

*Monday,
26th February, 1912*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. L

April 1911 - March 1912

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OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

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GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT. -

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS
UNDER THE PROVISIONS OF THE INDIAN COUNCILS ACTS,
1861 TO 1909 (24 & 25 VICT., C. 87, 55 & 56 VICT., C. 14,
AND 9 EDW. VII, C. 4).

The Council met at Government House, Calcutta, on Monday, the 20th
February 1912.

PRESENT :

The Hon'ble SIR GUY FLEETWOOD WILSON, G.C.I.E., K.C.B., K.C.M.G.,
VICE-PRESIDENT, *presiding*,

and 57 Members, of whom 52 were Additional Members.

QUESTIONS AND ANSWERS.

The Hon'ble Mr. Dadabhoy asked on behalf of the Hon'ble Sir Sassoon
David—

“With reference to the answer given on the 27th March last to my ques-
tion regarding assessment of income-tax on factories, will the Government be
pleased to state what decision, if any, has been arrived at in the matter?”

The Hon'ble Sir James Meston, replying on behalf of the Hon'ble
Sir Guy Fleetwood Wilson, said :

“The Government of India do not consider it desirable to standardise the
rules on the subject throughout India. They have, however, requested Local
Governments to examine carefully the practice obtaining in their respective
Provinces in order that clearer and more definite rules may be framed, suitable
to local circumstances.”

The Hon'ble Mr. Dadabhoy asked :

“Will Government be pleased to lay on the table a statement, showing
year by year the number of marriages registered under the Indian Civil Mar-
riage Act (Act III of 1872), with particulars as to the nationality and religion
of the parties?”

[*Sir. Reginald Craddock; Mr. Dadabhoj; Sir T. R. Wynne.*] [26TH FEBRUARY 1912.]
R. W'gunc.]

The Hon'ble Sir Reginald Craddock replied :

" A statement* is laid on the table which shows for each year since 1872, by Provinces, the number of marriages registered under the Indian Civil Marriage Act (Act III of 1872). It is impossible to state the religion of the parties, as the Act applies only to the cases of such persons as do not profess one or other of the main religions of the country, and the information given by them on this point is thus merely negative in character; nor is there any record as to nationality. It would, however, appear from the names of the parties that, out of the 2,028 persons who have availed themselves of the provisions of the Act, 1,728 were of Hindu, 24 of European and 2 of Muhammadan origin, whilst uncertainty exists as to the remaining 274."

The Hon'ble Mr. Dadabhoj asked :

" Do Indians trained at Engineering Institutions in India find employment on the Indian Railways ?

" If so, how many of them are so employed ? "

The Hon'ble Sir T. R. Wynne replied :

" The reply to the first part of the Hon'ble Member's question is in the affirmative.

" Information as to the number of Indians trained in Engineering Institutions in India, who are employed on Indian Railways, will be found in the Classified List and Distribution Return of Railway Establishments published half-yearly, a copy of which is available for reference in the Additional Members' Room in the Imperial Secretariat.

" The number of Indians (recruited in India) on the permanent Engineer and Upper Subordinate establishments of State Railways is shown on page 131 of the list for the half-year ending 30th June 1911. The figures there given do not, however, include persons employed on the non-pensionable and temporary establishments. Details of these establishments will be found on pages 20 to 24 of the list.

" I should add that the Engineering Colleges in India, in addition to training Engineers proper, train a large number of Indians who qualify in Civil and Mechanical Engineering but all of whom do not secure appointments on Railways as Engineers and Upper Subordinates, as the demand for such is limited. A considerable number of these, whose pay varies from Rs. 50 to Rs. 500, are employed on railways as Inspectors of Works, Permanent-Way Inspectors, Foremen, Mechanics, Sub-overseers, etc., but complete lists of the men in these classes are not published."

The Hon'ble Mr. Dadabhoj asked :

" Is it true that the Pennsylvania Railway under an arrangement with the State employ annually six of the best men turned out by Engineering Institutions within the State ?

" Will Government be pleased to say whether they will make similar arrangements on State Railways and State-controlled Railways ? "

The Hon'ble Sir T. R. Wynne replied :

" The Government of India have no information as to the method of recruitment of Engineer Establishment of the Pennsylvania Railway.

" At present four qualified Engineer students of the Rurki College are posted annually to State Railways for a course of one year's practical training, and, of these, the two best are permanently appointed to the Engineer Estab-

[26TH FEBRUARY 1912.] [Sir T. R. Fyane; Mr. Dadabhoj; Sir Reginald Craddock.]

ishment on completion of their course, the other two being retained as temporary engineers or discharged in accordance with the rule in paragraph 626 A, State Railway Construction Code.

"In addition, two qualified students of the Rurki College Upper Subordinate class, and one qualified student of the Sibpur College, are appointed annually to the Upper Subordinate Establishment of the State Railway Engineering Department.

"With a view to furthering the employment of Indians trained at Engineering Colleges and Technical Institutes, and to the establishment of close relations between these institutions and Railways and other employers, the Government have deputed Colonel Atkinson, B.E., Principal, Thomason College, Rurki, and Mr. Dawson, Principal, Victoria Technical Institute, Bombay, to travel round India and report on opportunities of securing wider employment for Indians, and, if necessary, to adjust courses at Engineering Colleges to conditions prevailing on Railways."

The Hon'ble Mr. Dadabhoj asked :

"Has the Government received any communication from the Secretary of State on the subject of the practices prevalent in many parts of India of dedicating minor girls to temples and of giving minor girls in adoption to public women?"

"If any such communication has been received, will Government be pleased to state what action has been taken upon it?"

"Does Government propose to initiate preventive legislation? If so, does it propose to undertake such legislation at an early date?"

The Hon'ble Sir Reginald Craddock replied :

"The matter is engaging the attention of the Government of India, but at the present stage of the discussion no further information can be given."

The Hon'ble Mr. Dadabhoj asked :

"Will Government be pleased to state why 'temporary promotions' following leave to a member are not provided in the Provincial Civil Services while they are provided in the Higher Services?"

"Do Government propose to abolish the distinction in the Civil Service Regulations, and make the rules uniform in respect of both the branches of the Public Service?"

The Hon'ble Sir Reginald Craddock replied :

"The reason for the differential treatment of the Provincial Services on the one hand and, for instance, the Indian Civil Service, to which it is understood the Hon'ble Member refers, on the other, is that the latter was originally organised on a system of substantive promotion in furlough vacancies. In 1868, this procedure was changed, and an officer proceeding on furlough retained a lien on his grade appointment. As a partial compensation to his *locum tenens* for the loss of substantive promotion, what is known as an officiating allowance was given to him, and this is doubtless the 'temporary promotion' referred to. These considerations never applied to the case of the Provincial Services, to which the system of officiating promotion has not been extended. In view of the origin of the existing difference, as explained, it is not considered necessary to introduce a uniform treatment of these Services in this respect."

[*Babu Bhupendranath Basu ; Sir Reginald Craddock ; Mr. Mudholkar.*] [26TH FEBRUARY 1912.]

The Hon'ble Babu Bhupendranath Basu asked :

" Will the Government be pleased to state--

- (1) the number of hospitals, public and private, in the whole of British India ;
- (2) the number of dispensaries distributing charitable relief ;
- (3) the number of patients in each year for the last three years in the hospitals ;
- (4) the number of patients in each year for the last three years attending the free dispensaries ;
- (5) the average number of people suffering from malaria, plague and other preventible diseases in British India each year for the last three years ;
- (6) the number of deaths from the above diseases during the same period ;
- (7) the number of medical colleges and schools maintained or recognised by Government ;
- (8) the number of qualified medical practitioners turned out of these colleges and schools for the last three years ;
- (9) and if any data is available, the approximate number of qualified medical practitioners in British India. "

The Hon'ble Sir Reginald Craddock replied :

" No distinction is drawn in official records between hospitals and dispensaries, and it is therefore impossible to give the information asked for in the first four questions in the exact form required by the Hon'ble Member. But I lay on the table a statement marked A,* which shows that there are in the whole of India 4,128 institutions for the relief of sickness. Of these, 3,214 are maintained entirely by the State or by local funds, and 914 in whole or in part by private effort. I also lay on the table a statement marked B,* which shows the number of in-door and out-door patients, respectively, for the period 1908-1910. I trust that these figures will suffice for the Hon'ble Member's purpose.

" In answer to questions 5 and 6, I lay upon the table a statement marked C* to show the number of recorded deaths from small-pox, fevers, cholera and plague for the same triennial period. There are no statistics which will show the number of persons who suffered from these or any other diseases.

" The answer to question 7 is five medical colleges and 15 schools.

" The answer to question 8, is 1,905, namely, for 1909, 670 ; for 1910, 629, and for 1911, 606.

" In answer to question 9, I lay upon the table a statement marked D* which shows that there are approximately 8,784 qualified medical practitioners in British India, of whom approximately 1,771 are private practitioners. This latter figure is, however, open to doubt, as in the absence of any medical registration act the information on the subject has to be drawn from unofficial sources.

The Hon'ble Mr. Mudholkar asked :

" Will Government be pleased to state the terms of reference to the Committee on Indian military expenditure which Government are reported to have appointed with Sir William Nicholson as its President ? Is there any non-official Indian appointed on the Committee ? If not, does Government propose to consider the desirability of according informed Indian opinion suitable representation on that Committee ? "

[26TH FEBRUARY 1912.] [*The Commander-in-Chief; Sir G. M. Chitnavis; Sir Robert Carlyle; Mr. Subba Rao.*]

His Excellency the Commander-in-Chief replied :

"The Government of India have recommended, and the Secretary of State has approved, the formation of a Committee of military officers assisted by Finance Department representation, to consider military policy, administration and expenditure in India.

"It is not proposed or considered necessary to include any other representation on the Committee."

The Hon'ble Sir G. M. Chitnavis asked :

"During Lord Minto's Viceroyalty, did any correspondence on the subject of a permanent settlement of land-revenue for the whole or part of India and of long term settlements pass between this Government and the Right Hon'ble the Secretary of State, and also between the Government of India and the Local Governments? If so, will the Government be pleased to lay the papers on the table for the information of the public, and to state the final result of such correspondence?"

The Hon'ble Sir Robert Carlyle replied :

"There has been no correspondence of the kind indicated by the Hon'ble Member."

The Hon'ble Sir G. M. Chitnavis asked :

"(1) Has the attention of Government been drawn to statements reported in 'Indian Art, Industry and Education' by Mr. E. B. Havell, late Principal of the Calcutta School of Art, and also lately in an appeal to the Government of India originally published in the *London Times* and since reported in most Indian newspapers by that same gentleman, that the indigenous building architectural art is languishing for want of official recognition and support?"

"(2) Do Government propose to employ Indian architects and carvers of the old school on any construction and decorative work which may be undertaken at Delhi and in the new Province of Behar and Orissa, and as far as practicable to patronise and encourage revival of Indian art in the Public Works Department?"

The Hon'ble Sir Robert Carlyle replied :

"1. The answer to the first question is in the affirmative.

"2. Government have no doubt that work will be found on the new buildings at Delhi and the capital of the new province for a considerable number of Indian carvers and other workers in the decorative arts, but the extent to which these will be employed will largely depend upon the nature of the designs for the buildings, a question which has not yet been considered.

"The architects to be employed on the designs of the buildings will be selected solely with regard to their qualifications for that important work and for dealing with the numerous complex problems connected with the design and construction of buildings adapted to suit modern requirements.

"Government have every desire to encourage the revival of Indian Art in the Public Works Department and elsewhere, and will take every opportunity of doing so with a due regard to economy in the expenditure of public funds."

The Hon'ble Mr. Subba Rao asked :

"With reference to my Resolution on the Public Service question and the enquiry promised by the Hon'ble Sir Archdale Earle on behalf of the Government on the 17th March last, will the Government be pleased to state the result of such enquiry and lay on the table such orders, if any, passed on the subject?"

[*Sir Reginald Craddock; Mr. Subba Rao; Mr. Madge; the Commander-in-Chief.*] [26TH FEBRUARY 1912.]

The Hon'ble Sir Reginald Craddock replied :

"The question raised by the Hon'ble Member is the subject of inter-communication between the Government of India and the Secretary of State, and the Government of India are not prepared to make any pronouncement with regard to it at this stage."

The Hon'ble Mr. Subba Rao asked :

"Will the Government be pleased to lay on the table the rules and orders made by the Governor General for the transaction of business in his Council under section 8 of the Indian Councils Act, 1861, and also those by the Governors of the Presidencies of Fort St. George and Bombay under section 28 of the said Statute?"

The Hon'ble Sir Reginald Craddock replied :

"The rules framed by the Governor General under section 8 of the Indian Councils Act, 1861, for the transaction of executive business in his Council govern the procedure of a body whose deliberations are confidential, and the Government of India consider that no useful purpose would be served by placing them on the table.

"The Hon'ble Member's request as regards the rules framed by the Governors of Madras and Bombay should be preferred in the Councils of those Governors."

The Hon'ble Mr. Madge asked :

"Will the Government be pleased to state—

- (1) whether the Cantonment Magistrate of Landour has been authorised—
 - (a) to inform any owners of property held in undisturbed possession for over fifty years under the Norman Grant or the Wells Settlement Act that though their houses may be their own the land on which they stand belongs to Government and may be resumed;
 - (b) to prosecute and fine owners for exercising proprietary privileges which they have enjoyed and exercised unquestioned for over fifty years; and
- (2) whether the Government has received legal advice from its own legal advisers conflicting with or not supporting the claims advanced by the Landour Cantonment Magistrate against private owners?"

His Excellency the Commander-in-Chief replied :

"(1) (a) The estate holders have been informed that the Government of India are prepared to consider as *grantees* the holders of the estates now included within the limits of the cantonment, which are shown in the list of grants prepared in 1842, since it is considered that their position cannot be better than that of the Government itself, which is only that of a lessee. It must, however, be understood that these rights do not conflict with the full power of Government to administer and impose taxation under the Cantonments Act, 1910.

"The reply, therefore, is in the negative.

"(b) The reply is in the negative.

"(2) The position claimed by Government, based on legal advice, is as stated in reply to (1) (a) above. Any claims made which do not coincide with this statement of the case are unauthorised."

[26TH FEBRUARY 1912.] [Mr. Madge; Sir Reginald Craddock; Mr. Muhammad Shafi; Sir Robert Carlyle.]

The Hon'ble Mr. Madge asked :

“Will the Government be pleased to state—

- (1) how many members of the Domiciled Anglo-Indian Community have been nominated for the higher police appointments of their respective Provinces during the past five years;
- (2) how many officers have been brought out from Britain during the same period for similar appointments in each Province; and
- (3) what are the respective proportions of imported to locally nominated officers in the several Provinces during the same period?”

