite prepared, on this occasion, even to remain neutral, although we think that on the merits of the Bill it is quite possible to oppose it. But, Sir, I think it is my duty to point out as to what this House is doing. I do not want to stand in the way of the Muslim or any community, but let the House realise what is being done. First of all, Sir, we have been referred to Muhammadan Law. Let us see, Sir, what is the position under the Muhammadan Law. My Honourable friend, Nawab Siddique Ali Khan, read from page 147, the bottom of the page, of Honourable Amir Ali's book. May I read a little ahead ? I am reading from page 146 :

“ The *Bait-ul-Mal* consists of four departments or divisions, viz. :

- (1) The chamber of alms ;
- (2) The chamber of booty ; ”

We are not concerned with that : that will only arise if there is a Hindu-Muslim riot.

- “ (3) The chamber of the *kharaj* or the tax levied upon the *Rayahs* ;
- (4) The chamber of uniaherited property.”

This is the last clause with which we are concerned—uninherited property;—but skip over a few lines. I find at the bottom of the page :

“ The revenues are employed in the following manner :

(1) Those of the department of alms ; ”

We are not concerned with that :

“ (4) Those of the department of unclaimed property, in the relief of those who are sick and poverty stricken, the burial of the poor, the support of foundlings, in affording succour to the indigent and the helpless—”

Then comes the portion which my Honourable friend read out, but I should read it again :

“ The only ground on which the claim could be based.....”

I draw the attention of the Honourable Members to this, the only claim means the claim of the Muslim community :

“ would be that the property would remain in trust in the hands of the officers of Government for the benefit of the poor.”

Therefore, Sir, as I read Mr. Justice Amir Ali's book, it means this property does not become personal property, but remains in the hands—of course they were contemplating a Muslim Government—it remains in the hands of the Government for the relief of the poor. Then the learned author goes on to say :

“ The Musalman Law insists that such property should be applied exclusively to the benefit of the Moslem poor ; whereas the claim advanced on behalf of the Government does not entertain this object.”

According to Muslim Law, therefore, the uninherited property should be held in trust for the relief of the poor, that is, the Muslim poor. If the Honourable Member will turn to the Bill, he will find :

“ Notwithstanding any law or custom to the contrary the estate of a Muslim, subject to the Muslim law of succession, dying intestate without any heir shall devolve on the Muslim community and shall not escheat to the Crown.”

What does that mean ? Is there any question of trust or relief of the poor or anything of the kind ?

I will deal with my Honourable friend, Sir Muhammad Yamin Khan. He said all that can be done in the Select Committee—that is his favourite argument : if something is wrong, that will be put right by somebody in the Select Committee. Now, Sir, the matter is not so simple as all that. If you are going really to create a fund for the poor, it does not matter that it is the Muslim poor. Assume for the sake of argument that this House agrees to create a fund for the Muslim poor. I would ask the House to consider what are its rights or powers of legislation. Honourable Members will find in the Provincial List, 7th Schedule, Exclusive Provincial List, I am reading the relevant items :

“ No. 21. Devolution of agricultural land.”

So that, in so far as property without any heir consists of agricultural land, that must clearly be kept out of this Bill. This House has no

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power to frame any law with reference to agricultural land : that must be left to the provinces. Now, Sir, coming lower down :

“ 32. { Relief of the poor ;
Unemployment ;

34. Charities, charitable and other endowments.”

If this is going to be really a charitable fund for the help of the Muslim poor, this House has no power to legislate. The way the Bill has been drawn, it is not *ultra vires*, because the Bill reads :

“ the entire Muslim community, 70 millions or more, become the owners of the property.”

There is not a single word here about the formation of a trust or the property vesting in a trust or things of that kind. What will the Select Committee do now ? If Sir Muhammad Yamin Khan is put on the Select Committee will he propose amendments which will not conflict with the Government of India Act. Because as I read the Muslim Law.....

Sir Muhammad Yamin Khan : I will take into consideration all the points which have been made by the Honourable Member.

The Honourable Sir Nripendra Sircar : My friend may think for days, weeks and years. He will have no solution, because it cannot, in the same breath, be said that we shall follow the *Shariat* law but we shall not follow it when the Government of India Act creates any difficulty. That cannot be done, and if the *Shariat* law, as I understand it, subject to correction, lays down that it is a fund which is created for the benefit of the poor, assuming that we have got a dozen of the most brilliant lawyers in the Select Committee, including my Honourable friend, Sir Muhammad Yamin Khan.....

Sir Muhammad Yamin Khan : I am not proposed to be on the Select Committee.

The Honourable Sir Nripendra Sircar : No, no. We must have your assistance. Supposing you were there and supposing you were given plenty of time to think over the matter what then ? At present he has no ideas on the subject (Laughter), it is quite clear—how is he going to get out of the horns of a dilemma ? Either follow the Muslim law, and then this must be a charitable fund for the poor. If that is so, this House has nothing to do with this Bill, it will be *ultra vires*. If, on the other hand, if you do not follow the *Shariat* law no question arises. It is not in any spirit of antagonism to Muslim interests or in any spirit of communalism that I desire to point out these matters to the Members of this House.

Major Nawab Sir Ahmad Nawaz Khan (Nominated Non-Official) : If this Bill is sent to the provinces and the Muslim Members there produce it in their Assembly, will it be all right ?

The Honourable Sir Nripendra Sircar : I give a well-known formula ; I do not express opinions on hypothetical questions. (Laughter.)

Sir Muhammad Yamin Khan : May I ask whether the Honourable Member proposes that this matter should be dealt with by the provinces and not by the Central Legislature ? Is that the idea ?

The Honourable Sir Nripendra Sircar : May I know in what sense my Honourable friend has understood me ? (Laughter.)

Sir Muhammad Yamin Khan : I have understood him in the self-contradictory statements which he has made.

The Honourable Sir Nripendra Sircar : For the benefit of my Honourable friend—I do not think that any other Honourable Member had any difficulty in understanding me—I will repeat it very slowly. As I understand the Muslim law, the authority being this book from which the passage was read.....

Sir Muhammad Yamin Khan : Is that the only authority ?

The Honourable Sir Nripendra Sircar : Have you got any other authority ? (Laughter.)

Sir Muhammad Yamin Khan : Yes, there are many.

The Honourable Sir Nripendra Sircar : May I assure my Honourable friend that if there were other books, if anything favourable in other books had been found, that would have been quoted by this time. He can take it from me (of course, there may be something in Arabic which neither my Honourable friend understands nor do I understand) (Laughter), but so far as the English books are concerned, I have not come across any other.

Sir Muhammad Yamin Khan : I have got other books with me.

The Honourable Sir Nripendra Sircar : To that we shall refer when my Honourable friend comes to the Select Committee. May I just explain over again the point I am making ? It is not very intricate nor is it very difficult. (Laughter.) The Muslim law says that the property of a person dying intestate would go to the department of *Bait-ul-mal*. For what purpose ? It would be treated as a fund created for the benefit of the Muslim poor. I am now raising no question about whether the poor of other communities should be allowed to come in or not. Let us take the law as laid down here, completely, the entire sixteen annas. My point, therefore, is, that you are creating a charitable fund for the relief of the Muslim poor, and I would draw the attention of my Honourable friend to the Provincial List which stands in the way of this House legislating on that matter. Is there any difficulty in following me ? (Laughter.) I may be entirely wrong but I do not know that I have spoken in such a confused strain that the point may not be understood. (Laughter.) My arguments may be wrong.

Major Nawab Sir Ahmad Nawaz Khan : Quite clear. (Laughter.)

The Honourable Sir Nripendra Sircar : There is one other matter which I would like to point out before I resume my seat. I was so far proceeding on the assumption that the law applicable was the Muslim law as I understood it—and I am waiting for another book to be produced by my Honourable friend on the subject—and I would like to say that the law as it stands at present is very clearly laid down in a case which is one of the classical cases on the subject, reported in Moore's Indian Appeals. If I may read just a passage from that—this is a case

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with which those Members who are lawyers must be familiar—*Collector of Masulipatam vs. Cavalry* :

“ On the death of an absolute owner, any question touching the inheritance from him of his property is determinable in a manner personal to the last owner (*in the case of Hindus and Muhammadans*) But when it is made out clearly that by the law applicable to the last owner, there is a total failure of heirs, then the claim to the land ceases to be subject to any such personal law and as there can be legally speaking no unowned property, the law of escheat intervenes and prevails, private ownership not existing, the State must be the owner as the ultimate Lord.”

That is the present law, there is no doubt about it. But we are going to change that law, it is quite within the competence of this House to change that law, but according to *Shariat* law, it must be in the direction of creating a charitable trust, which is not permissible to this House. The Bill, as drafted, says nothing about charity. The entire Muslim community becomes the owners instead of the Crown. When property now escheats,—let us not take the case of a Muslim, let us take the case of a Hindu or a Christian,—the Crown does not hold it subject to any trusts. And the whole idea of this Bill is—just as at the present moment the Crown becomes the owner of the property of the man dying without heirs,—so if this Bill is passed, the entire Muslim community would be the owner of those properties. Not a single word is breathed here about a trust or the property being held according to the laws of the *Shariat*. We are taking a portion of the *Shariat* law and cutting out the other portion which is an essential portion, namely, the property is meant not for the benefit of any particular person but for the charity of the Muslim poor. The Bill says, “ It shall devolve on the Muslim community and shall not escheat to the Crown ”. That is, the Crown, which under the law as it now stands, is the absolute owner of the property, is going to be replaced by the Muslim community. Be it so ; if that is Muslim law, let it be enacted. But that is not the Muslim law. The Muslim law does not suggest, even in an indirect manner, that the Muslim community will get the property as absolute owners just as the Crown at the present moment becomes the absolute owner of escheated property. What are the consequences of the Bill as it stands ? Supposing a Muslim gentleman dies at Cawnpore leaving a House, what would happen according to Sir Muhammad Yakub’s Bill if it becomes law ? Upon his death the house devolves on that is to say, becomes the absolute property of 70 million Mussalmans. That is the position. May I know how that house is going to be possessed, how that house is going to be enjoyed ? Will there be a suit for partition, for the house being divided into 70 million shares ? What is going to happen ? Who is going to pay the rents and taxes in the meantime until the 70 million Mussalmans meet and decide for themselves as to what they will do with the House ? As I said, you are on the horns of a dilemma. If you follow the Bill, then this is opposed to the *Shariat* law, completely opposed to the *Shariat* law. This is not the *Shariat* law. If you do not follow the Bill, but if you really want to make it correspond to the *Shariat* law by putting in the necessary words that the property will be held in trust for the relief of the Muslim poor, it is quite permissible but for the fact that this House cannot do it. That will be a matter for the provinces to take up and lay down the law. If any province takes it up it is quite open to it to make for that province a law that the escheated property will go in this way. As I said I do not want it to be said that the Muslims

wanted a particular law and Government killed that Bill at the earliest stage. I do not want that to be said, and therefore, as I said, Government on this occasion will remain neutral. Later we shall be unable to support a measure which we find, even now, to be open to objection. The property belongs to a Muslim and if it goes to a Muslim by Muslim law, and if that can be validly enacted here, and if objections taken can be removed by the Select Committee it may be a different matter. We cannot support the Bill, because it must be made clear, especially having regard to what Sir Muhammad Yamin Khan said, that we must retain the liberty of taking such course as we think fit in any later stage of this House, either in this House or anywhere else. We do not accept the principle of the Bill, and we shall wait to see if the Select Committee can remove our objections, and if not removed we shall oppose the Bill later. Sir, that is all I have got to say.