The Hon'ble Sir Reginald Craddock replied :

“I place on the table a statement,* the figures in the several columns of which answer the three parts of the Hon'ble Member's question. The Government of India have no information as to how many of the 26 officers shown in column 2 of the statement were domiciled in the strict sense of the term. In answering the question, the phrase ‘Members of the Domiciled Anglo-Indian Community’ has therefore been interpreted to mean officers recruited in India, as distinguished from officers recruited from England; and I gather from parts (2) and (3) of the Hon'ble Member's question that this interpretation gives him the information which he requires. The statement does not include a few military officers who have in special circumstances been appointed in India to the Civil Police in Burma, Bengal and Eastern Bengal and Assam.”

The Hon'ble Mr. Muhammad Shafi asked :

“Will the Government be pleased to state, for the information of the Council, the total amount of outlay upon State irrigation works, Major and Minor, whether in the form of extension of previously existing or of construction of new canals, since the Budget debate of 1905 up to date? What is the total length of canals and distributaries constructed during this period, and what is the total area in acres irrigated by the canals so constructed?”

The Hon'ble Sir Robert Carlyle replied :

“The outlay on the construction of our Major irrigation works since the Budget debate of 1905 is as follows :—

Year.	Outlay in lakhs.
	Rs.
1904-05	87½
1905-06	129
1906-07	175½
1907-08	191
1908-09	210½
1909-10	224½
1910-11	235½
1911-12 (probable)	287

“The total expenditure on our Minor irrigation works for the same period is as follows :—

Year.	Expenditure in lakhs.
	Rs.
1904-05	133½
1905-06	140½
1906-07	128½
1907-08	127½
1908-09	134½
1909-10	135
1910-11	132½
1911-12 (probable)	128

* Vide Appendix No. 3.

[*Sir Robert Carlyle; Mr. Muhammad Shafi; [20TH FEBRUARY 1912.]*
Sir Reginald Craddock.]

"The total length of canals and distributaries in operation at the end of 1904-05 and of 1911-12 and the areas irrigated by the canals in those years are as follows, the figures for 1911-12 being approximate:—

Year.	Length of canals and distributaries in operation.	Irrigated area.
	Miles	Acres.
1904-05	50,176	20,167,967
1911-12	58,084	22,433,837
Increase in 1911-12	8,588	2,265,870

In addition to the canals in operation, there are altogether 55 projects which are either under construction, awaiting sanction or being examined by the professional advisers of Government. These are designed to irrigate 10 million acres at a total capital cost of about 50½ crores of rupees. The Major works now actually under construction will add an aggregate length of about 7,500 miles to the total length of channels."

The Hon'ble Mr. Muhammad Shafi asked :

"Is the Government aware of the publication in the Australian Colonies of what is called the 'Official Year Book of the Commonwealth of Australia' containing in a compact form valuable information relating to the administration of the Colonies from year to year? Has the Government of India considered the advisability of undertaking the publication of an Official Year Book, on somewhat similar lines, for British India?"

The Hon'ble Sir Reginald Craddock replied :

"The Government of India have seen the publication to which the Hon'ble Member refers. So far as this country is concerned corresponding information is given in the 'Statement exhibiting the moral and material progress and condition of India' and in the 'Statistical Abstract relating to British India' which are presented to Parliament; in the volumes of statistics of British India, which are published in India, and in the Annual Administration Reports of the various provinces. All these publications are accessible to the public, and nothing in the nature of a further Year Book appears to be required."

The Hon'ble Mr. Muhammad Shafi asked :

"Will the Government be pleased to state—

- (a) what is the starting as well as the maximum pay of a Munsif in Bengal, the United Provinces of Agra and Oudh and the Punjab, respectively;
- (b) what is the total number of these posts in each of the three Provinces and, excluding those who have secured these appointments through competitive examination, how many of the present incumbents of these posts, in each Province, have been appointed direct from the ranks of the legal profession?"

"With your permission, I should like to have these two questions answered separately."

[26TH FEBRUARY 1912.]

[*Sir Reginald Craddock ; Mr. Muhammad Shafi ; the President ; Raja of Dighapatia ; Sir Harcourt Butler ; Mr. Gokhale.*]

The Hon'ble Sir Reginald Craddock replied :

"I lay upon the table a statement* which gives the information desired by the Hon'ble Member. He will observe that it gives the information separately as asked for by him."

The Hon'ble Mr. Muhammad Shafi asked :

"It was my intention, Sir, with your permission, to put a supplementary question in connection with question (a)."

The President replied :

"The Hon'ble Member had better give notice of his question."

The Hon'ble Raja of Dighapatia asked :

"Has the attention of the Government been drawn to a recent address delivered by Sir Theodore Morison at the London Chamber of Commerce in which he deplored the exclusion of Indian students from apprenticeships in English workshops? Do Government propose to consider the necessity of affording facilities to Indian students of Technology to get admission into the factories and workshops both in England and India for the purposes of practical training?"

The Hon'ble Sir Harcourt Butler replied :

"The Government of India have seen the reports of Sir Theodore Morison's address which have appeared in the Press.

"The difficulties which have been experienced in affording facilities to Indian students for study in certain branches of industry have already formed the subject of communications between the Secretary of State and the Government of India, and are still under consideration."

The Hon'ble Raja of Dighapatia asked :

"Is it a fact that the new Province of Assam will be withdrawn from the jurisdiction of the Calcutta High Court and placed under a Judicial Commissioner?"

The Hon'ble Sir Reginald Craddock replied :

"No such proposal is at present under the consideration of Government."

The Hon'ble Raja of Dighapatia asked :

"Will Government be pleased to state if it is proposed to abolish the Board of Revenue in Bengal, and, if so, whether Government intend to fix the number of members of the Executive Council of Bengal at its statutory maximum?"

The Hon'ble Sir Reginald Craddock replied :

"It is proposed to discontinue shortly the separate appointment of Member of the Board of Revenue in Bengal, but no increase in the present number of members of the Executive Council is contemplated on this account."

The Hon'ble Mr. Gokhale asked :

"With reference to the announcement made by the Under Secretary of State for India in the course of the discussion of the Indian Budget in Parlia-

[*Mr. Gokhale ; Sir Harcourt Butler ; Sir James Meston ; Sir Robert Carlyle.*] [26TH FEBRUARY 1912.]

ment last July that the Government were preparing 'a scheme of a comprehensive character dealing with elementary, technical and higher education' and that it would be 'made known before long,' will the Government state what progress had been made with the preparation of such a scheme, and when it would be published for general information?"

The Hon'ble Sir Harcourt Butler replied :

"The Government of India have forwarded to the Secretary of State a general scheme of a comprehensive character dealing with elementary, technical and higher education. They are not in a position to say when it will be published for general information."

The Hon'ble Mr. Gokhale asked :

"Is it the intention of the Government of India to remove the Imperial Records from Calcutta, not to Delhi, but to Simla? If so, will they state how they propose to provide at Delhi for the needs of members of this Council, who require access to the records to enable them to perform satisfactorily their duties in connection with Council work?"

The Hon'ble Sir Harcourt Butler replied :

"The question of the removal of the Imperial Records has not yet been decided. Wherever the records may be located, provision will be made at Delhi for the needs of the members of this Council who require access to the Records to enable them to perform satisfactorily their duties in connection with Council work."

The Hon'ble Mr. Gokhale asked :

"With reference to the observations made by the Hon'ble the Finance Member last year on the proposal to create a fixed Sinking Fund, will the Government state if the examination of the question promised by the Hon'ble Member has been completed? And if so, what conclusion has been arrived at?"

The Hon'ble Sir James Meston, on behalf of the Hon'ble Sir Guy Fleetwood Wilson, replied :

"The question has been carefully studied; but it presents considerable difficulties, and the Government of India regret that they are not yet in a position to make any statement regarding it."

The Hon'ble Mr. Gokhale asked :

"Has the reply of the Secretary of State to the despatch of the Government of India on the subject of the position of the Provincial Engineers of the Public Works Department been now received? When may final orders on the subject be expected?"

The Hon'ble Sir Robert Carlyle replied :

"The Secretary of State has not yet replied to our despatch on the subject. Government hope to have a reply on an early date, but they cannot state definitely when a reply may be expected."

The Hon'ble Mr. Gokhale asked :

"Will the Government lay on the table a return showing what Members of the Indian Civil Service are of South African, Canadian, Australian or New Zealand origin?"

[26TH FEBRUARY 1912.] [Sir Reginald Craddock; Mr. Gokhale.]

The Hon'ble Sir Reginald Craddock replied :

"The existing records in the possession of Government do not furnish the information asked for. The facts will, however, be ascertained and communicated to the Hon'ble Member."

The Hon'ble Mr. Gokhale asked :

"Are there any medical men, outside the ranks of the Indian Medical Service, occupying any Senior Clinical Chairs in the Calcutta and Madras Medical Colleges? Is there any legal bar to the appointment of such men? If not, will the Government state why no such appointments have been hitherto made?"

The Hon'ble Sir Reginald Craddock replied :

"The answer to the first two portions of the Hon'ble Member's question is in the negative, but it is the intention of the Government shortly to appoint an officer outside the ranks of the Indian Medical Service to the newly created chair of Anatomy in the Medical College, Calcutta. It is of the utmost importance in the future interests of the medical profession in India that the instruction imparted to medical students should be as efficient as possible, and it is because the best qualified Professors have hitherto only been found among the members of the Indian Medical Service that those posts till now have been filled from that service."

The Hon'ble Mr. Gokhale asked :

"Is it a fact that other duties besides their particular work are sometimes assigned to Professors in Medical Colleges and Hospital Physicians? Is it a fact that some of the officers of the Indian Medical Service, holding responsible posts intended for research work, are permitted to undertake in addition private service under private firms in Calcutta and Bombay or on the Editorial Staff of Medical journals? If so, how far is such acceptance of private service consistent with the terms of their appointment to such posts, or with the rules of public service?"

The Hon'ble Sir Reginald Craddock replied :

"Professors in Medical Colleges and Hospital Physicians may be whole-time officers, *i.e.*, they may have no other official work than that of teaching by lectures, clinical demonstrations and charge of wards in the hospital attached to the College; or their professional work may be a collateral charge. Instruction in Chemistry, for example, is normally given by the Chemical Examiner, and in Medical Jurisprudence by a Civil Surgeon or Police Surgeon. In some of the Colleges a Professor may combine the duties of more than one chair with those of Civil or Presidency Surgeon. Consulting practice is permitted in certain appointments; in the others—the so-called 'non-practising' professorships—it is not.

"It is not clearly understood to what 'responsible posts intended for research work' the Hon'ble Member refers. For instance, the Chemical Examiner, Bengal, is allowed to undertake private practice, and there is no reason to suppose that this interferes with the proper discharge of his official duties. If the Hon'ble Member cares to specify any particular appointment which he has in mind, further information can be given.

The Hon'ble Mr. Gokhale asked :

"Will the Government lay on the table a return showing the cases in which action has been taken by the different Local Governments and Administrations under the Press Act of 1910, since the date of the last return on this subject?"

[*Sir Reginald Craddock; Mr. Gokhale; Mr. Sachchidananda Sinha.*] [26TH FEBRUARY 1912.]

The Hon'ble Sir Reginald Craddock replied :

"A complete return,* corrected up to date, showing the cases in which action has been taken by the different Local Governments and Administrations under section 12 (1) of the Press Act I of 1910 since the passing of the Act, is placed on the table as requested."

The Hon'ble Mr. Gokhale asked :

"Is it not a fact that a despatch was received from the Secretary of State for India in 1905 urging the formation of a Civil Medical Department? Has anything been done in this direction, and, if so, what? Will the Government lay on the table the opinions of authorities consulted on the question in India?"

The Hon'ble Sir Reginald Craddock replied :

"I would refer the Hon'ble Member to the reply given to a similar question put by him on the 18th March 1910, and also to the answer furnished to the Hon'ble Pundit Madan Mohan Malaviya on the same subject on the 7th March 1911. The Government of India are still awaiting the orders of the Secretary of State in the matter, and, in these circumstances, no further information can at present be given."

The Hon'ble Mr. Sachchidananda Sinha asked :

"Will the Government be pleased to state whether any, and if so, which of the recommendations of the Decentralisation Commission have already been carried out, also whether any of them are at present under consideration, and if so, which and when the decision of the Government thereon may be expected?"

The Hon'ble Sir Reginald Craddock replied :

"No general reply can be given without detailed explanations and qualifications of excessive length, and the compilation of these would necessitate protracted references to Local Governments, and would serve no useful purpose. If the Hon'ble Member cares to specify any particular proposal of the Commission of the subsequent history of which he desires to be made aware, an endeavour will be made to supply him with the facts."

The Hon'ble Mr. Sachchidananda Sinha asked :

"(a) Will the Government be pleased to state if the Governor in Council of the Bengal Presidency will in all respects be vested with the same powers and privileges as the Governors in Council of the Madras and Bombay Presidencies, especially in the matter of directly corresponding with the Secretary of State. If not, what differences, if any, are it is proposed to be made?"

"(b) Is it under contemplation to curtail or abolish the powers of the Madras and Bombay Governments in the matter of direct correspondence with the Secretary of State, as recommended by the Decentralisation Commission?"

The Hon'ble Sir Reginald Craddock replied :

"(a) The powers and privileges of the Governor in Council designate of the new presidency of Bengal will be governed by the legislation which will shortly be undertaken in the Imperial Parliament, pending which no statement can be made."

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"(b) No proposals to curtail or abolish the powers of the Madras and Bombay Governments in the matter of direct correspondence with the Secretary of State are at present before the Government of India."

The Hon'ble Mr. Sachchidananda Sinha asked :

"(a) Will the Government be pleased to state if the Signal Engineer Department of State Railways is a special Branch of the Engineer Establishment of State Railways ?

"(b) If so, when was it established, and what are the rates of pay and conditions of service of officers belonging to it ?

"(c) Are the officers of this department included in the Imperial or Provincial Branches of the Engineer Establishment of State Railways, or whether they are classed as temporary ?

"(d) Is this service open to all His Majesty's subjects, and if so, what qualifications are required ?

"(e) Have the rules governing appointments to this service been published ; if so, when and where ?

"(f) Have certain officers of the Provincial Engineer Service been transferred to the Signal Engineer Department ? If so, why, and on what conditions ?"

The Hon'ble Sir T. R. Wynne replied :

"The replies to the Hon'ble Member's questions are as follows :—

"(a) The Signal Engineer Establishment forms part of the Superior Revenue Establishment of State Railways. There are ten appointments in all.

"(b) In order to deal with the present day requirements of railway travelling and railway signalling on the recommendation of a Committee of Managers, the establishment was put on its present footing in February 1909, but prior to that date, individual appointments of Signal Engineers existed in the Engineering Department.

"The rates of pay of the present Signal Engineer Establishment are stated on page 34 of the State Railway Classified list for the half-year ended June 1911 (which is available for reference in the Additional Members' Room). Briefly, there are Assistant Signal Engineers on Rs. 400—600, Senior Assistants on Rs. 700—900, and two Signal Engineers in charge whose maximum pay is Rs. 1,000 and 1,250, respectively, and all are subject to the ordinary rules applicable to the Superior non-pensionable establishment of State Railways.

"(c) As has been stated, the Signal Engineer Establishment forms part of the non-pensionable open line establishment.