Syed Ghulam Bhik Nairang (East Punjab : Muhammadan) : Mr. President, the motion before the House being one for reference of the Bill relating to intestate succession to a Muslim who has left no heir, to a Select Committee, the important question is whether in the light of the speech made by the Honourable the Law Member, the Bill is so defectively worded or misconceived as really to amount to nothing tangible in the shape of legislation. That is one question and the second is whether there is any legal bar to the Bill being entertained in this House and being passed. Now, as far as the defects of form are concerned, the point was really adverted to and dealt with at some length by the Honourable the Mover on the last occasion when he moved for reference of this Bill to a Select Committee. He admitted the several defects which, as at present drafted, the Bill contains, but I think he was right, and I am repeating the point here, in requesting that, in spite of the defective drafting, the Bill may very well be referred to a Select Committee and the Committee may be left to remedy those defects as far as possible within the rules and practice of this Honourable House. He instanced the case of the famous Sarda Act and I may refer to a Bill which is now being considered by this House, the Insurance Bill. We know that this important measure had been for a very very long time on the Government anvil. A very competent staff had been engaged and paid to draft the Bill and after the Bill had been drafted and duly introduced by our learned and Honourable friend, the Law Member, it was referred to a Select Committee and yet, after it has been through the Select Committee, we find that about two-thirds of the Bill has been entirely redrafted. So, really there is no difficulty in remedying formal defects if it is intended to make it an intelligible measure and a measure which, if passed into law, will be capable of being carried into effect. That is no difficulty really ; if the House is so minded it can certainly have the defects remedied in the Select Committee. The second ground on which objection has been taken by the Honourable the Law Member is really more important and worthy of serious consideration. There is no doubt whatever that under the Seventh Schedule, List No. 2, any legislation, whether in the shape of the present Bill or in the shape of any other Bill, with regard to the devolution of agricultural land is beyond the competence of the Central Legislature and that objection has got to be admitted. There will also be difficulty about charities and charitable institutions but I think, on a careful consideration of the entire question, it will be admitted, that properties which are left by

[Syed Ghulam Bhik Nairang.]

persons who die intestate and without leaving any heirs comprise properties other than agricultural land or a scheme which is contemplated by succession to an heirless intestate Muslim embraces much more than charities and charitable institutions and, therefore, we can frame the law in such a way as to leave alone agricultural property situated in the provinces which can be dealt with by the Provincial Legislatures and other things which come within the excepted list of legislative subjects and can legislate only so far as the Central Legislature is competent to legislate but there are very large areas which are centrally administered. The Central Legislature can certainly pass legislation with regard to properties situated in those areas and it can certainly pass legislation with regard to property which is not covered by the excepted list. So, there is no doubt that what this Legislature is not competent to do will have to be left undone, but if it can do something to meet the wishes of the Muslim community, which wants a law of this kind unmistakably, that should be done. I may, while discussing this point, submit, that the property of a Muslim who dies without leaving any personal heirs and without leaving any will cannot be regarded as property which has got no heirs in law. All that happens in law is this. The person dies without leaving any personal heirs such as personal relatives but the Muslim community as a corporate body is an heir to such a person and it cannot be said that the personal law has ceased to apply to the case because the question of succession to his property has to be decided with reference to the personal law of the last owner and the last owner having left no heirs the question of applying his personal law does not arise at all. This was the line of argument followed in the Privy Council case to which reference has been made by the Honourable the Law Member, the Masulipatam Case, and, with all deference to Their Lordships of the Privy Council, it must be said, at least by a Muslim claiming to understand the spirit of the Muslim law, that the view taken in that case was incorrect so far as the Muslim law is concerned. The Privy Council case related to succession to the property of a Brahmin. If the question of heirs to the last owner had to come in, the law to which reference had to be made was the Hindu law. For, under the Hindu law, really no heir had been left by the last owner. That may be a fact and under such circumstances it may have been correct on the part of the Courts to hold that the last owner having left no heir, under his personal law, there is no question of applying his personal law to this case and we must have recourse to the law of escheat and by the law of escheat the property goes to the Crown. That might have been perfectly correct. But on the analogy of a case relating to the property left by a Hindu, I would submit to this Honourable House, it would be wrong to hold, with all deference to Their Lordships of the Privy Council, that the same principle will apply to the case of a Muslim. In the case of a Muslim, I claim—and probably I shall be able to take up the challenge of the Honourable the Law Member at a later stage if a later stage comes—and will prove from authorities that this is a case really of succession. It is not a case of failure of succession, or failure of all possible heirs and only the creation of a trust on the failure of heirs for the benefit of the Muslims. It is not a case like that, although it has been so put by some of the text writers. The real position is that the Muslim community is the heir; it is not a beneficiary under a kind of Charitable Trust. It is the heir and we have got this undoubted principle in the words of the Holy Quran

itself, which says : "*Innamal muminuma ikhwatun*". All the believers are brothers. This is the relationship which is recognised by the Holy Quran and by the tenets of Islam, and, therefore, this is a case of succession.

The Honourable Sir Nripendra Sircar : May I offer a personal explanation ? My Honourable friend need not take up any challenge, because no challenge was thrown out. I quite agree that, according to the Muslim law, it is not a case of escheat, but that the last heir, instead of being a particular person, is the Muslim community. In that sense I have not raised any question about it.

Syed Ghulam Bhik Nairang : I am much obliged to the Honourable the Law Member, and I may add incidentally that the attitude taken up by the Honourable the Law Member from the very beginning was such that even the words of explanation which he has added were not needed. None of us in this House misunderstood his attitude. It was one of absolute impartiality. He approached the question from an absolutely un-biassed point of view and put before the House the legal view as he conceived it and we are obliged to him.

Anyhow, the question at the present moment is this. Two objections were taken by the Honourable the Law Member. Another objection has been taken in the several opinions which have been received on the circulation of the Bill and it was to a certain extent adverted to by the Honourable the Law Member. He said that if this Bill is passed into law, the Muslim community will get an advantage which other communities have not got, while the properties left heirless by the members of other communities will continue to escheat to the Crown as at present, the properties of Muslims, under similar circumstances, will henceforward, if this law is passed, vest in a certain way in the Muslim community. That will be a discrimination and a differential treatment. That was a point which was referred to by the Honourable the Mover in his speech and I repeat the same thing. I really wonder why some very responsible people who have expressed opinions about this Bill on circulation have entertained such an objection at all. Can any one in this House or any fair-minded person anywhere say that justice should be done only to one person or to one community and not to all persons and to all communities ? Can anybody ever have the courage to say so ? We say it openly that we are claiming, by bringing this Bill before this House, that justice which has been long delayed to us should now be done. But we also say, most unequivocally, that the same kind of justice should be done to all communities. I believe there must be a similar principle—although I can cite no authority on the point at present as I have not studied the matter from that point of view—in other communities also under their systems of law ; and, if there are such principles in those systems of law, I would welcome the introduction of Bills of a similar nature to deal with cases of a similar kind occurring in other communities. With these words I support the motion that the Bill be referred to the Select Committee.

Maulana Zafar Ali Khan (East Central Punjab : Muhammadan) : Sir, in all the Great God's creation there are three creatures whom I dread the most,—the scorpion, the bug and the Law Member. But I dread the Law Member the most. When a scorpion stings me, I can rub ammonia or permanganate of potash and the excruciating pain caused by the sting

[Maulana Zafar Ali Khan.]

may be assuaged : while in the case of the bug, if he is awfully inconvenient, I can remedy this inconvenience by changing the pair of trousers. But there is no getting away from the fact that I cannot escape from the Law Member.

The Honourable Sir Nripendra Sircar : I will give you a pill as a remedy ! (Laughter.)

Maulana Zafar AH Khan : The Law Member has a peculiar knack of ramming a law down my unwilling throat. If needs be, he will do so with the help of the powers behind at the point of the bayonet. We, the Mussalmans, for the past hundred years have been groaning under certain laws against which there has been no remedy. I have the greatest respect for the present Law Member. There are exceptions to every rule. But might I remind him, with great respect, that he may know everything about the Hindu law, he may know everything about the spirit of the Christian law, the European law, but so far as the Islamic law is concerned, he also can commit mistakes. Only this morning I was reading in a paper that the great High Court of Madras pronounced a judgment in the case of a Mussalman who married two sisters at one and the same time, and the High Court Judges, who pose as great authorities on Islamic law.....

Mr. S. Satyamurti (Madras City : Non-Muhammadan Urban) : I rise on a point of order. No Honourable Member can cast any reflection on any High Court, or on any Judge of the High Court.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member ought not to say anything which is a reflection on any High Court Judge. Besides, he must confine himself to the Bill before the House. We have nothing to do with the judgments of High Courts in this case.

Maulana Zafar Ali Khan : Then I will say a certain High Court. I simply wanted to point out the fact that according to Muslim law no two sisters can be married to a Mussalman at one and the same time.

Mr. President (The Honourable Sir Abdur Rahim) : But we have nothing to do with the marriage of two sisters.

Maulana Zafar Ali Khan : This is how British lawyers appreciate our sentiments, our feelings, our traditions and our point of view. Only the other day there was another case. According to the British law, in this country, a mosque which has been in adverse possession of a non-Muslim.....

Mr. President (The Honourable Sir Abdur Rahim) : Again, the Honourable Member is not confining himself to the Bill. The rule of this House is that he must confine himself to the Bill.

Maulana Zafar Ali Khan : The main idea underlying this Bill is that if a Muslim dies intestate, if he is stricken with palsy or if he dies in the battle field and he leaves no heir and he has had no time to make a will (Interruption), his property must not revert to the Crown, but to his own community. I am very much obliged to the Honourable the Law Member because he has assured us that in this matter at least the Government

Benches would remain neutral and so far as the Congress Benches are concerned, I had occasion to have a talk with a certain gentleman who is very close to me—a Member of the Congress Party—and he said that so far as this Bill was concerned, his Party would remain neutral. I am very much obliged to them. If the Congress Party also remains neutral, then we will carry our point. We were only afraid that the Congress Party might make common cause with the Government Benches and kill the Bill. In that case the Bill would be lost. This time we will win. I was saying, Sir, that a Muslim dies intestate. His property may be worth a thousand rupees or may be worth a lakh or four lakhs. To whom does the property revert? To the Crown. The Crown uses that property whether it is in kind or in cash. How does it use that property? Not in accordance with the desire of the man who died. According to Islamic law, the way in which the money should be spent is that it should be spent in the cause of the Lord. That is the law of Islam. Now, the law as it stands at present allows the money to revert to the Crown and the Crown makes use of it in any way it likes, which may be repugnant to the sense of the Muslim community as a whole and to the soul of the departed. As my Honourable friend, Syed Ghulam Bhik Nairang, pointed out, in this matter of reversion of property of an intestate deceased, we do not want anything for the Muslim community alone. We would gladly concede the same right to the great Hindu community to demand the same privileges for themselves. If a Hindu dies intestate, let his property revert to the Hindu community. In the case of the Muslims, it must revert to the Muslim community and, so far as the Muslim community is concerned, we, the Muslim Members of this House, represent them and in their name we call upon all those who are ready and willing to help us in legislating on this particular question to see to it that every property left by a Muslim intestate should revert to the community and that community may appoint a Trust in which the whole community might repose confidence and that Trust might be allowed to spend the money in the best way possible. Although the wording of the Bill is defective, this object might be achieved by suitably amending the Bill in the Select Committee. Ways might be found in the Select Committee to satisfy all the doubts raised by the Honourable the Law Member and when the Bill has emerged from the Select Committee and comes to this House for discussion, I think it will be found that it is not so impracticable as has been apprehended. With these words, I support the motion.

Pandit Krishna Kant Malaviya (Benares and Gorakhpur Divisions : Non-Muhammadan Rural) : Sir, I have been off and on in this Assembly since 1923, and, during this period, I never had occasion to request my Honourable friend, Sir Muhammad Yakub, who is not present here today, in vain. He always agreed to support any measure by his speech or his vote whenever I requested him to do so. It is, therefore, very painful to me, Sir, to stand up and oppose the Bill which has been sponsored by him. My Honourable friend, Syed Ghulam Bhik Nairang, says that it was not unexpected. I wish him joy. I have nothing to say to it, I am only glad that I have not disappointed him and have stood up for truth, but my Honourable friend, Maulana Shaukat Ali, will bear me out when I say, that whenever there was a righteous cause for which my Muslim brethren fought, I joined them, I suffered with them as well as a Muslim in the country and I assure my Muslim

[Pandit Krishna Kant Malaviya.]

friends even today that whenever occasion arises, whenever time demands, whenever they have a righteous cause to fight for, I will stand by them and fight their battles.

An Honourable Member : Why not today ?

Pandit Krishna Kant Malaviya : My Honourable friend wants to know why is it that today I am not supporting this measure which is before the House ? I want to tell my Honourable friend that from time immemorial, in all times, in all countries and in all history, the property of an intestate has vested in the State.

An Honourable Member : Not in all countries.

Pandit Krishna Kant Malaviya : I have yet to know a country where this is not the case. Either the power vested in the hands of the village community or in the hands of the Feudal Chief or in the Church or in the State. My Muslim friends say that according to the Islamic law the property of a man dying intestate vests in the Muslim community, with all due respect to them I may be allowed to differ from them and tell them that if what they say be a fact then in that period of their history the community must have been an interchangeable term with the State. What is the machinery provided, which in the name of any community can take possession of a property, can administer a property or any trust ? Is any machinery provided anywhere in this world in the name of any community which does this sort of work ?

An Honourable Member : We had *Bait-ul-mal* in those days.

Pandit Krishna Kant Malaviya : My friend says there was *Bait-ul-mal* in those days. May I know whether in those days Muslim States had only Muslim subjects and whether Jews and other people were or were not residing in Muslim States ? What became of the property of those who were non-Muslims ? Did the property of non-Muslims also go to *Bait-ul-mal* ? Was there a different law for non-Muslims and Muslims ? I think anything like that was not possible.

Sir Muhammad Yamin Khan : I may point out for the Honourable Member's information that in those days the laws of the different communities were administered by the Muslim State according to the laws of the person who died, whether he was a Christian or whether he was a Jew.

Pandit Krishna Kant Malaviya : I am very thankful to my Honourable friend, Sir Yamin Khan, for thus interrupting me, but I may assure him that he has given away his entire case. He told the House that in those days the property of different communities was administered by the Muslim State. That is just what I want to tell the House, that it was the State and not the community which administered the property and the law.

Sir Muhammad Yamin Khan : It was the law which was administered.

Pandit Krishna Kant Malaviya : Yes, the law was administered by the State and not by any community and, therefore, the property also of a man dying intestate was administered according to the laws by

the State. This is what I also am saying. I want to know, where was the "*Bait-ul-mal*" and where is it today in modern Turkey, in Iraq, in Iran, in Hedjaz or in any other country? Coming to our own country, we had our Muslim kings here, we had the Moghul Emperors. Has anybody heard, is there any record in Indian history, that there was a "*Bait-ul-mal*" in Hindusthan? Even in old Turkey, during the time of the Khalifa, the "*Bait-ul-mal*" was under the Sultan and not under the Khalifa. The Khalifa was the head of the Church and the Sultan was the head of the State.