"(d) The appointments are open to all His Majesty's subjects possessing a technical knowledge of up-to-date Railway Signalling.

"(e) No special rules have been published. Recruits possessing the necessary technical knowledge are taken on as required : such knowledge on its practical side is acquired on large signalling works and installations in Great Britain.

"(f) Two officers of the Provincial Service who specialised in Signalling on the North-Western State Railway and went through a course of training in England on their own initiative and at their own expense, were appointed to the Signal Engineer Establishment on its formation in 1909. On appointment they severed their connection with the pensionable Engineer Establishment."

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The Hon'ble Mr. Sachchidananda Sinha asked :

"In reply to the resolution moved last year by the Hon'ble Mr. Subba Rao on the public service question, the Hon'ble Mr. (now Sir Archdale) Earle stated as follows :—

'Although Indians are not eligible for direct recruitment to this service (Superior police service), Deputy Superintendents who are recruited almost entirely from among Indians, and who form a service similar to the Provincial Civil Service, can be promoted to the superior service up to, for the present, a limit of 5 per cent. of the number of Superintendents in a province. This works out to a total of 15 posts at present available for Indians out of a total of 300.'

"Will the Government be pleased to mention the names of Deputy Superintendents, if any, who have been promoted to any of the fifteen posts of Superintendents thrown open to them?"

The Hon'ble Sir Reginald Craddock replied :

"The information will be collected and communicated to the Hon'ble Member."

The Hon'ble Mr. Sachchidananda Sinha asked :

"(a) Are the Government aware that there is very great dissatisfaction with the management of the Bengal and North-Western Railway amongst the public of North Behar and the Eastern District of the United Provinces—the tract through which the railway runs—on the score of unpunctuality of its service, the insufficiency of accommodation provided, especially in the higher classes and also that of the goods wagons, the bad lighting arrangements, the general inefficiency of the staff and in all that conduces to the convenience and comfort of passengers?"

"(b) If not, do the Government propose to institute an inquiry so as to ascertain public opinions on the subject?"

"(c) If not, will the Government be pleased to state their reasons for the same?"

"(d) Will the Government be pleased to state the dividend declared by the Directors of the Bengal and North-Western Railway during the last five years?"

The Hon'ble Sir T. R. Wynne replied :

"No representations have been received by the Government of India of such a nature as would support the imputations against the Company's management contained in part (a) of the question. In the matter of shortness of rolling stock the present temporary pressure of trade is causing the same difficulty to be felt on other Railways in India.

"In these circumstances, Government do not propose to hold the inquiry proposed in part (b).

"As regards (d) the dividend paid by the Company during the last five years for which figures are available is :—

1906	.	.	.	.	.	.	.	.	6½	per cent.
1907	.	.	.	.	.	.	.	.	7½	"
1908	.	.	.	.	.	.	.	.	7½	"
1909	.	.	.	.	.	.	.	.	7½	"
1910	.	.	.	.	.	.	.	.	7½	"

"I would add that the Bengal and North-Western Railway proper has been constructed entirely out of funds provided by the general public without a guarantee or any other financial assistance from Government."

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The Hon'ble Mr. Sachchidananda Sinha asked :

"Will the Government be pleased to state the total numbers of Colleges which were placed under the jurisdictions of the Calcutta, Madras, Bombay, Allahabad and the Punjab Universities, respectively, when the said Universities were established?"

The Hon'ble Sir Harcourt Butler replied :

"At the founding of the several Indian Universities territorial limits within India were not stated. The numbers of colleges affiliated to the several Universities at or near the time of their establishment were (so far as can be ascertained from the Calendars available of nearest date after the constitution of the Universities) as follows:—

Calcutta	.	.	.	.	13
Madras	.	.	.	.	7
Bombay	.	.	.	.	2
Punjab	.	.	.	.	5
Allahabad	.	.	.	.	13"

WILD BIRDS AND ANIMALS PROTECTION BILL.

The Hon'ble Sir Reginald Craddock : "Sir, I have to introduce to the Council a Bill to make better provision for the protection and preservation of certain wild birds and animals. This Bill has already, by virtue of an order passed under rule 23 of the rules for the conduct of Legislative Business by the Governor General, been published in the *Gazette of India* of the 12th January 1912. It follows under the terms of the second paragraph of that rule that it is not necessary that I should move for leave to introduce the measure; but the Council would no doubt like to have a brief explanation of the proposals, and I accordingly offer a few remarks on the subject.

"The better protection of the fauna of the country is a matter which has come before the Government from time to time since the year 1869. In the earlier discussions it was the general opinion that the harm done had not reached sufficient dimensions to warrant the imposition of restrictions for the protection of birds and animals. But, as time went on, cultivation began to spread over waste-land and communications and trade increased, it became necessary to provide some measure of protection and Act XX of 1887 was the result. This Act enabled Local Governments and municipal and cantonment authorities to make rules applicable to municipal and cantonment areas to prohibit under penalty the sale or possession of wild birds recently killed or taken during their breeding seasons, as well as the importation into any municipal or cantonment area of the plumage of any kind of wild bird during such season. The Act further empowered Local Governments to declare these provisions to apply to any animals or game other than birds. It was hoped by these measures that it would be possible to check the indiscriminate slaughter for the purpose of food, or for the sake of furs or feathers, of birds and animals, the protection of which during their breeding seasons was necessary to preserve the species.

"The restriction of the operation of the Act to the very limited areas of municipalities and cantonments was found to give inadequate protection, and in 1902 it was considered necessary to bring section 19 of the Sea Customs Act of 1878 into use, so as to prohibit the taking by sea or by land out of British India of the skins and feathers of birds, except feathers of ostriches and skins and feathers exported *bonâ fide* as specimens illustrative of natural history. It has since become evident that these powers are inadequate to secure the object desired. Municipal and cantonment authorities have themselves no special interest in a matter of this kind, and although in some Provinces further protection has been secured by means of Forest Regulations and the conditions

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attached to gun licenses, yet, as a result of much correspondence and consultation, it has been considered necessary to extend these powers over the country at large in order to secure the object in view. It is now universally recognised all over the world to be one of man's duties to preserve from extermination all such birds and animals as are not in themselves a danger to human life. In Ceylon and Africa Ordinances have already been passed and an inter-departmental Conference on the subject sat at the Colonial Office in London last year. The laws of the United Kingdom, and of several of the United States of America, of Norway, Russia, Belgium, the Netherlands, certain German States, France, Switzerland, Hungary and parts of Austria will, even if the Bill now before the Council is passed, be considerably in advance of the law in this country in the matter of the preservation of game. Only last September the Government of India were invited to join in an International Commission for the protection of nature. The Government accordingly propose that we should in India also bring ourselves now into line with the movement to protect from extermination the wild birds and animals of the country. I accordingly recommend this Bill to the Council.

"Lest, however, any apprehension should be felt that it is sought to protect game at the expense of agriculture, I desire to lay stress on the fact that care has been taken in the Bill to exempt from the penalties that may be imposed the capture or killing of a wild animal by any person in defence of himself or of any other person, and the capture or killing of any wild bird or animal in *bond fide* protection of a standing crop or growing fruit. I move, therefore, that the Bill to make better provision for the protection and preservation of certain wild birds and animals be referred to a Select Committee consisting of the Hon'ble Mr. Syed Ali Imam, the Hon'ble Sir Cecil Graham, the Hon'ble the Maharajahdhiraja Bahadur of Burdwan, the Hon'ble Sir G. M. Chitnavis, the Hon'ble Nawab Abdul Majid, the Hon'ble Mr. Merodith, the Hon'ble Mr. Vincent, the Hon'ble Mr. Carr, the Hon'ble Mr. Arthur and myself."

The motion was put and agreed to.

SPECIAL MARRIAGE AMENDMENT BILL.

The Hon'ble Mr. Bhupendranath Basu: "Sir, I have the honour to move that the Bill to amend the Special Marriage Act, 1872, be referred to a Select Committee, and in doing so, with your leave, Sir, I shall briefly review the position as regards the Special Marriage Act which my Bill seeks to amend. When I introduced this Bill last year, I must say that I did not expect or anticipate the large and influential support that I have received from the country. It was beyond my wildest expectation. If you go into the history of social legislation in this country, beginning from the time when the Marquis of Wellesley stopped the practice of throwing children into the sea down to the time when the Sati Bill was passed into law, there was almost always even against inhuman practices as throwing of children into the sea, the killing of female children, the burning of sati, a storm of indignation and opposition which would have stopped the hand of a less courageous Government than ours has been in the past. Would it be believed now that when Lord William Bentinck introduced his great legislation stopping the burning of Hindu widows, would the Hindu of the modern day believe, that his ancestors submitted a solemn memorial to Government that if widows were no longer allowed to be burnt the result would be that the marital rights of the people of this country would be seriously jeopardised, that chastity amongst women would be an unknown quantity, that husbands would be poisoned and murdered and that social life would be intolerable? Who is it amongst the opponents of my measure to-day who would not say that it was the grossest libel that could have been pronounced upon Hindu womanhood? What has been the experience of nearly a hundred years that have

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since passed as regards the effect of the measure on Hindu life and Hindu home? Well, Sir, I remember also the great agitation that was raised when a tiny little measure, which to the social reformer was practically of very little concern, for raising the age of consent was introduced into this Council at the time of Lord Lansdowne. Sir, I saw a mass meeting on the *maidan* in which nearly a hundred thousand men had assembled from all over Bengal to protest against the iniquity of the Government undertaking to legislate on a matter affecting the social life of the Hindus. I was present also on that occasion at the temple of Kalighat where hundreds and thousands had assembled offering prayers to the goddess to save them from that dire calamity, and I also remember the procession joined by the highest of the land which passed through or rather in front of this Government House to show the indignation of the people against a measure of that description. This is a recent instance—an instance which is within the knowledge of many of us: I had the temerity when that Bill was being criticised to be present at a public meeting to put in a protest against the Resolutions that were going to be passed. Well, Sir, I was very soon shown the door, and the treatment I received I have not yet forgotten. Then, Sir, when the great Vidyasagar brought forward his Widow Re-marriage Bill, what was the feeling of the country from Bombay to Calcutta against its provisions? It was that Hindu society was going to be turned upside down and the purity of the Hindu widow was going to be destroyed. I shall not refer to the *Lex Loci Act*, which was opposed practically universally by Hindus and Mussalmans alike—an Act which removed forfeiture from those who gave up the religion of their ancestors and embraced a different faith, and the charge was made against the Government by Mussulmans and Hindus alike that it was really intended to further the progress of Christianity in this country. My measure, the small Bill that I have introduced, has not met with even a hundredth part of the opposition that those measures had evoked in the past. Even the very measure which I now seek to amend when it was introduced by Sir Henry Maine and reintroduced by Sir Fitzjames Stephen with great and material alterations there were sixty thousand signatories against it and there were only a few people who were supporting it. I have been at some pains to go through the voluminous correspondence with which the Government has favoured us and I find that in the opinions that have been expressed on either side of the question, there are about 177 in my favour against about 187. That, I think, is a very respectable number in my support. From these numbers, I am excluding Burma, where I have a majority in my favour. I am also excluding Baluchistan as not probably likely to be affected by my measure if passed into law, at least not in the immediate future, and the number in that place is very small. In this majority against me, there are 28 Muhammadans who, as I shall proceed to show, are not so vitally affected as we are and there are 11 members of other communities neither Hindu nor Mussalman; so that if you omit these 39 opinions, the opinions that have been hitherto received for or against the measure those who are in my favour form a very respectable majority.

“I may refer to the many public meetings that have been held all over India in support of my Bill. To my great regret on the last occasion, my friend the Hon'ble Mr. Subba Rao had expressed some surprise at the revolutionary character of my measure. I am glad to be able to say that many orthodox people in his Province have given their whole-hearted support to my measure in all its details. Every Social Conference that has sat in India during the last year in every Province has spoken in support of my Bill. And I may say with a safe and clear conscience that I have personally never tried to influence, either by speech or by letter, the opinion of any single individual or body of men in my country over my Bill. I had been asked to tour about the country and to educate public opinion; but in a matter like this, rightly or wrongly, I thought it would be best to let my countrymen come to a conclusion for themselves. What I had to say had been practically said in the speech with which I introduced the measure. But it is not only the volume of the support that I have got, not only the extent; that is a most gratifying feature of the situation that I have the highest authority, if I may say so, in my

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country in my favour. Sir Pratul Chandra Chatterji, retired Judge of the Punjab Chief Court, Mr. Justice Banerjee of the Allahabad High Court, Sir Chandavarkar of the Bombay High Court, Mr. Sankara Nair of the Madras High Court, Mr. Sarada Charan Mitter, a retired Judge of the Calcutta High Court, have all spoken—high and great judicial authorities as these gentlemen are, recognised exponents of Hindu law and Hindu sentiment as these gentlemen must be assumed to be—they have all spoken in terms of unqualified approval of my measure. Mr. Srinivasa Aiyangar of Madras presided over a public meeting in which my Bill was discussed and supported my Bill. Dr. Satis Chandra Banerjee, a great Hindu jurist and an orthodox Hindu gentleman of Allahabad, has given his unqualified support to my Bill. Who else is better qualified in India to speak about Hindu customs and Hindu practices than Dr. Bhandarkar of Bombay? He belongs to an advanced section of the Hindus, but from the Hindu standpoint he has given his support to my Bill. And what is the stringent feature of all—that organ of the highly conservative and proud Mahuratta Brahmins of Poona—conservative I say in matters of religion and religious practices, who with their Hindu brethren in Bengal had led the opposition to the Age of Consent Bill, who had gone to the length of making a session of Congress nearly impossible at Poona because the use of the Congress Hall had been promised for a Social Conference after the Congress was over—it is their organ, the *Kesari*, which has been one of my strongest supporters. And who else? There sits my Hon'ble friend, Pandit Madan Mohan Malaviya, and his paper in Allahabad, the *Leader*, has thrown him overboard and has been most strenuously supporting my Bill. His lifelong friend and companion, his most esteemed colleague, Mr. Ganga Persad Varma of Lucknow, one of the most orthodox men that I have known—at the same time a man of advanced views and culture—in his paper the *Advocate* has been supporting my measure.