Maulvi Syed Murtuza Sahib Bahadur (South Madras : Muhamadlan) : They were both the same.

Pandit Krishna Kant Malaviya : The "*Bait-ul-mal*" was under the Sultan as the head of the State and not under the Khalifa whether you may or may not differentiate between the Sultan and the Khalifa. Let us not be led away by sentiment. I am surprised to see my Honourable friends are led away by sentiment and I am more than surprised to learn that the Congress Party has decided to remain neutral and even Government will remain neutral, as announced by the Honourable the Law Member. I can have no complaint for one is the present Government and the other is the coming Government of this country. (Laughter.) So far as the Congress Party is concerned it has always adopted the attitude of neither yes nor no whenever there was an occasion to stand by truth and nationalism. They may decide to remain neutral on an important question like this when an innovation is being introduced in the law of the land but I may tell them that they are not serving the country. According to all universal laws in all countries, the property of a man dying intestate vests in the State. Why is it then that a new change is sought to be introduced in this country?

Sir Muhammad Yamin Khan : Because Islam wanted to change the ideas of the people. Islam itself was an innovation.

Pandit Krishna Kant Malaviya : And Islam was either a church or a State and not a community. Sir, I oppose this Bill.

Maulvi Syed Murtuza Sahib Bahadur : Sir, I associate myself with the previous speakers, of course excluding Pandit Malaviya, in saying that we will not level any charge of communalism against the Leader of the House. As regards the legal points raised by him, all those legalities and technicalities have been broken through by my Honourable friend, Syed Ghulam Bhik Nairang. As a layman, I need not and cannot go into them. The reason why we are very keen on having a measure of this nature is that no trust has been maintained as yet by the present Government, and so the intestate property of a Muslim is being used, we do not know in what way. It may be for the promulgation of Christianity itself which we cannot be a party to; it may be debited to the Ecclesiastical Department of the Government of India. So it is necessary to have a measure of this kind enacted here, and we should all thank the Leader of the House for having said that Government would remain neutral in this matter, but as regards my Congress friends I do not see any justification.....

Mr. M. Asaf Ali (Delhi : General) : Muslim Congressmen are free to vote.

Maulvi Syed Murtuza Sahib Bahadur : I thought the same would be the case with non-Muslim Congressmen also, because we expect that under the national Government all measures should be introduced and passed without any difficulty. I am not at one with those like Pandit Malaviya who feel envious of the Congress Government which I am myself proud of.

Mr. Sri Prakasa (Allahabad and Jhansi Divisions : Non-Muhammadan Rural) : The Congress Government will take care of all Muslim poor ; you need have no anxiety about that.

Maulvi Syed Murtuza Sahib Bahadur : I have no anxiety. So, although there is option to vote, I expect them to whole-heartedly support it.

Mr. M. S. Aney (Berar : Non-Muhammadan) : Sir, it is really a matter of regret to me that it should have fallen to my lot to oppose this measure.

Sir Muhammad Yamin Khan : What a pity !

Mr. M. S. Aney : Yes, but because of pity I will not think of abjuring the duty which I owe to myself and to the country.

The nature and object of the measure before the House have been explained by the Honourable Member who moved the motion, and they were also further explained by the Honourable the Law Member. He has very clearly shown why and how there are difficulties in the way of this measure being accepted by this House. In fact even he went to the length of pointing out,—and I think very rightly too,—that this House is not competent to deal with the measure in the form in which it is placed before it. Having said that, with due deference to him, I fail to understand how he has taken up the attitude of neutrality he has taken and how he has asked the Government Members behind him to take up the same attitude ? If it is not competent for the House to deal with a measure like this, it is his clear duty, not only as the Leader of the House, but as the Law Member, also to oppose the measure and ask the House to throw it out, on the ground that it is not within the competence of the House to deal with it. . . .

Major Nawab Sir Ahmad Nawaz Khan : What the Honourable Member is saying is quite all right in so far as the provinces are concerned, but what about the areas administered by the Centre. This House has a right to legislate for them as well.

Mr. M. S. Aney : This measure is not intended exclusively for the people of the centrally administered areas only. This is a measure which is intended for the Muslim community as a whole which is scattered over the entire Indian peninsula from Kashmir to Cape Comorin and from Calcutta to Bombay. The entire Muslim community is going to be the heir under this law, and, therefore, my Honourable friend cannot take the limited and narrow view which he takes in respect of this important matter. I also want to make it perfectly clear,—although some of my friends might feel that there is some kind of communal feeling in me which prompts me to oppose this measure. . . .

Some Honourable Members : Not at all.

Mr. M. S. Aney : Let me tell them clearly that I have no communal feeling at all. We are dealing with the estate of a dead man, without an heir and there can be no question of any feeling in regard to the estate of a dead man. We have to look at this question from a different point of view. The principle of the law of *Shariat*, which is enunciated here, is perfectly clear. I don't presume to know much about the *Shariat* law which some of my other friends probably know better. I do not know a bit of Arabic, and, therefore, the law laid down in that language is something like Greek and Latin to me, but I am not prepared to accept from them that the law, as expounded by them, is correct so far as the particular authority to which they have made a reference is concerned. My friend, who is not present in the House, based his arguments on the observations contained in Mr. Justice Amir Ali's Book in support of this measure. Therein it is stated that it is not the Muhammadan community, which is intended to be the heir of an estate of a Muslim who died intestate and without an heir, but that it should be made into a Trust in the interest of the poor Muslims. The word 'poor' which occurs in the Muhammadan law, I take it, is intended to mean the Muhammadan poor. But the point is this. It is not altogether a new or novel provision exclusively belonging to the conception of Islamic law only. In the Hindu law also there are many *Smrithis* which contain a provision like that. I don't want to take up the time of the House by quoting all the extracts from Manu, Narad, Yajnavalkya and others.....

Sir Muhammad Yamin Khan : Does not the property of a Hindu monk go to the other monks ?

Mr. M. S. Aney : I am telling my friend just what he is telling me. I am coming to that point presently. There are express texts which lay down that the property of every member of the Hindu community can be escheated to the State in the absence of any heir, except that of a Brahmin. This text is repeated in more ways than one in three or four *smrithis* to which I have just referred. The question really cropped up in the important case to which also reference was made by the Honourable the Law Member. That case is reported at page 500 in 8, Moore's Indian Appeals,—the book is in my hand. Now, according to that decision, even if the text is accepted, what does it come to ? And that is an important point. The Crown cannot take the estate left by a dying Brahmin, without an heir ; if it takes it, it is tainted with sin ; it has to be given to a Brahmin only. This text has been very rightly interpreted, in my opinion, by the Privy Council, to mean not that the Crown cannot come in, but it vests in the Crown in the interest of some Brahmin, and, therefore, the Crown holds it as a trust. I find personally no difference whatsoever between the interpretation put upon this text by the Privy Council and the way in which the *Shariat* text has been interpreted by Mr. Justice Amir Ali. He also interprets the *Shariat* law to mean that the estate of an intestate Muhammadan, dying without an heir, goes for the poor Muslims. And who is to administer the law ? The Bengal Regulation of 1810 and Madras Regulation of 1817 expressly contain provisions empowering the State to administer the estates escheated in this way. The provisions are given there, and according to those provisions, for over 125 years, I think, nearly all the estates thus escheated are being administered and managed by the Government which came into existence in those early times. I am assured by my Honourable

[Mr. M. S. Aney.]

friend, Mr. Nairang, that they would not stand in the way of Hindus if we come forward with a similar measure and ask for a similar concession for the Hindu community. I am quite sure my Muslim friends will not stand in our way. But my point is this, that there has been practically a method of administration of a particular law on a particular point in existence for the last 125 years. Unless a strong case is made out that the administration of the law, in that particular way which has been in existence for over 120 or 125 years, has been detrimental to the best interests of the society concerned, there is no justification for us to insist upon a departure from that practice and ask for an innovation. Our regard for the texts which contain not only the law of inheritance but also something which goes to minister to our spiritual needs and to our eternal benefit in the other world is great and ought to be great. We do not want that sanctity of our texts should be impaired in any way. But if the Muhammadan community has already departed from that practice of the *Shariat* for 120 or 125 years, then there ought to be very strong justification for them to revert to that old law and depart from the present practice. . . .

Mr. M. A. Jinnah (Bombay City : Muhammadan Urban) : What is the present practice ?

Mr. M. S. Aney : You have a better right than I have to say what it is. You are more conversant with the practice with regard to this point about Muhammadan law and the way in which it has been administered by the Government. And I hope when the time comes the Honourable Member will be able to tell us what it is. But I take it the practice is that such an intestate estate is escheated to the Government and the Government administers it. If we find that the administration is not strictly in the spirit in which the State is supposed to do it, then we must come out with a different measure and call upon the Government, that estates so escheated to the Government do not enure to the benefit of the State as such but to the benefit of such society or community as are interested in that, and for that purpose a measure entirely different from the one before the House is wanted. The question before us is, whether this particular measure has to go to Select Committee or not ; and it is no use saying that because some improvement can be made on the existing practice, therefore, a Bill which does not correctly embody the principle which you stand for should go to Select Committee. In giving our consent to that, in my opinion we shall be committing ourselves to a principle which is not really the principle which we want to work out. The Muhammadan community is a different thing altogether from the Muhammadan poor when it comes to the question of holding an estate in trust. I do not want to identify one with the other : I am sure nobody else will do it.

I have only to say one thing more. In this country these two communities and also the third growing community, the Christians, should live and have to live together in peace and harmony. Our attempts should be—I shall affirm without fear of contradiction and without any hesitation—that we should try to live under and be governed by common laws as far as possible. I say as far as possible. Of course, the Government is pledged, we are ourselves pledged to observe our personal law in certain matters.

But if we have tolerated a departure from the pure personal law for a number of years and we really do not see any evil coming out from that departure by being governed by common practices in certain matters, in the interests of the growing nationalism, it is not proper for anybody to ask us to turn from that practice and again try to add to the points of difference which, unfortunately, already divide this country in so many ways. I think that would be the highest blunder. I would appeal to my countrymen whether we cannot have one common Bill for the administration of these escheated estates both among Hindus and among the Muhammadans : we can make trusts for poor Muhammadans and for poor Hindus in one Bill, under the supervision of Government. That would be developing the common law at the same time retaining, as far as is necessary, the characteristic specialities of the two communities and regard for the text also. But do not bring in a measure which will make some kind of invidious distinction in favour of one community apparently but not in reality doing any good. I do not advise my Brahmin friends to come out with a measure like this for this reason. There was a concession given to Brahmins like that. Probably the Brahmins in those old days were much better than what we are today and they may have deserved it also. I say a concession like that was given to the Brahmin community in the old laws of Hindus and I do not grudge the concession that was enjoyed by them at that time....

Mr. M. A. Jinnah : The Brahmins made the Act !

Mr. M. S. Aney : They always made the Acts, but without any sordid motives whatsoever.

Mr. President (The Honourable Sir Abdur Rahim) : If the Honourable Member wants to continue his speech, he can do so after Lunch.

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

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

Mr. M. S. Aney : I was dealing with the question of the principle for which my Muhammadan friends stand. Such a principle is not exclusively applicable to Muhammadans, but even amongst Hindus a provision like that existed. That matter was taken up to the Privy Council, and it was decided that, in spite of a provision like that existing in the Hindu Law to that effect, the property was declared escheated to the Crown. Now, the point I was considering was this. Although there is such a provision, still on the grounds I mentioned a short time ago, I am inclined to advise that if the Brahmin or any other community come up with a Bill like that and ask for exclusive concession for themselves and ask for benefits which cannot be shared in by other classes and communities living in this country, that sort of thing, in my opinion, is, not somewhat, but radically opposed to the policy which we want to evolve in this country and, therefore, nobody should do anything of the kind. In the interests of the growing nationality which we want to bring about, ideas and sentiments which may have their source in our scriptures, have to be subordinated, and a new kind of mentality has got to be brought into existence. That was the

[Mr. M. S. Aney.]

point which I was developing when the House adjourned. Before finishing, Sir, I would also like to draw the attention of the House to an expression of opinion which is published in the papers giving opinions on this Bill. It is an opinion given by the members of the Bar Association of Bombay, of which the Leader of the Opposition is one of the most distinguished ornaments. That Association has given very good grounds and strong reasons for opposing the very principle of this Bill. The opinion of a body such as that consisting of eminent lawyers is, I believe, entitled to very serious consideration by the Members on the official as well as the non-official sides of this House before any decision is arrived at. If they think that there is something in the reasoning which is given in the opinion of the Bar Association they should take it into consideration : that is my submission to them. I know most of the Members have not even looked into the question and it seems to me that they have no idea of what is called *Bait-ul-mal*. It is explained and defined here :

“ In Wilson’s Glossary *Bait-ul-mal* is defined as the ‘ public treasury or exchequer into which payments on various accounts are made and according to the sources whence they are derived, applicable to the support of different classes of persons ’. The principal sources are stated to be four in number of which the fourth is : ‘ Property escheated, or for which there is no owner and also fines for manslaughter and murder which is to be expended on the maintenance of the sick, the poor and foundling children ’.”

Thus *Bait-ul-mal* was nothing but a public treasury which was entitled to receive all sources of income amongst which escheat of property coming in the form of an estate left by a man dying intestate and heirless was one, and if it is a public treasury it is a thing not belonging to any community, but it belongs to the State which represents all the communities inhabiting the country. A public treasury is a different thing from the treasury of a community, and I think, I am right in taking upon myself the responsibility of saying that this is the correct interpretation of the Arabic text. Wilson’s work is accepted as authoritative and the interpretation given in his glossary is very often quoted in courts of law and accepted and acted upon by distinguished judges. So, if *Bait-ul-mal* was a public treasury, the law of escheat is not so radically in conflict with the Shariat law on this point as it is represented to be, and, therefore, the ground on which a claim for legislation like that is made is, to my mind, nugatory altogether. Further, in the opinion of the Bombay Bar Association it has been very eloquently brought out as to what is the real distinction or difference :

“ When, therefore, it is stated by Wilson that ‘ the *Bait-ul-mal* is not the property of the ruling power, but that of all Muhammadans for whose benefit it should be administered ’, the real opposition is not between Muhammadans and non-Muhammadans, but between the King and his subjects who, in a Muslim state, would mostly be Muslims. This opposition is very well brought out in the Encyclopædia of Islam, I—598, where it is stated that *Bait-ul-mal* was the State Treasury or Exchequer, while the *Khizana-i-Amira* corresponded to the Civil List or Privy Purse of the Sovereign. The Association is of opinion that the *Bait-ul-mal* was really the public treasury, and that property which fell in it by escheat was as much liable to be used for the purposes of the State as property which came to it from ‘ duties on merchandise ’ which is given by Wilson as the first source of *Bait-ul-mal*.”

Even that idea of *Bait-ul-mal* does not exclude the control and the right of the State to property which comes to it by way of escheat to the Crown owing to the absence of any proper heir or to a man dying leaving his property intestate. These are some of the grounds which I have

brought to the notice of the Honourable Members, so that they may consider that we are not here to secure a little advantage for this community or that or to bring the existing law into conformity with religion, but we are here in the form of this measure being talked upon to create a situation in which the right is not to be recognised as the prerogative of the State, as it is recognised in almost all the civilised jurisprudence, in respect of the property escheated to the Crown but that of a community without reference to the State. Secondly, I have to urge also that this has been the law here for more than 125 years. The third thing which I want to state is this. Now, if property is escheated to the State, and if we know that the Indian State does not, hereafter, mean Hindus or Muslims, but a combination, I shall say a brotherly combination of the various communities, the benefit of the estate escheated to the State will be shared by all these communities together. The Muhammadans will share in the property of Hindus escheated to the Crown, and the Hindus in that of Muhammadans, and we thus shall become the common heirs to the property of all those dying intestate. This is the position under the existing law, and is that not a better position than the one contemplated in the Bill, from a national point of view, from the point of view of the interests of the State that is to come into existence, from the higher ideal of an independent India which we all cherish and for which every one of us is anxious to make some sacrifice? Is not that a better ideal which we should all place before our minds? Shall we, for the sake of a little sentiment here or there, ask this Honourable House to depart from that ideal? That is what I want to urge. It is not a question of Hindu *versus* Muhammadan or any one community *versus* any other community. If this broad view is taken into consideration, it is necessary, particularly for my Honourable friends on the Congress Benches, also to reconsider the position they have taken. It is up to them to create a new India. I want to tell them that the whole nation is looking to them. When they are in power, will they adhere, in spite of a petty displeasure evinced probably in some unknown quarters through misunderstanding or misapprehension,—I ask whether they are prepared to discard this petty displeasure and resolve to stand for the right ideal which alone will enable India to be placed on a par with the other civilised nations of the world, an independent India, an India standing on a footing of equality with other independent nations of the world. Keeping this great ideal before them and understanding all the implications and responsibilities which the reaching of that ideal entails, I want them to reconsider the decision which they have taken. It has been my pleasure and privilege not only to vote with them in this House but to work with them outside this House. I have worked all my life for nothing except the Indian National Congress. I am a Congressman; I was a Congressman; I have lived a Congressman and I shall die a Congressman (Cheers), in spite of whatever may be said. Therefore, I claim the right of asking my Congress friends also to reconsider their position dispassionately on this point,—whether it would be proper for them to allow a Bill which embodies a wrong principle to go unchallenged. The motion which my Honourable friend, Sir Muhammad Yakub, has brought, unfortunately, is not well-conceived and the principle at the bottom of the Bill is unsound. I ask my Honourable friend, the Leader of the House, also to reconsider his attitude. His attitude of neutrality is entirely out of place and unintelligible. If he had correctly interpreted the law and the powers of this House, for that very reason he

[Mr. M. S. Aney.]

must go with me into the 'Noes' Lobby when this motion is put to the vote. Sir, I oppose the motion.

Mr. M. Asaf Ali : I had not the slightest desire to participate in this debate until I heard my Honourable friend, Mr. Aney. It appears to me that he has turned this particular question into a point of principle. Perhaps principles are involved in it, but instead of our trying to make heavy weather about them we might just as well concede what might be trifling points. After all, what does this Bill seek to do? It only seeks to establish the right of a community to the unclaimed property of one of its members. If that principle is applied to all the communities of India I do not think any one will be the loser. My Honourable and learned friend referred to the question of sacrifice in the interests of the nation. Conscious sacrifice I can understand, but sacrifice by a dead person who did not know what sort of sacrifice he was making is beyond my comprehension. Here you are not asking the individual who has left his property to make a little sacrifice in the interests of the nation or the country. You are really asking the Government, first of all, to claim the unclaimed property of a dead person who has left neither a will nor an heir, and then apply that property to whatever purposes they may like. I do not quite see the point. Would it or would it not be more equitable to apply such money to purposes which were nearer the heart of the person who had left it? Suppose a Jaini, or a Sikh or a Hindu or a Christian died intestate and without any heir, what use do you think he would like the Government to make of the money he had left? He would like that money to be applied to purposes which were close to his heart, probably the education of the members of his community or the help of the helpless, and so on and so forth. In those circumstances, I do not see what earthly objection there can possibly be to the principle underlying this Bill. The proposition before the House today is not to pass this Bill as it is. I do not agree with the Bill as it stands. I want to see it amended, properly amended, so that it may be made workable, and inasmuch as the motion moved by the Honourable Member is merely for reference of this particular Bill to a Select Committee I see no reason why we should not support it. I have heard it said that by supporting this Bill we shall perhaps be giving away the whole case; and that we shall be supporting a vicious principle. I see no vicious principle involved in this Bill at all.

Mr. M. S. Aney : I have not used the word "vicious".

Mr. M. Asaf Ali : I am not referring now to what my Honourable friend Mr. Aney said. I am referring to some of the other learned and erudite observations that have been made since about eleven thirty this morning. References have been made in this House to the Shariat, to Islam, to *Bait-ul-mal*, the history of *Bait-ul-mal*, the Khilafat, the Sultamate, etc.,—and all sorts of irrelevant matters have been gone into. I can assure you that, in so far as this Bill is concerned, none of those questions really arises. This Bill simply says that if a Muslim dies without an heir, and without a will, let his property be held in trust—this Bill does not say so in so many words, but I would like it to be amended so as to make it possible for the Government to hold such money, as may be left by an intestate and heirless Muslim, in trust for the deceased's community. Rules may be made for the application of such money. The rules as

regards the application of this money should state the beneficial purposes for which it must be used,—which again will be beneficial to the nation. If a part of the nation is being benefited by the money which is left by one of the members of a particular community, after all, it is the nation that is benefited. Why should the nation benefit only by way of sharing the money which one man may leave and spreading it all over the show, rather than the particular community of the deceased benefiting by that money? After all, that community also is a part of the nation. I therefore, really do not see how this Bill can be opposed by any person who holds any reasonable views. As I said a little earlier, the motion before the House is merely for reference to a Select Committee. Let the Bill go to the Select Committee. We have all expressed our views about it. And I am prepared now to tell any one straightaway who may care to hear, that the Bill as it is does not commend itself to me. I would like to see it amended very drastically.

Mr. M. S. Aney : A different Bill altogether !

Mr. M. Asaf Ali : I do not mind in what shape the Select Committee returns the Bill to the House. I shall still have the freedom to move amendments if I feel that such amendments should be moved, but I do not see why it should be condemned out of hand. I, therefore, support the motion for reference to a Select Committee.

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions :
 3 P.M. Muhammadan Rural) : I have heard with very great interest the views which Mr. Aney has expressed on this small Bill for the benefit of the Mussalmans. The moral principles that he has preached would have been well placed on some other occasions and in connection with some other Acts. The object of this Bill is a very simple one. Some of my friends today have asked how many such Mussalmans are there in India who come under the provisions of this Bill to necessitate a legislation of this type. I tell them that even if one Mussalman dies intestate, and his property goes to others, it is against the *Shariat* and the principles of Muhammadan law. My friend, Mr. Asaf Ali, has dealt elaborately with this point, and I do not want to explain the object of this Bill at length at this moment, but I would like to say that the first heir to an intestate Mussalman or an intestate Hindu is the police of this country. When a rich Mussalman or Hindu dies, it is the barrister or the vakil who becomes his heir. In the same manner, it is the police of this country who take hold of the moveable possessions of an intestate Mussalman or Hindu. Does my friend want the police to rob these men, before the Government get these things by way of escheat? In the case of cash left in banks, it is the banks' agents and shareholders who take the property in their hands. It is very difficult to find out what money he held in the bank. If I am not wrong, in Bihar they have a *Amir-i-Shariat*. They have a *Bait-ul-mal*. If the Mussalmans in other provinces also want to form committees on these lines to protect the property of intestate Mussalmans, I don't think there is anything impracticable. They have done it in Bihar, if I am not wrong. So, I would ask my friend not to oppose this Bill in the way he has done, but to respect the feelings and sentiments of the Mussalmans. That is all that I have got to say.

Several Honourable Members : I move that the question be now put.
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Mr. Deputy President (Mr. Akhil Chandra Datta) : The question

“ That the Bill to declare that properties of a Muslim dying intestate and without any heir devolve upon the Muslim community be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable the Home Member, Qazi Muhammad Ahmad Kazmi, Mr. Abdul Qaiyum, Syed Ghulam Bhik Nairang, Maulvi Syed Murtuza Sahib Bahadur, Khan Bahadur Sir Abdul Hamid, Maulana Shaukat Ali, Mr. Muhammad Azhar Ali, Maulvi Zafar Ali Khan, Khan Sahib Nawab Siddique Ali Khan, and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five.”

The Assembly divided :

AYES—26.

Abdul Ghani, Maulvi Muhammad.
Abdullah, Mr. H. M.
Anwar-ul-Azim, Mr. Muhammad.
Azhar Ali, Mr. Muhammad.
Blutto, Mr. Nabi Baksh Illahi Baksh.
Dalpat Singh, Sardar Bahadur Captain.
Essak Sait, Mr. H. A. Sathar H.
Fazli-Haq Piracha, Khan Bahadur Shaikh.
Ghiasudin, Mr. M.
Ghulam Bhik Nairang, Syed.
Jehangir, Sir Cowasji.
Jinnah, Mr. M. A.
Kushalpal Singh, Raja Bahadur.
Laljee, Mr. Husenbhai Abdullahhai.

Mehr Shah, Nawab Sahibzada Sir Sayad Muhammad.
Muhammad Ahmad Kazmi, Qazi.
Murid Hussain Qureshi, Khan Bahadur Nawab Makhdum.
Murtuza Sahib Bahadur, Maulvi Syed.
Rahman, Lieut.-Colonel M. A.
Shahban, Mr. Ghulam Kadir Muhammad.
Shaukat Ali, Maulana.
Siddique Ali Khan, Khan Sahib Nawab.
Sikandar Ali Choudhury, Maulvi.
Umar Aly Shah, Mr.
Yamin Khan, Sir Muhammad.
Zafar Ali Khan, Maulana.

NOES—9.

Aney, Mr. M. S.
Banerjee, Dr. P. N.
Chattopadhyaya, Mr. Amarendra Nath.
Maitra, Pandit Lakshmi Kanta.
Malaviya, Pandit Krishna Kant.

Parma Nand, Bhai.
Sant Singh, Sardar.
Sivuraj, Rao Sahib N.
Som, Mr. Suryya Kumar.

The motion was adopted.

THE MOSLEM PERSONAL LAW (*SHARIAT*) APPLICATION BILL.

Mr. H. M. Abdullah (West Central Punjab : Muhammadan) : Sir, I beg to move :

“ That the Bill to make provision for the application of the Moslem Personal Law (*Shariat*) to Moslems in British India, as reported by the Select Committee, be taken into consideration.”