“ Amongst the Parsis, the *Parsee* newspapers and the *Oriental Review* have also lent their strong support. Some of my Muhammadan friends in this Council had done me the great honour of supporting my measure when I introduced it here. A Muhammadan Judge of the Allahabad High Court, known to be the most learned Muhammadan jurist in India, esteemed alike by Hindus and Mussalmans for his quiet piety and knowledge of Arabic literature, Maulvi Karamat Hussain, has given his unqualified support to my Bill. Two Muhammadan Judges, one of them of the Sialkot Division and the other of the Hissar Division, have also supported my measure. I believe it must be apparent to every one that if opposition could have been expected from any quarter rightly it would be from the Brahmoe, for though one of the grounds put forward by me when I introduced the measure was that the Hindu community did not like nor did the Brahmoe like that they should be called non-Hindus; from a conversation that I had with one of the leading men in that community, I gathered that if any class of men were affected injuriously by the Bill, it would be the Brahmoe, for they would no longer then be a different community but merely a sect of the Hindus and their fate would be sealed, for the absorbent power of the Hindu religion would soon obliterate all differences that existed between the Brahmoe and the Hindu. The members of the Adi Brahmoe Samaj had opposed the Special Marriage Act when it was passing through its stages in this Council in 1872; but I have the satisfaction of finding that the cultured minister of the Adi Brahmoe Samaj, Mr. Satyendra Nath Tagore, who in his letter to the Government says that his community have not departed in any essential particular from Hindu usage or custom or in the matter of marriage in the Vedic ritual, has given me his whole-hearted support, though his community had opposed the Bill which now stands as law. And the other branch of that Brahmoe community, the Sadharan Brahmoe Samaj—the most go-ahead community in India, who have introduced inter-marriages among them through their enlightened secretary, a man of great scientific attainments, Dr. Nilratan Sarkar, has spoken in no uncertain terms in support of my Bill, not only on grounds of social well-being but also on scientific grounds,

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"Well, Sir, my friend to my right (Maharajadhiraja Bahadur of Burdwan) had criticised my Bill as a bomb thrown into the citadel of Hinduism. Bombs are not only the special privilege of Criminal Intelligence Department but of all who shelter themselves behind the buttress of prejudice and ignorance and are always afraid of some extraordinary commotion which may overthrow the little protective works that they set around themselves for their safety. Sir, I am a Hindu. I feel that the eternal verities of the Hindu religion rest not on the slippery sandbanks of superstition and prejudice, nor upon the unreliable support of ignorance and incredulity, but on the more enduring foundations of faith and truth. And my religion stands in no fear of those who are seeking to replace the ephemeral by the abiding. There is a class of critics who have seen in my Bill nothing but evil and who have seen in me nothing but an incarnation of some malignant power bent upon destroying the strongholds of Hinduism. To these I make no reply. But, Sir, I think it is desirable to deal with some of the grounds of opposition—the more prominent grounds of opposition—that have been raised against my Bill. The subject is abstruse and may not be of interest to my European colleagues who are not probably conversant with the operation of marriage laws amongst us and to whom it may be a tiresome story. But to us—it is very important, and, therefore, in the best way that I can, I proceed to deal with the principal objections taken against my Bill by the opponents of the measure.

"The first great objection is that my Bill will lead to inter-marriages between the different castes. It will also lead to intermarriage between the different creeds. It will thus lead to the destruction or the overthrow of the boundaries that at present safeguard the Hindu faith. That in fact is the principal objection to the Bill. As my Hon'ble friends will remember, the present Act says that whenever a marriage is going to be contracted under its provisions, the contracting parties are to make a declaration that they profess no known religion in India. My amendment is that this provision should be done away with. All that is necessary should be what has been laid down in other civilised countries where marriages are not contracted according to the ritual of the Church that the parties should declare that 'we intend (that is the language of the Act) to marry under the Act.' That is all that I desire. I believe there is some little misapprehension about the scope of my Bill. In the first place, I intend that marriage should take place amongst the different castes of the Hindus. I do not say that marriage should be without any Hindu ritual. It is quite possible, it is more than probable, that when two Hindus belonging to different castes intend to intermarry, they will go through the Hindu ritual, but that will not validate their marriage at the present time, because under the law as now followed intermarriage between different castes is not permissible. So that, so far as the operation of my Bill is confined to the Hindus, it is more in favour of the Hindus than the present law is, because it does not make it obligatory on the parties to declare that they are non-Hindus. But my friends say while it is more in favour, no doubt in one sense it is against us in another. You are obliterating, they say, the distinctions of caste, you are undermining the purity of our race—that is the argument which I want to meet. They say 'so far as marriages are confined to the sub-divisions of the same caste, we have no objection; you take your Bill, get it passed into law with the unanimous support of the country.' Some of them have said that so far as that is concerned the present Hindu practice and present Hindu law, as understood, would render such unions valid. That is an opinion which has been expressed by some eminent Hindu lawyers who have given their opinions against me. As Sir Henry Maine has said, it is difficult to contract marriage upon a mere opinion. It is true indeed that in a certain case from Madras to which I made reference when introducing my Bill in this Council, they had held that amongst the Sudras an illegitimate son would be entitled to inherit, and consequently it was argued that illegitimacy is no bar to inheritance amongst the Sudras. And there would be no bar to intermarriage—assuming the argument to be sound, that case was brought to the notice of an eminent Hindu Judge of the Calcutta High Court in the case of *Narayan Dhara* against *Rakhal Gain*. I will not go into the details of that case

except to say that one of the parties was a weaver and the other was a cultivator. In that case, when reviewing the case of the Madras High Court, which had been finally decided by the Privy Council, Mr. Justice Romesh Chunder Mitter said that it would hardly warrant him in upholding the validity of a marriage between different castes amongst the Sudras. Well, what it is my friends mean when they say that you do not require a validating Act to render unions between sub-sections of the same caste legal I do not understand. What is it they understand by the words 'the same caste' when they lay down this proposition? Do they mean the four original castes, the Varnas, or do they mean the thousand and one sub-castes that have now grown up and become independent of each other, and do they mean to say that amongst these independent sub-castes intermarriages may take place and such intermarriages would be held to be legal? Well, if that is their contention, all I can say is that judicial opinion is against it. In a case in which the parties were Nepalese but residents of the United Provinces, a Brahmin married a Kshatriya, both belonging to the twice-born caste and contracting an alliance which was lawful in Nepal; but that marriage was pronounced to be illegal by a Bench of the Allahabad High Court in a recent case (28 Allahabad, *Badan Kumari v. Suraj Kumari*). My friends say, well, if the law as it now obtains is not a sufficient safeguard for a marriage like this, we shall not stand in your way. Get a law passed which will make intermarriage valid between sub-sections of the same caste. How many people such a law would affect it would be difficult to conjecture, but I want to go much further, those who have supported me want to go much further, namely, we want to give the contracting parties the fullest liberty of conscience. I am only at present confining my remarks to the Hindus. If two members of two different independent castes among the Hindus want to marry, why should we stand in their way? It has been said we stand in their way in order to maintain the purity of the Hindu caste and the Hindu race. Let us see how far this purity rests upon a historical basis. The Brahmins naturally claim the highest degree of purity. There can be no doubt that in very ancient times there were constant feuds between the Brahmins and Kshatriyas, the priestly and the warrior castes, sometimes the Brahmins suffering defeat and sometimes the Kshatriyas. Then arose a great champion of the Brahmin, supposed to be an incarnation of Vishnu himself, Parashuram, who extirpated the Kshatriyas 21 times. How he could extirpate 21 times is a problem which Brahminical ingenuity can alone solve, and before which I confess myself beaten. This Parashuram, the great extirpator, the great extirpating champion of the Brahmins, was the son of a Brahmin, the great sage Yamadagni, but curiously enough he was the son of a Kshatriya mother, Renuka, the daughter of King Prasenjit. So that, starting from this great and cardinal point of the superiority of the Brahmin over the Kshatriya, we find that he whom they have set up as a champion was the son of a Kshatriya mother. Then, again I go to another authority, namely, one who laid the foundation of the Brahminical creed in India, who may be justly regarded as the highest amongst the high, the great Vyasa, the compiler of the Vedas, the writer of the Puranas; he was the son of a Brahmin by a fisher-woman. I suppose no blame attaches to him for having a humble and lowly origin on his mother's side. Then, one of the great sages, Yajnyavalka, has laid down that from a Chandala to a Brahmin is only six stages, that from a Sudra it is five, and so on in lessening degrees. A man of humble origin could thus reach the goal of Brahminism. Well, if the authority of Yajnyavalka may be disputed—and my friends the Hindu lawyers in this Council will support me in saying that he is a very high authority—I shall quote the authority of Manu himself. He says (chapter X, verses 64-65)—'if a female sprung from a Brahmin by a Sudra woman bear children to one of the higher castes, the inferior attains the highest caste within seven generations.' Thus a Sudra attains the rank of a Brahmin, so that it is difficult to say at the present day how much of the Brahmin is Sudra and how much the real and true priestly caste. There is a question put to Manu: what is the fate of an offspring begotten by chance by an Aryan upon a non-Aryan? I quote from the same chapter, verses 66 and 67. The answer is 'he who is begotten by an

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Aryan on a non-Aryan female may become an Aryan by his virtues.' In the Puranas we find innumerable references to intermarriages and to interchangeability between Brahmins and Kshatriyas. My friend Mr. Subba Rao, the sturdy champion of orthodox Hinduism, and my friend to my left Pandit Madan Mohan Malaviya will remember that in the Matsya Purana there is an enumeration of the great Rishis who had propounded the Vedic *riches*. Those Vedic hymns came to the Rishis by inspiration. In that enumeration we have got 91 Rishis, some Brahmins, some Kshatriyas and three Vaishyas. These are the Rishis of the Vedic times.

"There is a curious story in the Aitereya Brahmana, a branch of the Rigvedas. The story is of a great dispute for priestly functions between the Kshatriyas and the Brahmanas, and the story is very interesting reading, showing that in those times Kshatriyas and the Brahmins were alike entitled to perform those priestly functions.

"There is a passage in the Mahavarata Anushasana Parva which says: that a son from a Sudra mother, if he performs meritorious deeds, attains to Brahminhood; so does a Vaishya.

"There is a curious passage in the Bramanda Purana, which gives the origin of the Sudras as follows: 'Those who are always sorrowing, always weeping always serving weak in body, those Brahmins are styled Sudras.' Coming down to the Tantric period, we find that in the Maha Nirvan Tantra, held in high esteem for the purity of its practices and the elevation of its doctrines, mention is made of Shivite marriage, where it is laid down that no restrictions as to age or caste exist in the Shaiva form of marriage. It is well known that at one period of her history India had very largely adopted the Tantric cult.

"It is thus evident that the purity of caste upon which higher castes rely so much at the present day is more imaginary than real.

"I will in this connection quote from Rhys David's book *Buddhist India* :—

'There are also numerous instances,' says he, 'even in the priestly manuals, of custom of unions between men and women of all degrees of social importance. These are not only between men of rank and women of a lower social grade, but also between men of a lower and women of a higher social position.'

"I shall quote with your leave a passage from another authority (Hunter's *Orissa*), Volume I, page 261 :—

'We have seen that in several Provinces, the Brahmins are emphatically not the priesthood of the people, and so far from being an ethnical entity following an immemorial vocation they contain within their caste every trade and calling. We have seen the Brahmins as shepherds, as ploughers of the soil, as potato-growers, as brick-makers, as brick-layers, as petty traders, as carpenters, stone-cutters, blacksmiths and village-policemen, who in India rank very low in the social scale, as the descendants of the aboriginal fisher tribes, as arbitrarily manufactured out of the promiscuous low-castes, as day-labourers and as menial servants.'

"Where, then, is the purity of which we hear so much?

"Coming from the general to the particular, there is an institution known as Kulinism in Bengal established during Hindu times: the original Kulins were Brahmins of great piety and learning. In course of time they deteriorated and in ten generations so much corruption had crept into the body of the Kulins that the great Debibar Ghatak with the assent of the Kulins was obliged to lay down rules for their protection.

"He divided them into 36 circles, and what do you think of these circles? They were not circles of merit but of equal demerit. They were intended to define the limits of intermarriage, to each circle being assigned classes with the same defects and corruptions amongst them. I shall draw a veil over what those defects and corruptions were. I commend to the curious a study of Debibar's rules: the proud descendant of the Kulin Brahmin in Bengal would pass a most uncomfortable half hour if he read them. If such has been the case with the Brahmin, we can easily imagine what has been the fate of the other castes. There must have been a great admixture in the past. Ethnolo-

gical researches establish this conclusively. If we look at the map annexed to Sir Herbert Risley's book *The People of India*, we find that in Bengal the population is Mongolo-Dravidian, in Southern India entirely Dravidian, in Oudh, in Allahabad also the same; it is only in the Punjab and parts of Rajputana that we find the Aryan in the population. Therefore, whether you treat the question mythologically, historically, or scientifically, this claim to exclusive purity is not at all well founded. If this purity has not existed in the past, why insist upon it at the present moment? I shall not dwell further upon that aspect of the question. To me it has been a most unpleasant duty to discharge, but in a solemn meeting like this, duty has compelled me to do so. Then, Sir, it is said that not only will my Bill facilitate intermarriage between different castes of Hindus, it will facilitate marriage with non-Hindus. Well, to me it does not seem to be, I must honestly say, a very dire calamity. There is historical instance of Chandra Gupta, known to Greek historians as Sandracotas, marrying the daughter of Seleucus Nikator. There is also an instance given by Tod in that fascinating book of his, *The Annals of Rajasthan*, where a ruler of Mewar married a daughter of Yazdgird III, the last of the Sassanide Kings of Persia. The nobles and princes of Kathiawar still marry into Muhammadan families and the sons born of Muhammadan mothers succeed. There are numerous instances in our Puranas of marriages of Aryans with Nagas. Then we have got marriages of Hindu princesses and Moghal princes in Moghal times. We have still got in the present day in Hyderabad the same practice obtaining without either side losing in caste or in prestige. Why then should there be such a great horror? If anything can give peace to my unhappy country, it will be a feeling that the tie connubial embraces all in its single fold. It is a practice not unknown to our forefathers, it is a practice still followed by our contemporaries. Why then should it be opposed at the present day?