The object of the Bill, as the House is already aware, is to replace the customary law by the *Shariat* law in certain matters where the parties to a dispute are Muslims. By doing so, it also helps the weaker sex as it enables women to succeed to the ancestral property and to claim dissolution of marriage on certain grounds. After explaining the object of the Bill briefly, it gives me great pleasure to say that the Bill has met with a unanimous support from the Select Committee except in one or two points. Objection has been taken to the words “ or Law ” in clause 2 of the Bill by Messrs Mudie, Muhammad Azhar Ali and Sir Muhammad Yamin Khan in their minutes of dissent. As there is an amendment on the agenda for the omission of these words, I shall deal with it when it is moved. Meanwhile, I would confine my remarks to the modifications suggested by the Select Committee. The main changes made by it are two, one relating to the exclusion of the agricultural land from the purview of

the Bill, and the other concerning the amplification of the word "divorce". As succession to agricultural land is an exclusively provincial subject under the Government of India Act, 1935, it had, much against my wish, to be excluded from the Bill. Having regard to the different forms of dissolution of marriage recognised by the *Shariat*, it was considered necessary to provide for all of them. In order to implement the provisions in this respect, a new clause 3 has been inserted in the Bill empowering the District Judge to grant dissolution of marriage on petition of a married Muslim woman on certain grounds. These changes have been introduced in the interest of the females who, in such matters, are at present at the mercy of their husbands.

I am sure that these wholesome changes will be supported by the House. In addition to the above, the Select Committee have made a few other amendments which are fully explained in the report, and I need not take the time of the House in dilating upon them. I hope that the Bill in its present form will meet with the approval of the whole House.

Sir, I move.

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

"That the Bill to make provision for the application of the Moslem Personal Law (Shariat) to Moslems in British India, as reported by the Select Committee, be taken into consideration."

Mr. Abdul Qaiyum (North-West Frontier Province : General) : Sir, I am in sympathy with the objects which this very useful Bill aims at. There is a great awakening among the Muslim masses, and they are terribly conscious of their wretched condition socially, politically and economically. There is a desire in the community for an advance in all these directions. The feelings of the Muslim community have been expressed in public meetings throughout the length and breadth of this country. This feeling, I have great pleasure in stating, is not merely confined to males but it has spread to the females also, and for the first time the Muslim women in India have given expression to their strong feelings against the dead hand of customary law which has reduced them into the position of chattels. Sir, these feelings have been expressed by various organisations of Muslim women throughout India. A representative body of Muslim Ulemas like the Jamait-ul-Ulemai-Hind has also expressed its sympathy with the objects of this Bill. Sir, there is something in the word "Shariat",—may be it is Arabic,—which gives a sort of fright to some of my Honourable friends, but I think if they try to read the Muhammadan Law on the point, especially on the point of succession, they will realise that this Bill was long overdue and that it is a step in the right direction. People have no idea of what terrible conditions the Muslim women have had to endure in my own Province: I can say that whenever a Muslim died, at least before the Frontier Shariat Law was enacted in the North-West Frontier Province, his daughter, his sister and his wife all used to be thrown into the street, and the reversioner in the tenth degree would come round and collar all his property. I think that the conscience of all those who believe in progress, social, political and economic will revolt against such practice and once people realise that this Bill is primarily intended to improve the status of women and to confer upon them benefits which are lawfully their due under the Muhammadan law, then they will gladly support this measure.

[Mr. Abdul Qaiyum.]

'Custom' is a very indefinite term. I know it as a lawyer that in my Province whenever a question of custom used to crop up it used to involve any amount of research work, lawyers used to indulge in research work to find out cases, look up small books on customary law and it was found that the custom varied from tribe to tribe, from village to village and it has been held, by the High Court in our Province before the Shariat Act came into force, that custom varied from one part of the village to the other. The position was so uncertain that people had to spend so much money on litigation that by the time litigation came to an end the property for which people were fighting would disappear. It was with a view to put an end to this uncertainty that people in the Frontier Province pressed for an Act which was subsequently passed into law.

I have only one thing to say. Personally I want the Muslims in India in matters affecting them to follow the personal law of the Muslims as far as they can. I want them to move in this direction because it is a thing which is going to help the Muslims and because the Muslims form a very important minority community in this country—they are 80 millions—all well-wishers of this country will agree with me that if it enhances the states of Muslims, if it brings the much needed relief to the Muslim women, it will be a good thing for the cause of the Indian nation. Therefore, in our Province an Act was passed which goes much further than this particular Bill which is now under discussion before this House. It is a very well-known fact that under the new Government of India Act, agricultural land and waqfs and religious trusts are provincial subjects and that this Honourable House cannot legislate about matters which are now on the provincial legislative list. The Act which we have in the Frontier Province, Act VI of 1935, goes much further than this Bill because it includes agricultural land and religious trusts. Therefore, I have tabled an amendment that this particular Bill—though I heartily agree with the principles of the Bill—when enacted into law, should not be extended to our Province. If it is so extended, it would mean that the people of the Frontier Province would be taking a step backwards and not forwards. It is a well-known fact and it is laid down in the Government of India Act, section 107, that where a Federal Law comes into conflict with a Provincial Law and even if the Federal Law has been passed after the Provincial Law, then to that extent it over-rides the Provincial Law and the Provincial Law becomes null and void. Therefore, my submission is that the intention with which I tabled my amendment was not with any idea of opposing the object of this Bill, but my reason for moving this amendment is that this Bill does not go as far as we wish to go—at least in one Province, namely, the North-West Frontier Province. I submit this is a measure which has been long overdue. I have known cases where a widow who was enjoying life estate—and whose reversioners were waiting for her death, did not die but happened to have a very long life. There have been cases in the North-West Frontier Province where people have taken the law into their own hands and in order to get the property they have murdered the widow. I can cite other cases before this Honourable House. There have been cases which I have come across in my legal and professional career where, when a man dies leaving a wife who by customary law has to enjoy the property

till her death or remarriage, certain reversioners come forward and bring a suit to declare that the widow had married one of the reversioners with a view to proving that she was no longer a widow and with a view to terminate her life estate. There have been numerous cases where families have been ruined, murders and stabbings have taken place because the dead hand of customary law stood in the way of the reversioners who were anxious to get what they could not get and in order to deprive the poor widow, false cases have been trumped up that she had remarried. There have been many other illegal tricks resorted to by people with a view to get hold of the property. I submit, Sir, that the dead hand of customary law must be removed. We are living in an age in which very important changes are taking place. After all this customary law is a thing of the past. When many other things are going the way of all flesh, when even systems of Government have to change, when even mighty Empires have disappeared, when we see signs of softening even in the hearts of the Government of India, when we have got popular Congress Governments in seven Provinces—a thing which nobody would have believed six months ago or one year ago. I submit that it is high time that we got rid of this dead hand of custom. After all custom is a horrible thing as far as this particular matter is concerned, and by endorsing the principles of this Bill we would be doing justice to millions of Indian women who profess Muslim faith. I hope, Sir, the day is not far off when other communities will also bring similar measures and when in India women and men will be treated equally in the eyes of law in the matter of property, political rights, social rights and in all other respects. I have, therefore, great pleasure in supporting the principles of this Bill.

Sir Muhammad Yamin Khan (Agra Division : Muhammadan Rural) : Sir, fortunately in my province we have got no customary law, and, in my province, the Muslims are guided by the Muslim personal law. Therefore, I do not stand in the position in which the people coming from the Punjab or the N.-W. F. P. do.

An Honourable Member : What about special Magistrates in your province ?

Sir Muhammad Yamin Khan : We have got special magistrates. I do not want to go into the question as to what they are for. That is not the point. That is the happy position in which the Muslims of my province are. Here, as a Mussalman, I am not going to be affected by the enactment of this law, but the people to be affected are the people of the Punjab and Bombay and some portions of Madras. The particular point involved in this Bill is about inheritance. More than 1350 years ago the law was given by the Prophet of Islam by which Muslim women enjoyed rights denied to women of any other country then. It was a great revolution in the existing law and justice was done to a sex which had not much voice at the time. That law gave the women a free hand to possess and transfer property and deal with it in any manner they liked. Even married women became full owners of the property. This law was not enjoyed by women in Europe even so late as 1870. And now in spite of this law, woman is being deprived under custom of her legitimate rights which she would otherwise enjoy. Once a man accepts Islam he cannot say that he is not going to allow a woman of his family to enjoy the privileges given to her. Customary

[Sir Muhammad Yamin Khan.]

law is the outcome of a custom made by men who looked to their own self-interest and they were not safeguarding the rights of women. Therefore, the party really affected had no voice up till now and the women in the Punjab have been suffering, because the men who owned certain kind of property did not like that the property should pass from their family through the women to the other family, But that is against the Muslim idea. The Muslim idea is not that a woman of the family becomes a different person on her marriage because Islam does not recognise different families in this manner. And in the Punjab the women have begun to protest and hold meetings and demand their just rights. If women can adorn the benches in the legislatures and preside over municipalities and district boards and become Presidents and Vice-Presidents of Councils, there is no reason why they should be ignored by this House and their just and legitimate rights be denied to them. This Bill does not seek to give woman anything which is not her due ; it only seeks to do away with the injustice done to her for a long time by people who do not want to part with their property. And in that view I hope the whole House will support her case.

Then, we find that there have been different rulings in the different High Courts, and I think this House should now make clear what law should in future in cases of marriage, inheritance, etc., be applied to women and to parties when they are Mussalmans. This will really do justice to the people who have been suffering for a long time.

Sir, my Honourable friend, Mr. Qaiyum, referred to the fact that the word "Shariat" frightens some people. I may be included in them also because as a Sunni, Hanafi Mussalman, I understand "Shariat" in a different sense from my Shia friends who enjoy other laws. Doctors of law interpret certain laws in different ways, and according to the Shariat of the Hanafi law the only daughter of a man who dies gets half the property, whereas according to the Shia law she gets the full property. Therefore the word "Shariat" in this Bill frightens me as we do not know in what sense it has been used. How can we have a common law enacted for all the Muslims of India ?

Qazi Muhammad Ahmad Kazmi (Meerut Division : Muhammadan Rural) : The word "Shariat" is not in the Bill.

Sir Muhammad Yamin Khan : It is used in brackets after the words "personal law" in clause 2, and I object to that word being there. "Personal law" is quite clear but "Shariat" has different meanings for different people, and if the word is introduced here, it may be misunderstood by the Courts later on. When Mussalman doctors of law have differed even with regard to the Koranic law, what can you expect of the High Courts ? I do not want these difficulties to occur later and one High Court deciding a thing in one way and another High Court deciding in another way.

Syed Ghulam Bhik Nairang (East Punjab : Muhammadan) : What is happening in your province ?

Sir Muhammad Yamin Khan : The word used is not "Shariat". There is no such word ever used in any law book which says that you are governed by the Shariat, and I do not want to involve Muslims

into any difficulties which may be created by lawyers in the Courts. Therefore, Sir, I object to the word "Shariat" being used in the Bill.....

Mr. M. Asaf Ali (Delhi : General) : What is your concrete suggestion ?

Sir Muhammad Yamin Khan : I suggest that the words in the brackets should be dropped.

Qazi Muhammad Ahmad Kazmi : You ought to move an amendment to that effect.

Sir Muhammad Yamin Khan : If the Honourable Member has no patience to hear me, then the best thing for him to do is to go into the lobby and smoke there if he likes.

Mr. Sri Prakasa (Allahabad and Jhansi Divisions : Non-Muham-
madan Rural) : Will the Honourable Member be satisfied if the word is spelt "backward" ?

Sir Muhammad Yamin Khan : The Honourable Member has never been taken seriously in the House, and what is the use of his interruptions ? Again, Sir, we considered this in the Select Committee, and the Committee was equally divided on the use of the words "or law". My friends should have a little patience, because if they come here to enact a law for the entire Muslim community of about 80 million people they must be patient. If you don't show enough patience, then you show that you are not responsible to the people who have elected you here, and when serious matters are discussed, why are you so impatient ? If you go on interrupting me, you will get something more unpleasant.

Qazi Muhammad Ahmad Kazmi : On a point of order, Sir ; he cannot address me direct ; he should address the Chair.

Mr. Deputy President (Mr. Akhil Chandra Datta) : Let us now come back to the subject matter before the House.

Sir Muhammad Yamin Khan : I am sorry that the words "or law" have been used in the second clause, and those words mean the laws which have been enacted in the Legislature. As far as custom or usage was concerned, I fully agreed that they should be there, but the words 'or law' go against certain laws which have been made with the full concurrence and common consent of the Mussalmans for protection of certain interests which are not peculiar to Muslims alone, but to a particular class in which the Mussalman happens to be one. Like the United Provinces Zemindari Act which gives protection to the zemindars so that the property cannot be divided, it is not the woman who is deprived of the property. If the Act had been seeking to deprive the daughters only, I would have been the first person to oppose those Bills ; but it gives a right to a particular person to enjoy for his life time an interest in the property, and not to dispose it off. So far as the Agra Zemindari Act is concerned, it was brought forward on the request, I believe, of the late Nawab Mumtaz-ud-Daulah Fayyaz Ali Khan, and at that time many Muslim members of the Legislature supported the Bill. So protection is given to a particular class of people who come under the United Provinces Zemindari Act to see that

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the property is not divided whether it belongs to a Muslim or Hindu Talukdar or Zemindar. That property then remains intact according to the sanads and grants given by the Government under certain conditions. Now, if we have the words "or laws", it shall affect all Zemindars alike.

As far as the Waqfs are concerned, I daresay, many Honourable Members will have gone through the deeds relating to Waqf-ulul-Aulad, and the opinion held even at the time of passing that Act was, if a wakf-ulul-Aulad was or was not a wakf under the *Shariat*. That may be a debatable point, because Wakf-ulul-Aulad is made by a special law.....

Qazi Muhammad Ahmad Kazmi : Not by *Shariat*.

Sir Muhammad Yamin Khan : The law which empowers to make Wakf-ulul-Aulad is an Act, and a Muslim is given a right under that Act.

Qazi Muhammad Ahmad Kazmi : It is a validating Act.

Sir Muhammad Yamin Khan : It is an Act which gives special powers. Again, I say that according to *Shariat* you cannot restrict the free transfer of the property ; that is the Muslim law. Anything which stops the free transaction of the property is repugnant to the Muslim law according to *Shariat*, and if my friend will read the law on pre-emption, he will find many rulings there, and pre-emption has been interpreted in many ways. Although it has been called the Islamic law and it has been adopted by Hindus as customary law, yet you will find that many learned Muslim doctors have shown that the whole spirit of pre-emption is against the Muslim law because the Muslim law presumes that every Muslim is sensible man and he must have a free hand to transfer or to dispose of his property in any way he thinks proper. Therefore, the *Shariat* law is against any restriction to the transfer of properties. Then when you do away with those laws, you come to Wakf-ulul-Aulad and as far as this is concerned, that is at once nullified. But the point is that since you are having the words "and wakfs" and also the words "and charities and trusts", anything relating to them in the shape of enacted law will be done away with. Then the only thing left to be decided is how to interpret the law, and various High Courts will give different interpretations, the Privy Council will give a ruling in a different way, and thus the Muslims will be involved in serious trouble if the words 'or law' are retained, because they will do more injustice to the people for whose benefit this Bill is introduced. I, therefore, cannot agree to the words "or law" being retained in this clause.....

An Honourable Member : He has withdrawn those words.

Sir Muhammad Yamin Khan : If he does that, then I will have nothing to say : but he merely said that he will have his say when the amendment is moved to drop those words. I did not hear him say that he agreed to the dropping of those words. I found in the Select Committee that he was not willing to omit those words and he was supported

by two or three others. When I find that the Committee was equally divided, I think I must place it before this House. This was carried by one vote.....

Mr. M. Ghiasuddin (Punjab : Landholders) : On a point of order, Sir, are the proceedings of Select Committee not confidential and can they be disclosed on the floor of the House ?

Mr. Deputy President (Mr. Akhil Chandra Datta) : The Honourable Member knows fully well that in theory, they are confidential : but very often it is observed more in the breach. What happened in the Select Committee should not be disclosed on the floor of the House. If objection is taken, I think the Honourable Member had better not refer to what happened in the Select Committee.

Sir Muhammad Yamin Khan : I am not referring to what happened in the Select Committee, but this is given in my note of dissent and it is before the House that the Committee was nearly equally divided on the question.

Mr. Deputy President (Mr. Akhil Chandra Datta) : Although it appears in the Minute of Dissent, if in the course of a speech any Member takes objection to the discussion of anything that has happened in the Select Committee, I think it is better that he should not refer to it.

Mr. M. S. Aney (Berar : Non-Muhammadan) : May I just ask, Sir, when there is a Select Committee Report and there are Minutes of Dissent, are not the Members of this House entitled to make use of the opinions mentioned in those documents ? Can it be objected that these dissenting minutes also refer to some conversations in the Select Committee and therefore they cannot be made use of ? It is one thing to refer to arguments and conversations and talks that take place while the Committee was meeting. It is another thing to refer to matters which are embodied in the documents which are presented to this House. The opinions expressed there are the property of the House, and the House has a legitimate right to make use of them in discussing them in such manner as it thinks proper.

Mr. Deputy President (Mr. Akhil Chandra Datta) : As I understand it, the position is this : if a member of the Select Committee mentions anything in his minute of dissent as to what had happened in the Select Committee and which under the rules or the practice should not be discussed in the House, I am not aware of any procedure by which he can be prevented from doing so. I do not think that this is a very profitable discussion as it is very difficult to draw the line of demarcation between what is confidential in the Select Committee and what is not. As a matter of fact, very often things are discussed here which strictly speaking ought not to be discussed. On the present occasion, I do not think anything material has been disclosed except the fact that the members were equally divided on a certain matter. Nothing more has been disclosed by the Honourable Member.

Sir Muhammad Yamin Khan : That was what I was saying : I am not disclosing any other secret : the point I have to place before the House is one on which the Committee was divided. If the report had

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been unanimous, probably the House would take into consideration the fact that the weight of opinion was all on one side : but when the question is decided by one vote and the other votes are equally divided, then the House has a right to form its own judgment. I say that these words " or law " are not really in accordance with the Statement of Objects and Reasons of the Bill. What the Mover of the Bill really aims at is to do away with custom and that is what is said in the Statement of Objects and Reasons : he has not put in a single word that there was any law which he thinks has been wrongly enacted which would adversely affect the Muslims and the Muslim law. Coming as he does from the Punjab I can quite understand that he aimed at removing the customary law which he thought was doing injustice to the women of the Punjab, not knowing what the law was in other provinces : probably he did not care to go into those laws.

I have explained my objection fully to the House and I hope I will be supported by the whole House and even the Members who did not agree with me in the Select Committee will now agree to dropping out the words ' or law ' on the grounds I have mentioned. My concern is not only to save the talukdars and zemindars of the United Provinces but also the Acts which might create some kind of difficulty in the High Courts and might give rise to different rulings involving Muslims unnecessarily by these words being embodied in the Bill. I also want that the word " Shariat " in brackets should be dropped. (*Interruptions*). These words " Moslem personal law " are quite explicit.....

Maulana Zafar Ali Khan (East Central Punjab : Muhammadan) : How will you translate personal law in Urdu, Persian or Arabic ? What is the synonym of *Shariat* ?

Sir Muhammad Yamin Khan : This Bill is not brought in the language of Arabia nor in the language of Persia or in Urdu. This Bill is introduced in the English language and therefore we must try to understand it as such. (*Interruptions*.) Personal law is understood now as administered by the Courts. If a Muhammadan belongs to the Sunni Jamat, Sunni law applies to him : if a Muhammadan belongs to the Hanafi Jamat, then Hanafi law applies to him.

An Honourable Member : We are talking of Muslims, and not of Shias or Sunnis.

Sir Muhammad Yamin Khan : There is no one law as far as the Muslims are concerned. There is a difference unfortunately between Shia Law and Sunni Law, however much my friend may ignore it. I will give one example. According to Shia law, if there is a single daughter and no other issue then she inherits the whole property of her father but according to Hanafi law she does not get the whole but only half. There is no one law : there is a difference in law, and each is differently interpreted.

Mr. M. Asaf Ali : Will the Honourable Member kindly throw a little more light on the subject. How were such cases decided before the Anglo-Muhammadan law came into India ? Is not *Shariat* law ?

Sir Muhammad Yamin Khan : Yes. I must suppose that my Honourable friend knows it. He is a barrister of 25 years standing.

Mr. M. Asaf Ali : 27 years, if I may correct.

Sir Muhammad Yamin Khan : I stand corrected. He puts up a question like this. Is it Anglo-Muslim law or is it anything different? The difference between the Shia and Sunni law is more than 1,200 years old. Why do you say: "It is Shia Law, it is Sunni Law? What are the rulings given by Imam Abu Hanifa, Imam Yusuf and other Jurists"?

Mr. M. S. Aney : Suppose I am converted tomorrow to Islam. May I know if I shall be told at the time of my conversion that I am a Shia or a Sunni or a Hanafi? Shall I have all the knowledge of the law by which I shall be governed? That is what I want to know?

Sir Muhammad Yamin Khan : If the Honourable Member is so fortunate as to embrace Islam tomorrow, the first thing I will do is to embrace him. Then I will tell him the law he will have to choose and abide by.

An Honourable Member : Will he be a Shia or a Sunni.

Sir Muhammad Yamin Khan : If you want a judgment, you will have to go into a law court. We are going to make a law for a big community, and it is not going to be achieved by emotion and by interruptions of that kind without giving proper thought to the difficulties which may come in your way. Here we claim to be representatives of the people. We must speak on behalf of the people whom we want to represent in this House truly and properly. Here you may not want to conceal what is really happening in the country. If my friends over there will get up and say that the Sunni Law and Shia Law are the same as far as succession is concerned, I shall bow down. If the Honourable the Commerce Member, who is an eminent lawyer himself, will get up and say that the Sunni law and Shia law are one and the same in regard to succession, I will bow down at once.

Major Nawab Sir Ahmad Nawaz Khan (Nominated Non-Official) : So far as succession goes, Shia law and Sunni law are one and the same. The difference consists in the proportion of shares with which we are not at present concerned here.

Sir Muhammad Yamin Khan : When he says that Shia law and Sunni law are one and the same and only the proportion of shares is different, as a lawyer, it gives me horror. A difference in the proportion means a difference in succession. When you say that a woman is going to inherit 50 per cent. or 100 per cent. my friend does not seem to make any difference. When we make a law for the Muslim community we have to take into consideration all the *pros* and *cons* and not make a law which we shall repent for on another day. I do not want that the fate of this Bill should be the same as that of the Child Marriage Act which was passed hurriedly and which was later on denounced on the floor of this very House by the very persons who hurried it through.

Mr. M. A. Jinnah (Bombay City : Muhammadan Urban) : May I ask the Honourable Member—I want to understand whether he means to say that under these words as they are now embodied in the Bill, in

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cases where the parties are Muslims, the law shall be the Muslim Personal Law (Shariat) ? Does he wish to convey that every Mussalman will be governed by Hanafi Law if this Bill is allowed to stand as it is ?

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

Sir Muhammad Yamin Khan : It may be argued in a court of law that the Muslim Shariat Law must be the law as is embodied in the *Shariat*.

Mr. M. A. Jinnah : I am talking of this Bill.

Sir Muhammad Yamin Khan : If the word *Shariat* is there I can argue in a court of law that the succession should be according to the *Shariat* and not the personal law of the deceased.

Mr. M. A. Jinnah : Personal Law (Shariat) ?

Sir Muhammad Yamin Khan : There is the Personal Law which we all understand, but when you come to the word *Shariat* there can be so many interpretations. There are the *fatwas* of Alingarh, certain *fatwas* which have been made in Baghdad. We can say so many different things, and the law, which is now laid down, will have to be re-opened afresh and we shall be arguing what is the *Shariat* law and what is not. According to the *Shariat* a man can say I do not understand this to be *Shariat*. I think there is a great deal of difficulty, and I would not be a party, Sir, to the inclusion of the words which will involve the community in a lot of difficulties in Courts and unnecessary litigation in future. Therefore, I would like that these words "or law" and the word at the end "*Shariat*" should be dropped. We understand what Muslim Personal Law is.

Mr. Muhammad Anwar-ul-Azim (Chittagong Division : Muhammadan Rural) : Mr. President, the only purpose for

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which I intervene in this debate is to say a few words as to how far the various clauses of this Bill affect the Presidency that I come from. Generally speaking, it will not have any retrograde effect so far as the first two clauses are concerned, but with regard to the third clause, those Honourable Members who happen to be in any way connected with the High Court of Calcutta will have noticed from personal experience that in order to claim either a divorce or a maintenance or any status by a Moslem woman under the jurisdiction of the Calcutta High Court, she need not go to the District and Sessions Judge. If the clause is kept as it is, the purpose for which you would be giving this facility will not be realised. Mr. President, you must have known yourself the distance of the villages in a Bengal district. Sometimes it is 200 miles away from the place where the District and Sessions Judge sits. If Government are interested in making this matter straight and fair, they should see that so far as clause 3 is concerned, it does not affect us so far as the jurisdiction of the civil Court in my presidency is concerned. These are courts of first instance. Coming to the principle of the Bill itself. Mr. President, I think it is high time, nay, it is a pity, it is a singular pity that the Government of India, who profess to know everything, who profess sympathetic consideration for the people of this

country, who profess to be just and impartial in all matters concerning the affairs of the people of this country, should have sat still for such a long time, and I am really surprised that it should have been left to my esteemed friend from the Punjab, the Hafiz Sahib, to introduce this Bill and by mere accident it got a ballot for discussion here in this Assembly. The leaders of my people—no doubt have done a lot of good things—it is a singular pity that it has escaped their notice for such a long time. If the Government and their officers had been in a humane frame of mind, here at the Centre, this piece of legislation would not have been so long delayed. A controversy has been raised by my Honourable friend, the Knight from Meerut, whether *Shariat* should be bracketed after Personal Law. Erudite as he is, experienced as he is in worldly affairs, I should have thought that he could have surely translated Personal Law by no other word than by *Shariat* because this is the only word which is understood by the people at large, so far as the Muslims are concerned. I think that the insertion of this word *Shariat*, far from doing any harm, has made the thing more clear and expressive. Coming to the real principle of the Bill, Mr. President, this is a vast continent which has come under the British and the East India Company from time to time, but they had not codified the law so far as the Muslims were concerned. The hardship felt by the province of the Punjab and the sister province of the North-West Frontier must have been great ; otherwise a quiet gentleman of the position of the Hafiz Sahib would not have taken the trouble to bring forward this measure. May I ask what harm would be done by this piece of right given to Muslim women under this Bill ? What is after all a Custom ? If it removes that disability I think that it will have done a great service. I do not know whether this Bill will have a smooth passage in this House, composed as it is of various elements, but if a broader view is taken and if the condition of our women, especially of our Muslim women who are so helpless, is ameliorated to a certain extent, this House will be doing a great justice and a great service in the cause of uplift of women in this country. I need not go into the merits of the various amendments which have been given notice of by my esteemed Leader, the Leader of the Independent Party, but I should like to say something with regard to the amendment given notice of by the Government. That amendment wants the laws which have been passed on these various subjects of customs, and usage, to be kept intact. If Government feel that that is necessary, perhaps it might be done, but, at the same time, they must take this into consideration. If you are going to give to Muslim women and Muslims certain status which has been denied to them unjustly for the last 150 years,—to take shelter under the laws which have been passed by the various Legislatures in India where they had no hand would not be a good thing. But if a choice were given to the various provincial councils, with what grace and with what favour they would receive it I cannot say. That being the suspicion even in the case of a layman like myself, I dare say that this might appeal to the sense of justice of the Government. I do not think I have got anything more to say except that this is a very good piece of legislation and I commend it to the acceptance of the House.