"I pass on to another ground of opposition. I am afraid, Sir, I have been wearying the patience of the Council, but the importance of my subject is my only excuse. The question has been raised: is not marriage among the Hindus a sacrament, and are you going to introduce the elements of a civil contract into a relationship which is the holiest of holy relations amongst the Hindus? I do not desire to do anything of the kind. So far as marriages between Hindus are concerned, they may still follow their rituals, and it is because they may follow such rituals even when intermarrying between different castes that I seek to introduce my Bill. But let us again consider the proposition of those who put forward that marriage is a sacrament, a religious ceremonial, among the Hindus. Is that a proposition which is strictly correct and has been observed at all times? What about the Gandharva marriage that used to take place, marriages of love where only the exchange of garlands was sufficient? The name of Sankuntala has been mentioned in this Council on a previous occasion by a gentleman deeply versed in Oriental learning; a name which is held in esteem, if I may say so, in affection still by the Hindu people of India owing to the immortal writings of our great poet Kalidasa. She married, supposed at that time to be a daughter of a Brahmin priest, a Kshatriya prince by simply exchanging garlands. This is one of many instances that occur in the Puranas, and her son was the founder of that great line which gave the name of Bharatvarsha to India. Well, where was the religious sacrament in that marriage? Where was the religious sacrament in the Sayamvara ceremonies, where prospective husbands used to be invited, and the damsel was given the choice to choose, either by prowess of arms or by the display of learning, the best among the lot, and then after a choice a garland was exchanged: where was the religious sacrament? Manu himself, what does he say? He says, 'the recitation of benedictory sacred text and the sacrifice (with Homa and nuptial fire) in honour of the God Prajapati, are used in marriages for the sake of procuring good fortune to the brides, but the gift of the father is the cause of the status of husband'; so the matrimonial bond arises from the gift by the father. The whole of the religious ritual is only for the sake of procuring good fortune to the bride. This is Manu. Raghunandan, the great commentator on Hindu law in Bengal, says that the real element of

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marriage is gift and acceptance. It must be the gift by a person competent to give, and acceptance by a person competent to accept. Where is the difference between a civil contract and this form which is said to be the essence of the ritual? And what does my friend the Hon'ble Pandit Madan Mohan say of the many hundreds and thousands of our people not Brahminical or Brahminised Hindus with whom the putting of a vermilion mark by the bridegroom on the bride's forehead is enough to constitute the bond of marriage? That constitutes marriage among many castes of the Hindus. Are not these marriages considered valid both in our societies as well as in our Law Courts? Where then is the sacrament, the holiest of the holy, of which we have heard so much in the opposition to my Bill? Then, Sir, another objection has been raised, an objection, *viz.*, that if a man has the temerity to marry under this law, there will be the fatal power of divorce vested in the husband as well as in the wife, because the Act which I am seeking to amend provides (section 17) that the contracting parties may seek divorce under the Indian Divorce Act. Well, is divorce such a great calamity after all? I have in my hand a paper by a Hindu lawyer of Bengal who I am told has sent a similar paper to Government. He has cited instance after instance from our Law Courts showing the tremendous misery of many of the lives of our women leading, alas, in several cases, to suicide where the poor woman has had no means of escape from the marriage tie and from the cruelties of the husband. Is nothing to be said in their favour? Is the polygamous husband of India to have it all his own way, and should, in the twentieth century, the Government of British India do nothing for these poor women who are driven to suicide as the only escape from the marriage bond? But apart from that, is divorce itself such an unknown institution among the Hindus? My friends, many of them lawyers, Hindus and Mussalmans, in this Council, will tell you that amongst the lower classes of the Hindus divorce is very common; it is an institution which is freely availed of. What does Manu himself say—I am quoting verse 72, Chapter IX: 'Though a man may have accepted a damsel in duo form, he may abandon her if blemished, if diseased, if unchaste, and if she has been given in fraud,' so that a man can put away his wife whenever he likes under those circumstances. And there is another ground with which I think there may be some sympathy: a wife with a sharp tongue may be put aside at once. There is also some right given to the poor woman. The most authoritative Smriti enforced in the Kali Yuga is the Parasara Sanhita, and Parasara says in that well-known verse of his:

নষ্টে মৃত্তে প্রব্রজিতে ক্লীবে চ পতিতে পতৌ।

পঞ্চদ্বাপ হু নারীণাম্ পতিরগে। বিধীয়তে ॥

(If the husband dies, if the husband is lost, if the husband deserts, if the husband is afflicted with physical infirmities, if the husband incurs forfeiture of caste, under these five circumstances, a woman is at liberty to marry again.) This is not an unknown text which I have brought out. It was upon the validity of this text that the great Hindu widow remarriage movement began, and upon which the Hindu Widow Remarriage Act was passed. This is the text of Parasara, the authority of which could not be disputed, so that the Hindu law-givers Manu and Parasara gave liberty both to the husband and the wife to untie the marriage knot. Well, Sir, if monogamy is the highest ideal of marriage, there must be some relief, and I will, with your leave, quote a passage from Herbert Spencer:—

'The monogamic form of the sexual relation is manifestly the ultimate form, and any change to be anticipated must be in direction of the completion and extension of it. As monogamy is likely to be raised in character by public sentiment requiring that the legal bond shall not be entered into unless it represents the natural bond, so perhaps it may be that the maintenance of the legal bond will come to be held in horror if the natural bond ceased.'

"And because there may be divorce, why should we be so afraid of it? There is a divorce among the Mussalmans of India; in how many cases has it been found to operate harshly to the prejudice of the husband or the wife? Where is the complaint from the great Mussalman population in India? In

Patagonia, a marriage is a marriage at will, yet when one has occurred they seldom forsake each other even in extreme old age. And says Dr. Brinton, a great authority on social relations, in his book on the *Basis of Social Relations*: 'facility of separation is a potent stimulus to conjugal harmony. Licentiousness therefore is not synonymous with loose marriage relations, but the reverse.' These are the observations of learned scientific men who have had an opportunity of studying these conditions in the countries of the West.

"There is then another question raised, and a question I admit of some seriousness, that it will introduce confusion in our joint family life. This is an aspect upon which the Government of the United Provinces have urged: it will introduce confusion in our homes and our laws of succession and inheritance. I was present at a meeting of the Social Conference where a gentleman from the Punjab depicted in lurid colours the horrid situation that will arise in a Hindu home if a girl of the family were to marry a Muhammadan and have children. I do not know if such a contingency will ever arise. Or, supposing it does arise, does it arise for the first time under my Bill? What is the law at the present time? That you can contract, or, to use the expressive language of my friend the Hon'ble Mr. Subba Rao, that anybody can marry anybody else under the present law, only the contracting parties have got to make a declaration that they do not profess the Hindu or the Muhammadan faith or any other faith in India. Well, supposing a member of a joint Hindu family makes that declaration and marries a Moslem; what is it that can save the family from putting up with him in his own home except by seeking separation? My Bill will do nothing more. It will simply save the parties from making a declaration which may not be true. But even that declaration is not necessary under certain circumstances. If the Muhammadan member of a Hindu household is objectionable, I believe a Christian member of a Hindu household is equally objectionable. Under the Indian Christian Marriage Act, it is not necessary to make any declaration if one of the contracting parties is a Christian; so the Hindu man or woman can easily marry a Christian wife or husband and introduce the husband or wife into a Hindu home; the only protection now being a separation or division of the family. The same protection will apply even if my Bill ever becomes law. There is another fact which the opponents have overlooked, namely, the provisions of the Act known as the *Lex Loci Act*. In that Act, supposing the brother of a Hindu householder embraces the Muhammadan or the Christian faith, he succeeds. Not only does he succeed, but that Act has been considered by the Allahabad High Court to extend so far that his sons will succeed. If my brother, for instance, under the law as it now exists, embraces the Moslem faith, marries a Moslem wife and has children who follow the Moslem faith, and if I die without sons, my Moslem brother or Moslem nephews will succeed just as well as my Hindu brother or Hindu nephews would succeed. Where then is the difference that my Bill will introduce into the existing law? If there are difficulties, if there are elements of confusion in a Hindu home, in the Hindu social life, these difficulties, these elements of confusion, exist to-day just in the same degree as they will exist if my Bill becomes law. It has been held by the Privy Council in the case of the Chief of Majidia, Sardar Dyal Singh, that a Sikh or a Hindu by becoming a member of the Brahma Samaj does not necessarily cease to belong to the community in which he was born. It was held in a case in Indian Law Reports, 25 Bombay 551, where a Hindu convert to Muhammadanism after his conversion gave away his Hindu son by a Hindu wife to a Hindu brother, that that adoption was valid; and in Bengal a Brahma gentleman who practised Brahma rites was allowed, under the Act which I am seeking to amend, to give his son born as a Brahma and observing the Brahma rites for adoption to a Hindu brother, and that adoption was held to be valid. All this confusion does exist; mine will not make it worse confounded, if there is confusion at all. Sir, these are the questions, the principal questions, which the Hindu opponents to my measure have raised. I have dealt with them, so far as I am able, to show that their fears and apprehensions are unfounded and unjustified.

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"I will now deal, and deal very briefly, with the principal objections of the other communities. Our Moslem friends outside this Council—not all of them, but some of them—have also opposed my measure. Well, there are authentic cases of unions with Moslems and non-Moslems—authentic cases in our country as well as elsewhere. There is one objection which I can appreciate, though in my time of life it is difficult to sympathise with it. An esteemed friend from Dacca, brought into an unenviable notoriety by a recent speech in the House of Lords, protested against this measure on the ground that it will not be possible to indulge in the privilege or rather to exercise the privilege of polygamy if this Bill became law. Whether polygamy is a good or a bad institution I do not propose to discuss. The Mormons of America have adopted it, and probably there may be something good in it after all; but my friend need not be afraid that he will ever be disabled from keeping a full harem if my Bill passes into law, for he need not marry under my Act at all. It is a voluntary measure, an enabling measure, of which Muhammadans—and their number is happily growing small—who seek to still continue the polygamic habits of their ancestors in Arabia, need not be afraid. But it may afford great protection to those who seek to safeguard the interests of their daughters or sisters. No provision in a Muhammadan marriage contract—and I have had my hand in the framing of these contracts just as much as any Muhammadan Member of this Council has had—can give absolute right of protection in this respect. With the facilities that now exist of travel in foreign countries where young men go for study or for pleasure, it becomes an increasing danger to the girl-wife or to the father of the wife, and I am quite confident that many Muhammadans would avail themselves of the provisions of this measure to marry their children under the Act if they are not made to deny their faith, so that they can be saved from any future fears. Among the Muhammadans, marriage with a non-Moslem confers upon the children rights of legitimacy. Whatever may be thought of the marriage itself—and there are divergent schools of thought upon it—there is no difference about the legitimacy of the children; they are not affected at all. It is curious that what troubled my friend at Dacca also troubled a strong Hindu opponent of my Bill, Mr. Bhajekar, in Bombay. I am sorry to say that in his note he says, if my Bill passes into law, that it will render impossible for a Hindu husband to remarry if he is denied the blessings of a child from his first union. Well, if the powers of adoption that a Hindu has are not sufficient, my Act is not obligatory, and a Hindu husband who wants to keep in reserve the right to marry again at some future time during the lifetime of his wife, he need not marry under this Act at all. Sir Roland Wilson, a great authority of Muhammadan Law and Jurisprudence, says at page 66 of his Introduction:—

'Supposing it were possible to ensure the exact conformity of judge-made Anglo-Muhammadan law to the standard of the 13th, 17th or 19th century orthodoxy, the graver question would remain, how far this state of things would be likely to give satisfaction to Indian Muhammadans of the 20th century. Considering the intellectual ferment now going on among Indian Muhammadans, and looking to the wide publicity given to the views of Mr. Justice Ameer Ali, it is difficult to suppose that there are none who would jump at the opportunity of contracting a legal marriage on a footing more distinctly monogamous than can be secured by even the most carefully drawn contract under Anglo-Muhammadan law if the thing can be managed without the formal procedure as required by Act III of 1872?'

"And this is what I seek to remove—the formal procedure inculcated by Act III of 1872. Mr. Justice Ameer Ali, a great Muhammadan authority, has welcomed such a proposal. Sir Roland Wilson thinks that such a proposal would be a great benefit to many Muhammadan reformers of our country.

"As regards the Parsis, there has been opposition no doubt to my Bill from the Parsi community of Bombay, but there has also been strong support from Parsi gentlemen and Parsi organs of public opinion. As I said, the newspapers *Parsée* and *Oriental Review*, both of them Parsi journals, have given me their whole-hearted support. There is a fear in the Parsi mind, the Parsi is exclusive naturally from his position of isolation as the Hindu Brahmin is, and he does not want to admit into this fold the non-Parsi. But the Indian Christian Marriage Act enables him to do so. There was a great

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fight in Bombay over the marriage of a Parsi gentleman with a French lady, and I believe the fight ended in a victory for the French lady. However that may be, their position will not be worse.

"This is, then, briefly the position of the different communities, Hindu, Moslem and Parsi. With regard to the effect that my Bill would bring about if it became law, I ask my Hon'ble friends including members on the Government side, as to whether the effects are such as may be at all described as revolutionary. Many of the Local Governments, while sympathising with my Bill, have found it impossible to give me their support. The Government of Bombay is sarcastic; it says—who will look after the masses of India? They will be dissatisfied with this measure, they will not blame Mr. Basu or his party, but they will blame the Government. I should like to put a question in reply: when does this Government of Bombay think the masses of India will come to appreciate this Act and to marry under it? When they do come to think what it means, they will not blame the Government of India, but bless it for having allowed Mr. Basu to get it passed into law. But that is another question. It is the fate of all reformers to meet with ridicule and contempt. My friend, the late Home Member, who we all regret is no longer in our midst, said, when I introduced this Bill, 'before we proceeded further, the Hon'ble mover of the Bill should be able to assure us that he had behind him the full and almost undivided support of all the communities who are affected by it. It is a fixed principle of the Government of India not to interfere in any way whatever with the personal laws and customs of the different peoples of India, unless they have strong and conclusive evidence that the change is desirable, and that is the policy to which I hope I shall continue to adhere.'

"Sir, is this a condition which at any time is capable of fulfilment? Is this a condition which was kept in mind by the Government itself when it introduced measures which had the effect of removing social disabilities from the people of India? If not—and the answer must be an emphatic no—why should that condition be insisted upon in my case? Take the case of progressive England itself. Take the Deceased Wife's Sister's Bill. If the condition was that it would not be passed into law until it had the full and almost undivided support of the community, I am afraid it never would have passed into law. If that is the condition of things in Western countries, the position in my country is much worse. In the first place, we have got to deal with a peculiar society—a society conservative in its inmost fibre. We have to deal with a great amount of superstition and prejudice and ignorance. A time may come when, after my friend the Hon'ble Mr. Gokhale's Bill is passed into law and education has spread amongst the masses, when probably the masses will demand it and it will be irresistible. But in the meantime what of those who think, from conscientious grounds, from grounds of social policy, that intermarriage ought to be permitted? We are asking for nothing more than personal liberty of faith and practice, and if personal liberty of faith and practice does not encroach upon any other rights, upon rights of any other people, does not subject them to any appreciable injury and if the exercise of it is not immoral, no country in the world ought to stand against it. I was referring to the state of my country. I will briefly, in the language of a very high authority, place before you what that state is. There is a well known passage in the Vishnu Samhita—

কলৌ শূদ্র সমাপন্বা যথা কত্রা যথা বিশাঃ।

that in the Kali Yuga everybody is a Sudra except the Brahmin, so that we have not got the four Varnas which originally prevailed in India. Buckle says:—

'To the great body of the Indian people the name Sudra is given'—I am quoting from volume 1, page 78—and the native laws respecting them contain some minute and curious provisions. If a member of this despised class presume to occupy the same seat as his superiors, he was either to be exiled or to suffer the most painful and ignominious punishment. If he spoke of them with contempt, his mouth was to be burnt. If he actually insulted

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them, his tongue was to be slit. If he molested them, he was to be slit. If he molested them, he was to be put to death. If he sat on the same carpet with a Brahmin, he was to be hanged for life. If, moved by the desire for instruction, he even listened to the reading of the sacred books, burning oil was to be poured into his ears. If however he committed them to memory, he was to be killed. If he were guilty of a crime, the punishment for it was greater than that inflicted on his superiors ; and so on, and so on.

'And lest this should not be enough to maintain the subordination of society, a law was actually made forbidding any labourer to accumulate wealth, while another clause declared that even though his master should give him freedom, he would in reality be still a slave, for, says the law-giver, 'of a state which is natural to him, by whom can he be divested ?'

"The natural state being slavery, by whom, indeed, could he be divested ? And the learned author goes on to say : 'I ween not where that power may be, by which so vast a miracle could be worked.' I believe that power is in our midst to-day. It has been said that the Government of England in India is a providential arrangement. To us, Hindus, it is really so. It is the hand of British rule in India that will lift the Sudra, the non-Brahminical communities, from their present position. It is that which is my hope ; it is that which is my trust.

"Sir, I am not sanguine enough to believe that to me will be given the satisfaction of seeing my Bill passed into law. I am but a faint and weak worker in a difficult field ; but though to me may not be vouchsafed even the Pisgah sight of the promised land, the standard that I carry, though it may fall from my hands, others stronger, others mightier, others wiser than myself, shall rise, and they certainly will carry it forward to its goal."

The Hon'ble Mr. Dadabhoj : "Sir, I beg to support the motion, and in doing so, I must state powerful reasons have influenced my vote. When the Bill was introduced I pointed out that my community would be opposed to it. At the same time I supported the motion for leave to introduce it, on the ground that the people would then have an opportunity of examining it and of submitting to Government their varied views. It followed that I would be free to offer at a later stage any remarks mature consideration might suggest. My apprehensions about the attitude of my community have proved true ; Parsi opinion generally is unfavourable to the Bill. But I cannot but feel the opposition is based upon an inadequate appreciation of the exigencies of the situation. The Bill does not specially affect us,—Parsis. It contains no provisions opposed to the fundamental principles of the Parsi Marriage Act or to the existing practices of the community. Monogamy and divorce, the principal characteristics of the Act on which now provisions are sought to be grafted, are familiar to us. The only features disagreeable to the average Parsi are the removal of the existing bar to intermarriage between Parsis and non-Parsis, while the parties remain faithful to their respective religions, and the omission of the *asirvad* ceremony. I will deal with the first objection along with similar objections of the other communities ; and, as to the second, if any member of the community attach no particular importance to the ceremony and choose to dispense with it, I do not think the legislature can be expected, by the enactment or perpetuation of restrictive legislation, to prevent a lapse. It is worthy of note that a large number of educated Parsis are in favour of the Bill.

"Sir, any discussion of the merits of the Bill must relate (1) to the principle, and (2) to the details. It will be quite in accord with the rules of business and the practice of the Council to leave the details to be settled in Select Committee. Any examination of the Bill at this stage must therefore be confined to the principle. Now three main considerations suggest themselves in this connection :—

- (a) whether the proposed legislation is absolutely desirable ;
- (b) whether it is necessary ; and
- (c) what are its principal effects upon society ?

"If the Bill is absolutely desirable and necessary, unless its social and political effects are injurious, it deserves the support of this Council. Judged by this

test, the Bill under discussion, in my humble opinion, eminently deserves support. 'Public good is the object of the legislator.' It follows as corollaries that improvement of the morals of a community and social purity, promoting as they do 'public good,' are worthy objects of pursuit by the legislator. Now marriage affords the best guarantee of good morals and purity. The removal of artificial bars to marriage, encouraging as it does marriage, must be *pro tanto* beneficial to the community. It is exactly this demolition of bars which forms the underlying principle of the present Bill. The Bill seeks to remove the existing limitations to Indian marriages. That numerous limitations exist the oppositionists themselves admit, and the principal objection to the Bill is that it will, if passed, do away with those limitations and facilitate marriage. Apart, therefore, from the social and political consequences which will follow from it, the proposed legislation is undoubtedly desirable.

"Dispassionate consideration will show that it is likewise necessary. The burden of the opposition is that it is unnecessary and the people have not moved Government for it. Sir, in criticising the Bill, two facts should be borne in mind. In the first place, the days of Petitions to the Legislative Council are past, and the reformed Council, with a large non-official element in it, is dealing with the subject; and, in the next place, a non-official Member in close touch with orthodox Hindu sentiment has introduced the Bill. Government are no longer left to proceed in the matter of legislation on their own initiative, in intelligent anticipation of the needs of the situation. They have the help and the co-operation of the accredited representatives of the people. In the light of these facts the objection that the people have not moved Government for fresh legislation regulating marriages, loses point. A representative Indian has brought forward the Bill; Government have been moved in the best way desirable in the altered conditions.

"The recent important changes in the social condition of India accentuate the necessity for such a Bill. Forty years have passed since the enactment of the law it is now proposed to amend. The period has been one of all-round activity among Indians. Education has made enormous progress; the number of young men—Hindus, Muhammadans, Buddhists, Parsis and Jains—educated abroad is growing apace; with increase in the facilities of communication there is freer intermixture among the different communities. Caste hangs loosely to-day about the Hindu; his religion and caste rules do not prevent him from associating socially with the members of the sub-castes and other castes, and even non-Hindus, with the utmost freedom. Travel has only encouraged such associations. The *purdah* is being gradually lifted. Hindu ladies even go abroad for education and sight-seeing. English education, with its powerful emancipating influence, has gone on unchecked, dissolving old separatist ideas of the various Indian races. The history of the progressive countries of the West and the brilliant success of an Asiatic nation knit together by common ties of marriage and social intercourse have powerfully struck the imagination of the impressionable Indian and have changed the national ideal. Young men and young women of different castes and persuasions have been brought together, with the result that not a few inter-caste and inter-provincial marriages have taken place. Hindu ladies of Bengal have been married to Punjabis, Madrasis and Europeans. Hindus of Madras have married Burmese girls. Even Muhammadans have evinced a desire for marital relationship with Hindus. Last year I happened to see an advertisement in the *Bengalee* newspaper by a Muhammadan zamindar for the hand of a Hindu girl. This is a significant fact and has its moral. There is now in the country a greater desire for intermarriage and for a simple form of marriage. Whether this desire should be fostered by Government or not, is a different matter; but it is a legitimate feeling and when it does exist the legislator should take note of it, and any indifference on the part of this Council would cause acute disappointment among people, who, though numerically small, by their culture, knowledge, intelligence and position, wield the greatest influence in the body politic. The Arya Samaj has again under-

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taken to receive back into the fold of Hinduism all penitent backsliders by a purificatory ceremony known as the *Sudhi*. To those neophytes proper facilities of marriage are of the first importance. For long years to come they will not be able to establish marital relations with orthodox Hindus; the fact of their having renounced either Muhammadanism or Christianity will be a serious obstacle to marriage with the votaries of those religions. The marriage problem, again, in some parts of the country has become serious. The difficulty of getting suitable husbands for their girls is felt more or less keenly by Hindu fathers; necessity is helping the cause of social reform and making exogamous marriage increasingly popular. The questions which confront Government therefore are,—How best to meet the difficulty created by those various circumstances? How to lead this new feeling of the people into safe channels? How to insure good public morals in the new situation? To discourage illicit partnership and to promote marriage, will be the only prudent course. It is precisely with this object in view that the Bill has been introduced.

“Act III of 1872 does not meet the exigencies of the case. For the realisation of this truth, it is necessary to examine another important set of circumstances which have caused a marvellous development of the religious feeling in the country. Alongside of the disintegrating forces noted above, powerful causes producing in the mind of the Hindu a passionate attachment for his ancestral religion have been at work, without neutralising the effects of those forces. The past forty years have seen the Hindu Revival, the finale of which it is difficult to foresee. The labours of the Theosophical Society and the successful missions of Hindu religious preachers to the West, resulting in the conversion to Hinduism of several American ladies and gentlemen, have given a new direction to the Hindu genius. The Hindu, with all the acquired veneer of anglicism that strikes a stranger is now a firm believer in the fundamental truths of his great religion. The ritual he may discard, but he will not renounce the dogma; he refuses to be called anything but a Hindu. When the religious feeling is strong, conscience plays an important part in the acts of life. Now marriage is one of the most solemn acts of Man, and naturally the Hindu objects to disown his religion even for the sake of his fiancée. And he has a right to expect the legislature to respect his feeling; he is entitled to have a simple declaration form instead of the one provided in Act III of 1872, whereby he engages to be dutiful towards his partner through life, and not involving any renunciation of his faith. This is a question of conscience, and strict neutrality in social and religious matters on the part of Government is perfectly consistent with a respect for his conscience.

“The orthodox Hindu argues, the Hindu who wants to remain a Hindu must not think of marrying except in the conventional manner and cannot have any difficulty in so marrying. But the operation of the forces noted above must incline young people to consult their own wishes in the matter of marriage and not to leave it to be determined for them by their elders in the customary fashion. With the greater assimilation of Western ideas their views about marriage have expanded. The complaint last year was that the Bill would ‘shove a dynamite into Hindu society.’ I would remind the Hon’ble Member who made that remark that he mistook the effect for the cause. The Hindu society has already had dynamites shoved into it in Western civilisation and Western education. The Bill only seeks to render the explosion harmless and to prevent improper relations. We must take human nature as it is, and must be prepared for attachment among young people, from different parts of the country and from different races and communities, thrown together by the force of circumstances. Is it prudent for Government to ignore the fact, or is it wise for them to give the new sentiment a proper and legitimate direction? The duty of Government is clear. Sir Fitzjames Stephen, as Law Member, indicated it in language which should be recalled on this occasion:—

‘That English education in all its forms leads straight away from all forms of Native orthodoxy, is a proposition which I have never yet heard disputed. How can we sow the seed and refuse to recognise the crop?’

"The solution of the matter cannot be left to society. Exogamous marriage and intermarriage between different races are not recognised in Hindu society. Even if there be no objection to the ritual, there is the ever-present difficulty of getting priests to officiate at such marriages. That difficulty obviated, the legal difficulty arises. Custom alone will validate mixed marriages, but in view of the rigidity of the present-day judicial administration, new customs cannot grow.

"Sir Henry Maine noticed the difficulty years ago in words which gain force with time and experience :—

'It must strike every observant man that, by our introduction of legal ideas and our administration of justice through regular Courts, we give a solidity and rigidity to Native usage, which it does not naturally possess. It seems to me that, in order to prevent the monstrous injustice which occasionally results from this process, we must control it by the proper instrument—timely legislation.'

"Old Hindu society would appear to have been catholic and tolerant ; social rules were undoubtedly elastic. Mixed unions, though perhaps not strictly shastric or respectable, were recognised in society, and gave rise to whole castes and sub-castes. The Vaidyas, for instance, now an important and influential class of Hindus, trace their origin to intermarriage between two castes. Tradition assigns a similar origin to Barnwars. The *Kalcs* of Burma are a hybrid class. During Muhammadan ascendancy, intermarriage between Muhammadans and Hindus was not unknown. There is, I understand, in North Behar a class known as *Nats* who might equally be claimed by Hindus and Muhammadans, but who pass off as Hindus. In the absence of an authentic history, it is difficult to dogmatise, but the guess might be hazarded that they are a mongrel class. Why speak of mixed marriages only ? Hindu society has been tolerant of even liaison, and large classes of Hindus have grown with a recognised social position out of amours. *Kisenpachis* and *Kasials* are well-known in the country. It is this tolerance, this elasticity of social rules, which assured to Hindu society the remarkable vitality which has impressed non-Hindus so much. Even now mixed marriages are recognised in different parts of the country, and form a notable feature of Hindu society. In Guzrat, Nepal, Assam and East Bengal intermarriages are common. But custom is an indeterminate quantity. In the present state of Case Law doubts of a more or less serious nature will attach to customs which have not already been recognised by the Courts. And this latter condition may be said to be fulfilled in respect of a very few customs of intermarriage. In Burma, intermarriages between Hindus and Burmans which, according to informed Indian opinion, are 'extremely' and 'increasingly common' and in which 'both the parties consider themselves properly and legally married,' have been condemned by the highest local judiciary as illegal and invalid. In Guzrat doubts are entertained about the validity of intermarriage between the different castes and sub-castes. The Commissioner, Northern Division, in the weighty opinion he has recorded has noticed the fact :—

'I am informed that for some time past marriages between persons of different castes and sub-castes have taken place in Guzrat ; some of these castes and sub-castes have become so reduced in numbers of late years that they are in danger of extinction and it has been found necessary to look for brides outside ; these marriages, although the usual religious rites were observed, may not be upheld by the Courts, it is feared, as being opposed to ancient custom.'

"Even mixed marriages among Arya Samajists are of doubtful validity. In a case reported in 3 Allahabad Law Journal, a marriage between a Brahmin and a Kshatriya has been held invalid as opposed to custom. The Hon'ble Mr. Gokuldas Parekh computes so many as 200 families of Bhatias have intermarried with 'Hardwar maidens.' The validity of these marriages is not beyond doubt. Mr. Parekh also points out that in Porbundhar and Cambay, Hindu girls are converted to Muhammadanism and married to Muhammadans, because they cannot contract a legal marriage with Hindus of other castes. This is a serious position in all conscience. Hindus, again, have begun to migrate to distant countries. There are numbers of them in Canada, West Indies, Uganda, Zanzibar, South Africa and Mauritius. In

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Zanzibar, at any rate, intermarriage with native women is fairly common. The question naturally arises, what will be the status of the issue? Can it be said with justice in these circumstances that the Bill, aiming as it does to put the validity of intermarriage beyond doubt, is unnecessary? The amount of support the Bill has received from judicial officers is remarkable. The Judicial Commissioner of Oudh, for instance, reports :

'I have consulted thirty-four judicial officers and they are almost unanimous in support of the Bill.'

"I believe the current of judicial decisions, declaring intermarriage invalid unless sanctioned by well-established custom, accounts for the support. Sir, if ever legislation of this sort was justified by the circumstances, the amendment proposed is, as tending, in the words of the Collector of Broach,—

'to lessen the number of those painful cases so often seen in which the parties are condemned to concubinage degrading to both parties, simply because a legitimate marriage is impossible.'

"In the interests, therefore, of morality and humanity in the existing condition of society the Bill is both eminently desirable and necessary.

"The third point to be considered is its effect upon society. In a country like India the effect of legislation undertaken for the removal of social disabilities is twofold,—(1) upon society and (2) upon the feelings of the people towards Government. Now society will only gain by the enactment of the Bill. Anything which improves public morals is a distinct gain to society. The special communities which make up the Indian nation will profit by the Bill. Hindus, Muhammadans, Christians and Parsis who have submitted adverse opinions on the amendment apprehend that it will have disastrous results. Their apprehensions are, in my humble opinion, unreal. Strict adherence to Islamism does not prevent Muhammadan marrying non-Muhammadans. Even Moghal Emperors took to themselves Hindu wives. Many Muhammadan gentlemen who have been to England have married English ladies. Muhammadan gentlemen like Mr. Justice Karamat Husain support the Bill. In the orthodox Punjab, Muhammadan opinion would appear to favour the change. The Muhammadan Divisional Judges of Jhelum, Sialkot and Hissar recommend the proposed enactment. Then, instances are not rare of Christians marrying non-Christians. The Hon'ble Mr. Maung Bah Too, C.I.E., late a Member of this Council, points out in his letter to the Burma Government, 'irregular unions with Burmese women are very common among Christians.' There is nothing repugnant to Christians in marriage with non-Christians. After the enactment of the Indian Christian Marriage Act of 1872, such marriages did take place 'in divers parts of British India,' and they were so numerous that the legislature had to validate them by a special law—The Marriages Validation Act II of 1892. These facts show at least this much that there is a genuine desire among the community for marriage with members of the non-Christian communities, and that, facilities provided, such marriages would be common, thereby reducing to a minimum immoral attachments. These two communities thus will not suffer any inconvenience. Their social conscience will not be shocked at mixed marriages.