Khan Bahadur Shaikh Fazl-i-Haq Piracha (North-West Punjab : Muhammadan) : Sir, I feel it my pleasant duty to give my wholehearted support to the Shariat Bill, the necessity of which is so much being felt

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

by the Muslim community of the country, especially the Punjab. I am glad that almost all the members of the Select Committee were unanimously in favour of the Bill, with the exception of a few minor objections which would well be covered by the proposed amendments of the Honourable the Leader of the Independent Party.

Sir, the Bill is a most harmless one. It affects only those who profess Islam as their religion and that even in matters of their personal property and their marital laws. Under the circumstances, I think, there should be no objection at all on the part of any other section of this House. The Bill has the unanimous support of the Muslim community in the country and the Muslim Members in this House. I think everybody in the House would sympathise with the womenfolk of the Muslim community who, without any reason or justification, are at present being deprived of inheriting the property of their parents, simply because they belong to the weaker sex. This House, in passing this Bill into law, will be doing nothing but removing, though partially, a great injustice which is being done to the female sex of the Muslim community, who are at present ill treated, in many parts of the country like the Punjab, a part of which I represent. The proposed amendments by Mr. Jinnah, if accepted by the House, will no doubt render the Bill absolutely optional, which is against our wishes. Owing to the differences of views on certain points and the opposition of Government, Mr. Jinnah had to intervene to facilitate the passing of the Bill without any opposition. The Bill, if passed in the proposed amended form, will give a right to every Mussalman, who may so desire, to follow the Islamic law in matters of succession, which at present is impossible on account of the customary laws existing in many parts of the country. In supporting the Bill, the Government will be simply doing their duty in removing a long standing grievance of the Muslims by removing obstacles from the way of right minded Muslims who desire to follow Islamic law in matters of succession and other objects mentioned in the Bill. If the Bill is passed into law, the responsibility will lie on the individual Mussalmans to follow or not to follow the Islamic Law.

There is one point which I would like to mention, and it is this. Under Islamic Law, the decisions regarding the dissolution of marriages ought necessarily to be given by a Muslim Judge, for which, though no provision is made in the Bill, the Provincial Governments will, I hope, feel it convenient to make arrangements. I think in every province there must be many Muslim judges in service. They can very well be invested with powers to hear such cases, without any extra expense. By suggesting this, I do not mean that special separate judges should be appointed for this purpose. Sir, I hope that, in case the Bill is passed, Government will keep this point in view. Sir, I support the Bill.

Maulvi Muhammad Abdul Ghani (Tirhut Division : Muhammadan) : Sir,* the speech of my esteemed friend, Sir Muhammad Yamin Khan, has compelled me particularly to make a speech. So long as he was confined to that part of his speech which was more or less an advocacy for the rights of women, I was led to think that he perhaps belonged to the

*Translation of the speech delivered in the vernacular.

weaker sex (Loud Laughter) ; but when he turned practically to oppose the rights of the weaker sex, I realised my mistake. Every body in the world very easily offers to prescribe principles, but it is altogether a different story when time comes for putting them into practice. This exactly is the case with my Honourable friend. He laid down very emphatically the dictum that, so far as the question of rights is concerned, there is no difference between men and women, particularly when women are seen working side by side with men in every walk of life ; but women should not get any property rights in the constituency of my Honourable friend, because the existing law of the land is against such move. Possibly my Honourable friend has something to do with the *ta'ruk-dari*, and that appears to me to be the chief reason for his opposing the Shariat Bill.

Sir Muhammad Yamin Khan : On a point of explanation, Sir. The Honourable Member is making a wrong aspersion on me. He says he did not understand my speech, but he is doing me great injustice by saying that I have a personal motive or I am personally concerned in this matter.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member must not impute any personal motive to another Honourable Member, especially if he has not been able to understand his speech.

Maulvi Muhammad Abdul Ghani : Sir, I am aware that the procedure in the House does not permit me to make any personal attacks against any Member. I have, therefore, always avoided this and shall continue doing so in obedience to your orders. However, I would submit that it is rather easy for every body to lay down principles, which are so very difficult to translate into action. Hence it pained me to notice that there are people in this world who feel a conscientious objection to the use of the word " Shariat ". My Honourable friend has repeatedly declared that by the deletion of the word " Shariat " the Bill would become practicable. In this connection, I am rather inclined to say that time is fast approaching when a Muslim would consider it derogatory to use the words " Muhammad " or " Ahmad " along with his name.

Sir, so far as I have understood the Bill, I take it to mean that according to this, all that custom, usage and anti-Islamic practice, that have passed into law to the detriment of the Islamic law of inheritance, would disappear. Then, there is the controversy of bracketing the word " Shariat " after the words " Personal Law ". But what is " Personal Law " after all ? I almost rose from my seat to ask my Honourable friend for a translation of the words " Personal Law ", but he would not give me a chance for doing so. Nor did he offer any translation of that term even though it was demanded by other Honourable Members. I very much doubt if my Honourable friend knows the meaning of the words " Personal Law ", and for that reason I am sorry for him.

My Honourable friend has been harping again and again on the theme that Sunni law is different from Shia'ite law, although there is no mention whatsoever in the Bill itself as to how it will stand in the way of those who follow the Hanafi, the Safi'i, the Maliki, the Hambali, the Shia'ite or the Khariji school. What it aims at is only this that in this

[Maulvi Muhammad Abdul Ghani.]

respect every section of the Islamic faith will be bound to abide by its own traditions, practice and internal law, and that he will be bound to disregard all such customs and usages that have passed into law in spite of the Islamic law. So, if my Honourable friend, the gallant Knight from Meerut, has formed his opinion against it, he would do well to revise it.

Sir, I would also take this opportunity of saying that I stand for the Bill, provided it is carried without an amendment ; but I am not in favour of it in an amended form. I am raising this voice on behalf of the Muslims of Bihar. Let it not be said at any stage in the future that the Muslim representative from Bihar supported the amended Bill. In the province of Bihar, the Courts, even to this day, settle cases of inheritance, etc., according to the Islamic law. The Muslims of Bihar would stand to lose if the present Bill is in any way amended. With these words, Sir, I support the principles of this Bill and congratulate the Honourable Member who has moved it.

Qazi Muhammad Ahmad Kazmi : Mr. President, my own belief is that, to take part in the discussions of this House, unless something very important comes, is not proper for any Member of this House. I do not want to make it a general rule, but this rule must be observed especially on non-official days. Personally I always refrain from taking part in the debate, unless it is absolutely necessary for me to do so, for the simple reason that we have got a limited number of days for the non-official Bills and the non-official Resolutions, and we must be very careful to utilise that time. Still, as my learned friend, Sir Muhammad Yamin Khan, has tried to dissect this Bill clause-wise, I wish to say something on it. As a matter of fact, many of the points raised could have been easily dealt with at the time when the clauses would be discussed. But, as he has referred to those clauses on the basis of the principle itself, I will try to meet his objections as briefly as possible. Probably, the learned Knight has not seen the real necessity for which this Bill has been brought before this House. Probably he is not aware that there are the Punjab Laws Act, the Oudh Laws Act and other Acts which make the custom of the country override the personal law of the Muslims.

Sir Muhammad Yamin Khan : I may inform the Honourable Member that I have seen all those laws.

Qazi Muhammad Ahmad Kazmi : Had he only seen those laws, probably he would not have objected to the words " or law ". The Bill says : " Notwithstanding any custom, usage or law to the contrary ". By the words " or law to the contrary " is meant that all such laws, which provide that custom or usage should override the Muslim personal law, ought to be repealed. If we take out the words " or law " from this clause, then it would mean that " notwithstanding any custom, usage to the contrary, the Muslim law will prevail ". Now, the Muslim personal law will prevail in spite of the custom or usage, but if any custom or usage has been recognised by law and the law lays down that that custom and usage shall have preference over the Muslim personal law, then it cannot be repealed by this Bill. If my Honourable friend only knew that the necessity for this Bill is due to the fact that in the Punjab, the North-West Frontier Province and at other places there are enactments to the

effect that custom and usage shall have preference over the Muslim personal law, then he would not have talked in the strain in which he did. For the information of my learned friend, I will read section 5 (b) of the Punjab Laws Act, which says :

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

* * * * *

(b) the Muhammadan law, in cases where the parties are Muhammadans, and the Hindu law, in cases where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is above referred to.”

According to this section of the Punjab Laws Act, if there is any conflict between the Muslim personal law and the usage and custom, the usage and custom shall prevail as against the Muslim personal law.

Sir Muhammad Yamin Khan : Has that been enacted by a Legislature ?

Qazi Muhammad Ahmad Kazmi : Of course, it has been enacted by a Legislature. That is why I said in the beginning that the learned Knight had not had the occasion of reading these laws. I am referring to the Punjab Laws Act (Act IV) of 1872 passed by the Government of India. It is the Legislature which has passed it, enacted it, and it is a law which is today regulating the whole of the Punjab. It is to meet this particular law, which makes custom and usage superior to Muslim personal law, that this Bill has been brought. Therefore, unless some other remedy had been suggested by the Knight from Meerut to meet this particular difficulty, the words ‘or law’ should not be deleted, otherwise the Bill would be absolutely useless. In other words, if we have this law without the words ‘or law’, the result will be that as soon as a case under it goes before the Courts of the Punjab, they will say : “As against the custom and usage you can have your Muslim personal law, but when that custom and usage has been recognised by an enactment of the Punjab, then precedence will be given to the custom and usage over your personal law.” Probably, I have not yet succeeded in making the point clear to the learned Knight, but, in the darkness of the night, it is very difficult to throw light. Therefore, I will stop at this point.

Now, I take the next point on which my Honourable friend, Sir Muhammad Yamin Khan, waxed very eloquent, the word “Shariat”. He said that the word “Shariat” could not mean anything.

Sir Muhammad Yamin Khan : I never said that.

Qazi Muhammad Ahmad Kazmi : The word “Shariat”, according to him, means something which he does not understand. I can see that according to him Muslim personal law has got some particular meaning, but the word “Shariat” has got none. According to him, Muslim personal law means the personal law of the Hanafis, the personal law of the Shias, the personal law of the Sunnis, but the word “Shariat”, according to my Honourable friend, means only the personal law of one particular sect of the Muslim community.

Sir Muhammad Yamin Khan : Only one law of all the Muslims and not of different sects.

Qazi Muhammad Ahmad Kazmi : Whatever he says has to be accepted. Now, Sir, just as has been explained by Sir Muhammad Yamin Khan, if by "Shariat" he means one law, he must remember that all Mussaimans, who say that they are following the *Shariat*, are the believers in one Koran and are believers in one Prophet and one God, and, therefore, *Shariat* for Muslims means one *Shariat*, and he takes very serious objection to that. If Muslims say they have one *Shariat*, that is very objectionable to my Honourable friend.

Sir Muhammad Yamin Khan : No, no.

Qazi Muhammad Ahmad Kazmi : If that is the meaning that by splitting it up.....

Sir Muhammad Yamin Khan : Sir, I rise to a point of personal explanation. The Honourable Member has no right to misinterpret what I said. He may say whatever he likes, he may ventilate his own views, but he has no right to say that I mean this. I do not mean a bit of what he is talking about.

Qazi Muhammad Ahmad Kazmi : The only objection that was raised about the word "Shariat" was that *Shariat* is one, and there are different sects and different communities amongst the Muslims.....

Sir Muhammad Yamin Khan : What I mean is that *Shariat* can only be one and the personal laws of the Muslims can be different according to the sect to which they belong. Shias may have their own personal law, the Hanafis may have their own personal law, and, so far as *Shariat* is concerned, you cannot divide it into two different things—one *Shariat* for the Sunni, another *Shariat* for the Hanafis, and so on. You cannot do that.

Qazi Muhammad Ahmad Kazmi : Till now I have failed to get from the Honourable Member the translation of the words "Muslim personal law". He, as well as I, belong to this country and learned English at a very late stage and had learned Urdu or Persian phrases long before learning English, and yet I have been seeing that the Honourable Member had been insisting on the words "Muslim personal law" and has not been successful in giving a translation of it up till now. To me the word "Shariat" means Muslim personal law and nothing else, and if he thinks it means anything else, then he is mistaken. That is the reason why this word "Shariat" is the most appropriate word. These were the two main objections that have been taken so far as this Bill is concerned. If really the Honourable Member is serious, he could have very easily moved an amendment to that effect.

Mr. M. S. Aney : Is *Shariat* different from the law of Koran ?