"Both Hindus and my co-religionists labour under a misapprehension. There have been mixed marriages in the past, but conversion to other religions generally preceded the marriage. The Bill will not change the position of the community, and the only innovation will be that the preliminary conversion of the Parsi desirous of contracting a heterodox marriage will be rendered unnecessary. But this is a matter which is entirely of personal interest to the individual concerned, exclusively a matter of individual conscience, not affecting the community either way. The Hindu fears provide a psychological problem. During the controversy on the Hindu Widows Remarriage Act and the Special Marriage Act, their grievance was that the legislation would encourage secession and involved an injury to society; and now when relief is sought to be given to honest members of their community who refuse to abjure their faith, the charge is that unwelcome persons would call themselves Hindus. Sir, it is outside the province

of the legislature to settle and define what Hinduism is. If a particular act of a Hindu is revolting to orthodox opinion, it is open to the community to punish him by social interdiction. The heterodox Hindu must settle his differences with the community the best way he can. But unless the act of heterodoxy is opposed to public policy or public morality, the legislature will certainly enable him to do it. The observations of Mr. Peacock, afterwards Sir Barnes Peacock, on the Hindu Widows Marriage Bill have a point on the present occasion :

'If a person believed it to be his imperative duty to do an act which would not be an injury to his fellowmen or to society at large, the legislature would not forbid him to do it... What was there in this Bill which would prevent any Hindu from following his or her belief? What was the imperative duty which it would prevent any Hindu from performing?'

"This lays down a sound principle of legislation, and Hindu society cannot justly complain if by special legislation a Hindu is enabled to marry in a way which is not customary. Besides, Hinduism is a comprehensive term; it includes almost every shade of religious belief from pure theism to animism. Classes of the most varied types are called Hindus. How will the community suffer if, by intermixture, new varieties are formed? The effect upon society of the Bill cannot be injurious; on the contrary, it will be wholesome. Likewise the effect upon Indian loyalty cannot be serious. The Bill comes in in the natural process of evolution. The course of past legislation inevitably leads to it. Whatever shock Indian sentiment now receives is as nothing compared to that which it received first by the enactment of the Caste Disabilities Removal Act, otherwise known as the *Lex Loci Act*. The Widows Remarriage Act, the Special Marriage Act and the Age of Consent Act have hardly had much disturbing effect upon the people. There was a temporary ferment which subsided the moment the law was passed. The present Bill has not even excited the serious opposition which the other laws did; it has received a measure of support from the educated classes which is quite refreshing. Both for volume and weight that support is remarkable. It is true the Local Governments have recommended the rejection of the Bill, but experienced local officials, having the best means of ascertaining the feelings of the people, do not apprehend any serious consequence, and many of them support it. The conclusion that Indian loyalty will remain unshaken and no commotion will be created in the country by the law, appears legitimate in these circumstances. Sir, worse fears were entertained on the occasion of the passing of the Special Marriage Act, but history has falsified them. Lord Northbrook, then Viceroy, disposed of them in words that have proved prophetic:—

'The impressions which have been so much spoken of might, I admit, have more sway with a certain middle-class of Natives, who are partly educated; who are disposed to criticise and appreciate the policy of Government without being fully cognizant of its real views; who are strongly attached to the old standards of faith and social life, and are suspicious of innovation from authority—in fact, who are half-enlightened. I admit..... that there is a class among whom a Bill of this character may be regarded as an aggression on the part of Government, or, if not as a direct aggression, as a measure under cover of which the institutions of religion and caste may be gradually sapped and weakened. But, even here, I think that, if the question is allowed to subside into silence, little durable effect will be produced. The operation of the Bill will be rarely felt or seen. It will cease to attract attention. It will die out in the popular memory, and be forgotten. Nor must we forget that, as education becomes more diffused, the suspicions and resentments to which I have alluded will have less and less force. What gives offence now will give no offence a few years hence.'

"There is even less justification for alarm on the present occasion. The Bill has been criticised with a sobriety and calmness which provides the best augury for the future, and I feel confident people will cease to think of the law once it is passed, except those who want to avail themselves of its provisions and whom alone it vitally concerns.

"Sir, exception has been taken to the Bill by the Muhammadans because it makes polygamy impossible as also because marriage is a religious union as much as a civil agreement. The first objection is not entitled to any serious examination. The argument cannot prevail in civilised society. The practices of the community belie the second proposition, be it ever so correct

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in theory. Of all marriages in India a Mahomedan marriage is perhaps the nearest approach to a civil contract.

"The Hindu disapproval of the Bill is founded upon the fears that marriage under it would lose its legitimate character of a sacrament, and it would weaken the caste system, encourage undesirable unions, and introduce into Hindu society divorce. With regard to the first objection, it is enough to invite the attention of the Council to the pointed observations of Sir Narayan Gauesh Chandavarkar:

'Hinduism, in spite of its sacramental idea of marriage, permits customs, prevalent among some castes within its fold, which make marriage more or less a civil affair. There was a case the other day in the High Court in which it was found that, in a certain caste of Hindus in Guzrat, a custom prevailed by which a man and a woman could legally become husband and wife by merely agreeing to live together as such without any religious ceremony.'

"It is difficult to find much of religiousness in the *sagai* form of marriage which is prevalent among Sudras in many parts of India. Levitical marriages are also not rare in Orissa and other provinces. Of the eight forms of Hindu marriage, some at least have not religion as a base. In the next place, caste has already lost much of its traditional vigour through Western influence, and the weakness apprehended will go on increasing as long as that influence lasts irrespective of enabling marriage laws. The Bill, far from causing disruption in Hindu society, will strengthen it by preventing secession of members, cultured and influential, who would do honour to any community, because, presumably, those are the men who would place themselves under the operation of the new law. Thirdly, the bogey of discreditable marriages is familiar. It was strutted out with disagreeable frequency during the controversy on the Special Marriage Act of 1872, but the past 40 years have disillusionised the public. The risk is exaggerated. As Mr. Ashworth, Legal Remembrancer to the Government of the United Provinces, observes:

'The Bill will make marriages conducted under it legal, but it will not *per se* make them respectable.'

"Few men are so impervious to the wholesome influence of home and society as to seek disreputable unions. Fourthly, divorce is not unknown in Hindu society. It is common enough among the lower orders. Be that as it may, it is inconceivable that for long years to come those Hindus who will marry under the Act will have a recognised place in Hindu society. The introduction of a new principle of social existence will not therefore affect orthodox society within a reasonable length of time.

"While these are the special grounds of opposition on the part of the Hindus and Mahomedans, the other communities join them in assailing the Bill as unnecessary, premature, officious, disquieting in the matter of intestate succession to property and opposed to the professed neutrality of Government. I have shewn above the amendment is necessary. The second contention is beautifully vague. There is no standard of maturity in such matters. In a society, notorious for its indiscriminating conservatism, at no point of time can such legislation be said to be absolutely free from the charge of being premature. The Caste Disabilities Removal Act and the earlier Regulations it embodied were, to not a few, premature; the Hindu Widows Remarriage Act and the Special Marriage Act were likewise condemned by many as premature. And yet no harm has ensued so far to society. The legislature has at times to legislate in advance. In this matter of intermarriage, the existing situation is grave enough to demand the sympathetic attention of Government. If the Bill is rejected, the result will be that a Validation Act will have to be passed before long to remove the doubts thrown upon existing marriages by the Courts. How then is the Bill premature?

"There is no merit in the third objection that the Bill is thrust upon a community that has not wanted it. I have dealt with this point above. I only place before the Council a statement of facts made by Mr. P. C. Sen, Official Assignee of Burma:

'The Kalay and Ponna communities of Burma have often requested me to petition the Local Government on their behalf to pass an Act declaring such (mixed) unions to be legal and the issue legitimate.'

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"With time some such law is wanted by an increasing number of people. The contingency of the whole body of Indians moving Government for such legislation is impossible. There is, however, some force in the contention that intestate succession will become difficult and doubtful if the Bill is passed without modification, and it will be proper to remove all doubts regarding the succession of the issues of mixed marriages between the followers of different faiths by making the Indian Succession Act applicable to them, as Mr. Justice Sankaran Nair suggests. But this is a matter of detail which must be examined in Select Committee. It does not affect the principle of the Bill.

"The last objection is baseless, and the fact of its having been made common ground by all the communities justifies the suspicion that it is spurious. In no community are social functions so bound up with religious observances as among the Hindus. A marriage law like the one proposed will surely not interfere with the religious performances of any community, much less of the Mahomedans, Jews and Parsis. Then Hindu Religion in danger is an old cry. Government has disposed of it in a statesmanlike way in the past. The reply given by Mr. Grant, afterwards Sir John Peter Grant, in the course of the debate on the Hindu Widows Marriage Bill, is applicable today with the additional force which subsequent experience has lent to it :

'It was said that this measure would interfere with the Hindoo Religion; and it was also said that this measure, though in outward appearance merely a permissive Law, was in point of fact a coercive law.'

'There was no foundation whatever for the first of these objections. The Bill left every Hindoo free to act in accordance with his own religious views. But it would be an interference with Hindus in their religious concerns if the Council should refuse to pass this Bill. If, when 5,000 Hindus came forward and asked to be relieved from the operation of a Municipal Law which prevented their acting in this matter according to their convictions, the Council allowed that Municipal Law to remain in its present state, then indeed would it be interfering with the religion of a large body of Hindus; but if it did relieve the Petitioners, and all who think with them, from the restriction of the Municipal Law of which they complain, he denied that this would be an interference with the religion of any human being.'

"Sir, the truth is this has been, and for generations to come will be, the shibboleth of unmeaning conservatism, and if Government stay their hand out of respect for the feeling, necessary social legislation will be impossible. Government policy in the past has been more liberal. The *Lex Loci Act* was passed when there were dense ignorance and, as a consequence, over-sensitiveness in social matters in the land. The petitions of 60,000 persons against the Hindu Widows Marriage Bill were, as the Hon'ble Mr. Basu pointed out, justly disregarded by Government. Mr. Grant made the bold pronouncement of policy which did him honour and which ought to be inspiring to us :

'If he knew certainly that but one little girl would be saved from the horrors of *Brahmacharia* by the passing of this Act, he would pass it for her sake; if he believed, as firmly as he believed the contrary, that the Act would be wholly a dead letter, he would pass it for the sake of the English name.'

"Violent opposition was similarly evoked by the Special Marriage Bill and the Age of Consent Bill, but British statesmanship proved too powerful for it. And now when the people are far more enlightened, when the measure is hailed with joy by a large section of His Majesty's subjects and orthodox opposition itself has lost all its former bitterness, is the hope extravagant that Government will guide the Bill through the Council with their accustomed sympathy and firmness?"

The Hon'ble Maharajadhiraja Bahadur of Burdwan: "Mr. President, I am sorry I do not find my friend to the left in his chair just at present, for I should have liked to have reminded him of the corporal chastisement that he spoke of when he began his speech; for it struck me very forcibly when he was making his speech that it would have done him good, as well as those whom he thought fit to slander, if he had gone to those citadels of Hinduism regarding which he spoke with such a sneer; for as a silent sentinel, or as one of the guarding sentinels of that citadel, I would have had great pleasure to have taken him inside that citadel to remind him of the corporal chastisement that he spoke of."

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The President: "I must call the Hon'ble Member to order."

The Hon'ble Maharajadhiraja Bahadur of Burdwan: "Mr. Basu spoke at great length, quoting certain authorities regarding the different forms of marriages extant among the Hindus. I regret here again that he did so in this Council. As this is a ground on which there may be controversy, and, as I have already been taken to task for using certainly not half as offensive a language as my friend used regarding the Brahmins of India, I shall pass over this portion of my remarks and will now put forward before this Council my arguments against the adoption of this motion.

"I oppose this motion as I am opposed to the principle embodied in the Bill of the Hon'ble Babu Bhupendranath Basu. This principle violates not only the Hindu social customs and the cherished rites and laws of succession, but it also interferes with the social customs and marriage rites of the Muhammadans, Christians, Jews and Parsis. From the very beginning, I have been against the introduction of this Bill amending the Special Marriage Act of 1872, for it is something far greater than an amendment. Whilst the Special Marriage Act of 1872 was confined in its application to a handful of Brahmos, it was enacted for the purpose of giving a marriage law to a class who, having none of their own, stood in urgent need of one. This proposed legislation would cover not only the Brahmos, but all Indians of all creeds and denominations. As one who has advocated the relaxation of many a meaningless social custom among the Hindus, as one who is a strong supporter of the emancipation of Indian women, as one who is dead opposed to early marriages of Indian girls, as one who has tried to give practical proofs of his ideas of reform by practising what he preaches in his own sphere of life, I wish at the very outset to say that, even following and practising these precepts of emancipation and progress, I cannot, with any instincts of true Hinduism left in me, possibly advocate a *Varnashankarism* to be spread in the country for the sake of an infinitesimal minority or a special class, or for the benefit of a handful of love-sick Indian youths seeking legalisation of their indiscreet romantic marriages. It is after a very careful deliberation that I have come to the conclusion that the Bill before us, far from being harmless, directly interferes with the social customs and laws of succession, which a legislative body like this has no right to introduce or accept.

"I understand that the real reason why the Hon'ble Mr. Basu has brought this Bill up is that the declaration in the Special Marriage Act has been felt to be an 'unnecessary' condition. May I ask why it has been felt 'unnecessary'? The proceedings of the Governor General's Council held on the 27th March 1871 clearly show the circumstances under which the Act with its so-called 'unnecessary' declaration was passed, and prove beyond doubt that the declaration was a very *necessary* one, and it is still just as *necessary*, unless the whole mass of Indians, especially the Hindus, have within these forty years changed as rapidly and as abnormally as the swift-winged reformers themselves, of which there are some specimens to my left. The paragraph in the proceedings runs as follows:—

'The cause which led to the introduction of the Bill was the grievance which the members of the Brahma Samaj said they felt; for they asserted that they did not know whether they were married or not. The Bill was circulated to the Local Governments and had been discussed. It appeared that the Local Governments were almost unanimous on two points, first, that there could be no objection to give relief to the Brahmos, and, secondly, that a very great objection would be felt by all classes of orthodox Hindus if the measure were made a general one. They said that the direct effect of such a measure would be to introduce very considerable alteration in their social rules and the institution of caste generally. He (Sir Henry Maine) felt the weight of this objection. The Bill had been reduced to meet the specific cases of the Brahma Samaj and provided a simple form by which they would be married according to their own views.'