Qazi Muhammad Ahmad Kazmi : The question has arisen as to what is Muslim personal law. You will find even in elementary text books that the law of Koran is the Muhammadan law. My Honourable friend must be aware that the sources of Muhammadan law are the Koran, the Hadiz, i.e., the traditions, 'Qayas' and 'Ijma'.

Sir Muhammad Yamin Khan : The Shias have never accepted that.

Qazi Muhammad Ahmad Kazmi : Have they accepted the first one, or the second one, or the third one.

Sir Muhammad Yamin Khan : No.

Qazi Muhammad Ahmad Kazmi : Then, the Shias have never accepted either the Koran or the traditions or the ' Q'yas '. If that is the allegation that has been made by the Honourable Member about Shias, then, I am afraid.....

Sir Muhammad Yamin Khan : I said they have not accepted the first Khalifa, or the second Khalifa or the third Khalifa. I thought he meant them after using the words " ijma-ul-ummat." I am sorry if I misunderstood.

Qazi Muhammad Ahmad Kazmi : When I was talking of the sources of law of Islam, my Honourable friend understood me to mean the Khalifas. The Khalifas were never the sources of the law of Islam as far as I know, and the mistake is probably on account of some misunderstanding that the sources of Islam mean the Khalifas. That was never my contention. The law of Islam is *Shariat*.

Now, Sir, taking the Bill as it is, we are sorry that, on account of the enactment of the Government of India Act, it is not possible for the Central Legislature to make any law for the whole Muslim personal law and for all the property of Muslims. We are excluded from making any such enactment on account of the provisions of the Government of India Act for " agricultural land ", and, therefore, agricultural lands had to be excluded from the provisions of this Bill. Then, again, there was some misunderstanding about waqfs. It was suggested that as waqfs in favour of one's family and children had been enacted by a particular Act, so if we keep the words " or law ", then that Act will also be repealed. I would only remind my Honourable friend that the Act of 1913 is not an Act in the sense that it gives new rights. The Waqf Validating Act of 1913 only validates particular waqfs which were considered by their Lordships of the Privy Council to be invalid in the light of Munammadan law, and, therefore, there can be no question that this Bill can ever affect the Waqf Validating Act of 1913.

Sir, I was submitting that when this Bill was introduced in the Assembly, it was meant to cover a very large field, but, unfortunately, on account of the limitations imposed upon us by the Government of India Act, it has been considerably restricted in its scope because " agricultural lands " had to be excluded from the operation of this Bill. As we know, agricultural lands mean probably 99.5 per cent. of all the property that is available in India, so it is only .5 per cent. about which we can legislate and for which we are coming before this House. But it is not so much with the idea of getting sanction to this small property, but the idea in seeking the sanction of the House is that in addition to giving some little relief to the females of the country, we may get this principle accepted by this House, this being a representative House for the whole of India ; the principle being that Muslim personal law should be applied to Muslims, and the difficulties and troubles that have come upon the women of India on account of the customary law should be removed. So, Sir, it is in this spirit that this Bill is being proceeded with in this House. It was only for that reason that the words " save as regards agricultural land " were

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inserted by the Select Committee without any hesitation. The same thing about waqfs—the words “ other than charities and charitable institutions and charitable and religious endowments ” were inserted, because they are the subjects which relate to Provincial Legislatures.

There are various amendments on the list, and I appeal to the House to consider this Bill from the point of view which has been placed before this House. So far as the Muslim Members are concerned, they are amenable to reason and are prepared to accede to every reasonable change in the Bill so as to accommodate the Government and even to accommodate my Honourable friend, Sir Muhammad Yamin Khan, if really he has got any serious objections. But what we want is that the principle of the Bill should be accepted by this House as soon as possible, because we hope, that it will give a lead to all the Provincial Legislatures to follow this particular principle and legislate in that light. Above all, we have got to realise that the principle is a sound one. Muslim personal law, so far as marriages, divorces and other things are concerned, is more or less already in force in all the provinces. It is the succession which is the chief matter in which Muslim women are being deprived of their proper rights. Daughters and widows of very rich persons, when they die intestate, are being deprived of their proper right in the property of their fathers and husbands, and people of the seventh and eighth degree come forward and take away the property. The principle of customary law might have been good at some stages in the development of the history of India, but now is the time when even the principle of joint family system of Hindus is being retained only to a greater extent in name only. Even in the Hindu joint family, you find that there is more or less complete disruption. A friend of mine, who belongs to the Vaish caste, told me that it is ridiculous to say that there can be any joint family system in the Vaish community ; because, if you take up their account books, you will find that if four annas are spent for the son of one brother, an equal sum of four annas is to be spent for the son of another brother. So it is all right to say that they have got a joint family, but when you look into the inner conditions of that family, you will find that it is a family which is separate, and they are only labouring under that old name and are suffering from the handicaps of it. So, in short, I would submit that the principle of the Bill should be accepted by the House. It is a simple principle that we want to enforce that custom should be over-ridden by Muslim personal law, and, for these reasons, I give my support to this Bill.

Mr. M. A. Jinnah : Sir, I thought I would wait until I heard the Government view on this Bill but evidently Government have no views at all. The principle of this Bill, as I understand it, and its object is that, hitherto, amongst certain classes who are the followers of Islam there prevails a custom or usage by which they are governed in matters of succession and inheritance. These customs are age-long old and they have been pursuing them for centuries. Some customs have been established in Courts of law and have in fact the force of law. Some customs are nebulous and some are put up as they may suit the parties concerned. But as we grow and as India has developed, the customs which are still not established are sought to be established at the cost of a great amount of expense and prolonged litigation. Now, Sir, as I said, the principle underlying this Bill is to secure to the female heirs their due share

according to Muhammadan law. According to the customs and usages that have prevailed, the position of the female heirs has been a very precarious one. If a man dies his widow is only entitled to maintenance. When the question arises as to what maintenance she is entitled to, it is always a very difficult question to decide, because when a son or male heir succeeds to a large estate, he tells the widow that Rs. 100 is quite enough for her although it may be an estate of ten or twenty or thirty lakhs ; and then invariably litigation arises. Then, as some Honourable Members know, the result of that litigation is that the widow claims maintenance according to the position in which her husband lived, according to the estate he has left, and that leads to very lengthy litigation and complicated inquiry, as to what estate was left and what is to be awarded, and so on. Similar is the position of daughters and female heirs. I will not dilate on it any more, but I think that the House will agree that the state of things is not very satisfactory, and I submit that the Islamic code of law is most just because the shares are defined there, namely, the daughter gets half the share of the son, and similar is the position of female heirs. If she gets half in her own right she is the sole mistress and master of that share of hers ; and in these days and even in earlier days and even today the economic position of woman is the foundation of her being recognised as equal of man and share the life of man to the fullest extent. Therefore, that being the principle, namely, to avoid this uncertainty and to avoid the costly litigation that occurs for any of these customs not being defined or ascertained, it is desirable that at any rate we should secure to the female heirs their proper share according to the Muslim law.

Then, with regard to the other matters which are enumerated in the Bill, it seems that there is no difficulty. I do not think we are introducing or enacting a law which is in any way going back, but it is a more progressive and more advanced system of law than the customs and usages that are at present governing these various matters. You have got other matters enumerated there and, therefore, that really is the principle of the Bill. I, therefore, whole-heartedly support the principle of the Bill.

Having said that, there are certain very serious difficulties which we have to face, and things have been acted upon and laws have been enacted in this country ; and, therefore, the question whether the word "law" should remain in that Bill or to what extent we should meet that difficulty will be a question that we will consider when these various amendments come before us. There is one point which I should like to mention and I did try to follow my Honourable friend, Sir Yamin Khan, with regard to his point. I find that as the language of this Bill goes, of course anything is possible for one to argue in a court of law. You can always raise a dispute, the doors of the court are always open and I can always concede to Sir Yamin Khan that whatever Bill you may pass, there will be some people who will go to a court of law for a construction of some clause or some word. But that is no reason why we should not take the utmost care and caution and see that there is absolutely no doubt left as far as we humanly can help. Now, "Muslim personal law" is mentioned there, and Sir Muhammad Yamin Khan admits that if it is stopped there, there will be no difficulty, and

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it is quite obvious to any one who knows anything about the Muslim law that there are different schools of law, that there are certain variations and certain differences which have come about by means of interpretation of great jurists on Muslim law. It is interpretation, but the fountain source of that law is *Shariat*.....

Sir Muhammad Yamin Khan : The fountain is the Quran.

Mr. M. A. Jinnah : May I point out to my friend what Mr. Wilson says in his book.

Sir Muhammad Yamin Khan : He may not be correct.

Mr. M. A. Jinnah : Then, there is nothing in this world which can be correct and the only correct thing is what the Honourable Member says. There is no use of asserting that everything is incorrect and the only thing that you say is correct. I am trying to persuade my friend to examine it carefully, and I assure him that we don't want to tie ourselves up into knots. If there is the slightest ground for it, at least I am prepared to consider it, but I was trying *prima facie* to persuade my friend to see that there is no substantial point in this. This is what Wilson says at page 6 :

“ The Muslim Sacred Law (Shariat)..... ”

I think my friend is thinking perhaps of that meaning of *Shariat* Muslim sacred law. Now, Muslim sacred law in English, in brackets, is *Shariat*. What do we say? Muslim personal law (*Shariat*). It makes all the difference in the world, and when Wilson defines what is Muslim sacred law or *Shariat*, he says :

“ Muslim sacred law stands on a different basis. It professedly centres more round the personality and the sayings and doings of the Prophet than did even the Canon Law of the Trinitarian Christians round the personality of the deified Jesus. And its scope is infinitely wider. It enters into the minutest details of the daily lives of men, women and children, private and public, religious and secular.”

Therefore, when you talk of *Shariat* in that sense, it embraces the whole system of your life, secular and otherwise. When we are putting in the Bill ‘ Muslim personal law ’ (*Shariat*), I ask Honourable Members to say whether any Judge would have any difficulty in interpreting this clause and would go to the extent of saying that ‘ no matter whether you are a Sunni, Hanifa, Shia or Shafi or you belong to any other school by which you are governed as to your personal Muslim law, I will only hold you by the rule of Hanifa school of law ’ according to this clause. Surely, I leave it to the House to judge. I don't wish to take up any more time of the House, but I once more say this. This is really a very progressive and advanced measure, and it is certainly intended to secure a distinct benefit to female heirs who have suffered, and it is high time that they were relieved of their suffering, and I hope the House will accept the main principle of this Bill subject to such modification as may be necessary having regard to other difficulties that are facing us.

Mr. M. Asaf Ali : Sir, may I continue today or would you like me to start another day ?

Mr. President (The Honourable Sir Abdur Rahim) : There are only five minutes left, and I think you can start on another day.

The Honourable Sir Nripendra Sircar (Leader of the House) : With your permission, Sir, I would like to make a statement and a request to the Chair. Although we are making very satisfactory progress with the Insurance law, I understand we are in a difficulty. On the one hand, we still have a lot of ground to cover, while, on the other, I understand many of the Honourable Members are not willing to enjoy the October in Simla for a long time.....

Mr. Bhulabhai J. Desai (Bombay Northern Division : Non-Muhammadan Rural) : Not at all, if possible.

The Honourable Sir Nripendra Sircar : So far as I can judge the position, having applied my mind to it, I don't think really we shall be able to finish before the 8th or 9th of October, unless there is a little speeding up. I had a chance of talking to two Leaders of the Parties here. We are getting only two days for insurance laws next week,—and I would request you to sit till 6 o'clock on Tuesday and Wednesday, and, as regards Saturdays, the 18th, and 25th possibly, I may be allowed to make my observations later.

Mr. President (The Honourable Sir Abdur Rahim) : I have no objection to sit till 6 p.m. if that is the desire of the House.....

Several Honourable Members : No, no.

Mr. President (The Honourable Sir Abdur Rahim) : And I understand on the 18th.....

The Honourable Sir Nripendra Sircar : No, Sir, I mentioned one Saturday for the present.

Mr. President (The Honourable Sir Abdur Rahim) : I do hope that Honourable Members will agree.....

Mr. S. Satyamurti (Madras City : Non-Muhammadan Urban) : Sir, beyond 5 p.m. it is impossible to sit. I do know of the Honourable the Law Member's great capacity, but these complicated amendments practically exhaust us. I agree to our sitting on Saturday, but to expect us to sit beyond 5 p.m. on these complicated amendments would be an impossibility.

Mr. President (The Honourable Sir Abdur Rahim) : But we sometimes sit till 6 p.m.

Mr. S. Satyamurti : Sometimes, but not on these complicated amendments ; we sit for adjournment motions.

The Honourable Sir Nripendra Sircar : My previous offer of sitting till 6 p.m. not having met with approval, I shall make another offer, Sir. If the House will sit on the 18th and 25th of September, that will equally suit my purpose. I don't want to inconvenience anybody. It is for Honourable Members to decide which is the least inconvenient course, but something has got to be done.

Mr. President (The Honourable Sir Abdur Rahim) : I should like the Leaders of Parties to meet me tomorrow at 10-30 and settle the matter then, without discussing it in the House.

As regards sitting till 6 p.m., it sometimes may be necessary to sit beyond 5 p.m., and it will be in the discretion of the Chair to do so.

The Assembly then adjourned till Eleven of the Clock on Friday, the 10th September, 1937.