"If Sir Henry Maine's Bill had to be modified for the above reasons, how much more objectionable is Mr. Basu's proposed amendment, for here the disciple even outruns his preceptor! On the 18th of November 1868, Sir Henry introduced his Bill 'to legalise marriage between certain Natives of India not professing the Christian religion and objecting to be married

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in accordance with the rites of the Hindu, Muhammadan, Buddhist, Parsi or Jewish religion.' His Bill clearly excluded from its operations the Christians and applied only in cases where the party concerned had an objection to marry according to Hindu or other forms prevalent in India; but what was the fate of that Bill? It was thrown out as violating the social rules and sinning against the special laws and the alleged 'unnecessary declaration' was introduced into the Bill for a solution of the difficulties. The declaration was then of vital importance, for without this the law could not be passed and the Brahmos could not get any redress. They had then the option either to accept or to refuse the modification, but they chose to abide by it; they felt it necessary, for it was a marriage *according to their own rites*; and now they come forward and say that the very condition under which the Bill came to exist is 'unnecessary.' Now what would be the effect of removing this objectionable clause? Will it not make the scope of the Bill even wider than that of Sir Henry's Bill? It will remove the two small barriers which Sir Henry for some reason or other thought fit to maintain in his Bill and bring within its purview all races, creeds and nationalities residing in India. Then the very reasons which led to a modification of Sir Henry's Bill will apply with double force to Mr. Basu's Bill, unless it is proved that the Hindus, Muhammadans and others have changed their mind and are anxious to get the proposed marriage law for themselves. But have they really changed? It will amount to a total disregard of fact to say *yes*. The Muhammadans, Jews, Parsis, Christians and the orthodox section of the Hindu community are opposed to it as strongly now as forty years ago; a vast majority of the Sikhs and enlightened Hindus are equally opposed to it; the opposition of all the Local Governments is as strong now as then; only a handful of Brahmos have expressed their views in favour of the Bill. Is this a sufficient reason to consider such an important clause unnecessary? The removal of the clause would legalise a marriage between persons of different religions; do all the religionists approve of it? As the papers submitted to the Government in connection with the Bill prove the contrary, and as the vast majority of the uneducated orthodox class whose voice never reaches the Government would sooner part with their lives than with their sacred laws and customs, I consider the clause not only *necessary* but of vital consequence.

"Then, again, the Hon'ble Member says 'the provisions of the Act, moreover, cannot be availed of by those members of the Hindu community who desire to introduce intermarriage between different sub-sections of the same caste or between the members of the same caste inhabiting different Provinces of India.' The statement is comparatively modest, but to achieve this very modest purpose a Bill has been proposed which goes far beyond the reasonable limit. The Bill would countenance a union entirely contrary to established usages and customs. If the object of Mr. Basu is only to validate intermarriage between different sub-sections of the same caste or between members of the same caste inhabiting different Provinces, then there was no need seeking the aid of the legislature at all. Such marriages have my fullest support and are already taking place, though in a limited number, and he would have done well to have awaited and watched the gradual evolution of social rules. As a matter of course, society will adapt itself to the requirements of time—a hasty change is always to be deprecated. If a time-honoured custom is to be subverted at all, let it be done by slow degrees; let it take the natural course of progress; let the change come as a reformation and not as a revolution: as someone has properly remarked, seeking the help of Government for such a purpose 'not only betrays impatience but impotence.' Over and above what I have said on this point, I doubt the validity of the very statement. I doubt whether it is a fact that any member of the Hindu community desirous of introducing that intermarriage contemplated above could not do it because of the existence of the particular clause in the Act of 1872. No memorial was ever submitted to the Government to that effect: not a single line ever appeared in any newspaper which could bear testimony to it; so how can we presume this difficulty to have arisen at all? On the contrary we have always seen that those who have desired to introduce such intermarriages

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have taken recourse either to the Hindu law or to the Special Marriage Act, welcoming their consequences stubbornly. It is idle to say that the declaration in the Special Marriage Act of 1872 is deterrent to any man of honest conviction, for the declaration is nothing more than a truism. I shall put the whole case in a nutshell and show that the objection is merely imaginary.

"The intermarriages specified above are either valid or invalid according to Hindu law.

"If they are already valid, then there is no need of another legislation.

"If they are not valid, the person who is willing to contract such a marriage violates the provisions of the Hindu law and has no right to call himself a Hindu: so the declaration is harmless.

"Now, a question may arise—whether by contracting such a marriage a person would forfeit his right to be called a Hindu, though he may agree with the Hindu principles in several other respects: my answer is, *yes*; because Hindu marriage is regarded as a sacrament, whatever my friend may say to the contrary, because it is very closely connected with Hindu religion, Hindu law of succession and the caste system—all of which constitute the essence of Hinduism. In support of my arguments I would quote below a few lines from the proceedings of the Governor General's Council held on the 10th January 1872; they are as follow:—

'We thought that the Bill, as drawn by Sir Henry Maine, would involve an interference with Native law which we did not consider justifiable under all the circumstances of the case. It appears to me that the Hindu law and religion on the subject of marriage are one and the same thing; that they must be adopted as a whole or renounced as a whole; that if a man objects to the Hindu law of marriage, he objects to an essential part of the Hindu religion, ceases to be a Hindu and must be dealt with according to the laws which relate to persons in such a position.'

"On account of the supposed grievances stated above, Mr. Basu draws the conclusion that 'the necessity for a simple law of marriage, wholly optional, and which may be supplemented by the religious rights observed by the contracting parties, is greatly felt by those who do not desire to break away from Hinduism and at the same time seek to adapt their life to the growing needs of the times.' Now who are these Hindus that would disregard the Hindu laws of marriage and undermine the caste system of the Hindu society and yet like to pass for a Hindu? Surely not the orthodox community which form the majority of the race, neither a majority of the more liberal-minded men whose opinions we respect: it may be a majority of the Brahmos who constitute a small fraction of the Hindu community. But let us see how a Brahmo missionary and journalist has thought of this claim on the part of the Brahmos; he says:—'To identify the religion of the Brahmo Samaj with Hinduism at this late hour or to characterise it as a Hindu sect, is to ignore the progress it has made in various directions during the quarter of a century—such identification is like mixing water with oil. The anomaly is most apparent in the case of Abdul Guffar, Jelaludin Meah, Mr. Maitland and others who have become Brahmos and married according to Brahmo rites, who are as much Hindus as the Laplanders or the Zulus.'

"But howsoever small may be their number, if their grievances were real, the Government would have grounds to alter the law in such a way as to protect them, but I have proved that the grievances are imaginary and the objection is baseless. But we have no grudge against our Brahmo brethren. No one can have any objection if any protection is offered to the Brahmo community, whether necessary or unnecessary, provided it is not given at the cost of others. The Brahmos may claim to be Hindus only in the sense in which Buddhists are Hindus. Both are off-shoots of the same main stock: but how far different they are from one another at the present day! To those Hindus who would violate the fundamental principles of Hindu society and yet would like to be called a Hindu, I would say, they take an impossible stand-point, as may appear from the above extract and the reasoning which I have already adduced in that connection. I, therefore, fail to see how the declaration in the Act can possibly hurt anybody or hamper the moral progress of others. I may

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say that if the Brahmins have a conscientious objection against the declaration, they may make a positive declaration as suggested by R. B. Dewan Jamiat Rai (Paper No. 8) as well as by Sir Gooroo Das Banerjee, Kt. (Paper No. 9). No-body can have any objection to that.

" I shall now dwell upon the most important feature of the Bill—I mean its effect upon the existing laws of succession, adoption and marriage, and the revolution which it is bound to create against the joint family system, though my friend does not think so. It would introduce divorce into Hindu society and destroy the sacramental character of Hindu marriage, which my friend denies, on which depends the peace and security of a Hindu life, it would upset the rule of the prohibited degrees, render valid an intermarriage between persons of different religions, which is contrary to the principles of most of the religions, do away with the Muhammadan formality of a divorce, alter the law of adoption *in toto*, and create a most irreconcilable conflict in several other respects. These difficulties appear to me to be insurmountable—no solution has been proposed in the Bill, and in fact no solution is possible. The Hon'ble Mr. Justice Benson of the Madras High Court says:—

'The proposal in this Bill appears to me to be so revolutionary and impracticable, and so opposed to the general Hindu sentiments, that it is not worthy of serious discussion' (Paper No. 17).

" A disapproval stronger than this cannot be conceived. It is a pity that my Hon'ble Colleague did not realise this sentiment of the Hindu community, and it is a wonder that being a lawyer himself he did not foresee the conflict which would arise out of this measure in the established laws of succession, marriage and adoption; or, if he did foresee, it is stranger yet that he did not propose a remedy.

" Now a word or two to the few supporters of the Bill. Some have supported this Bill simply on the ground that it is a 'permissive measure.' I do not know if this can at all be a reason for passing an enactment. It is true that the Bill won't compel anybody to accept its provisions, but that is not the criterion to test the desirability of a positive enactment; unless and until it is proved that the society stands in need of a law, and that the influence of such law will be genial and salutary, I do not know why a new law should be passed at all. Is it for the relief of persons with superfluous conscientiousness; if so, at what risk? At the risk of creating a confusion in many societies and breeding discontent and turmoil. It is a direct challenge to the existing usage and custom, and it opens a back-door to the heterodox principles to come and wage war in the province of orthodox ideas. A 'Permissive Act' is not always harmless; even tolerance may amount to wickedness. The merit or demerit of a law or principle is to be judged from the effect which may come out of its working, and not from the possibility that it may remain defunct till a long time to come.

" Someone has said 'Intermixture of races conduces to mental and physical improvements' (Paper 20, page 19). I do not know how far this is true scientifically, but there is not a shadow of doubt in this, that but for the rigid rules of the Hindu community against such intermarriages, the Hindus would by now have ceased to exist as a distinct race. The high self-sacrificing spirit depicted in the splendid Epics, the undaunted courage and unparalleled patriotism of the Rajputs, the heroism of the Maharastriyas, were all a product of this nation, in spite of its restrictions against such intermarriages. I do not know if any other nation on the surface of the globe have shown better moral or physical progress; but this much is certain, that the existing laws and customs of our society have so long worked satisfactorily. I do not say that there is no room for improvement in them, for I know trimming and pruning is required; but it is one thing to improve and quite another thing to substitute contradictory innovations fraught with a danger almost unthinkable.

" Another critic goes on to say that the proposed measure would serve to abolish 'the pernicious caste system.' I do not know if it can be called a pernicious system at all. It exists in almost all the civilised countries in

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some form or other—in some places wealth and honour is the standard of measurement, in India it means the special vocations of special classes: I refrain from saying which is the better. Granting this to be a pernicious system, can the new legislation help to extinguish it? When the Special Marriage Act of 1872 was passed, some people had such hopes, but has it not proved the contrary? Have not the Brahmins been alienated one and all and classed as a different section altogether? History has a cruel way of repeating itself, and I am inclined to believe that the passing of this Act would rather extend the 'pernicious' system and make it more complicated than eradicate it. Like a patent medicine advertised to be capable of curing all diseases from headache to consumption, this Bill comes up to the Council with a promise of innumerable benefits, seeking acceptance at a very high cost.

"In conclusion, Sir, I beg to submit that the Government should not allow this Bill to go into Select Committee, but should throw it out at this stage, as it involves a change of a purely religious or social character. It is a matter for the consideration of the *Pandits* and *Maulvis* and social reformers, and not for the Government to legislate upon. In my opinion, the introduction of such a measure is directly opposed to the policy of non-interference which the Government has thought wise to uphold in all such matters ever since the gracious Proclamation of Her late Imperial Majesty Queen Victoria in 1858. With all the emphasis that I can command, I request the Government and this Council to throw out this Bill, and to the Government particularly I appeal not to interfere in a matter which falls under the category of one of those things which by the Proclamation of 1858 and subsequent declarations the British Government, through the mouths of Sovereigns and Ministers, have assured the Indians of their policy of non-interference. If I find, which I hope I won't, that the Government intends to allow this motion, then I shall certainly begin to believe that nothing is sacrosanct in these days."

The Hon'ble Sir Gangadhar Rao Chitnavis: "Unlike the Hon'ble Maharaja of Burdwan, I realise the hardship which the existing law, substantive and adjective, entails upon large numbers of people who, with ideas broadened by education and travel, but firm in the faith of their forefathers, are anxious to ensure homogeneity and vigour to the Indian races by free intermarriage, without moral compunction and consequential legal disadvantages. Personally, I like intermarriage, especially among sub-castes and the local variations of the same caste. At the same time I cannot but feel the Bill is somewhat premature. Public opinion in India is not sufficiently enlightened to allow of such a measure being passed without causing some amount of disquietude among the orthodox communities. I do not say there is any just cause for alarm, but the facts must be frankly recognised that the notions of Government in the matter of social reform are capable of misconstruction, and that there is still in the country a mass of ignorance and prejudice which can be successfully worked upon by the scheming agitator for his unworthy ends. Ignorant conservatism is deaf to reason, and so long as its volume is not considerably reduced, reforming legislation is not free from risk. The administrator has naturally to be cautious in these matters, and any nervousness on the part of Government will be justified by the social and political conditions of the country. It is not prudent to provide another ferment. The upshot is that, notwithstanding the fact that the Bill is desirable in theory and necessary in so far as it removes a real grievance of enlightened Indians, the appalling illiteracy of the masses, their prejudices, their keenness on matters of social privilege, their crude ideas of the duties of Government, and the present agitated state of the public mind make it unacceptable for the moment. A time will undoubtedly come when such legislation will be justified by the intellectual and social progress of the country, and will not provoke much hostile criticism. I am glad to note that time is not remote. Elevating influences are operating to produce the desired result, and when it does take place, Government would

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be well-advised to remove by special enactment the present restrictions to marriage. But until that time comes we should stay our hand.

“ My Lord, while I do not counsel the enactment of a general enabling measure, I beg to invite the attention of Government to the distressing condition, disclosed in the opinions submitted, to which large numbers of people have been reduced in different parts of the country in consequence of judicial decisions, refusing to recognise intermarriage even among sub-castes unless sanctioned by ancient usage. The cases of Bhatias intermarrying with ‘Hardwar maidens’ and of Burmans intermarrying with Hindus deserve sympathetic treatment and demand prompt attention. All these classes have a genuine grievance, and I would suggest that in all such cases of intermarriage an Act or Acts, as the exigencies of the situation might require, should be passed, validating existing and sanctioning future marriages. The opinions on the Bill submitted from Guzrat show that, by reason of the paucity in numbers of some of the castes, Hindus have to become Muhammadans, because intermarriage among the sub-castes and with the other castes is not recognised by the Courts. The Bill under discussion certainly meets such local requirements, and steps should be taken to introduce a Bill on similar lines for Guzrat, restricted in its operation to the castes mentioned in the Commissioner’s letter and other castes similarly circumstanced. Preliminary inquiries will, I apprehend, be necessary which, I hope, Government will be pleased to undertake at an early date.

“ This sort of special legislation, while removing present difficulties on the lines of least resistance, will gradually pave the way for general legislation. People will get accustomed to it, and the results of its working will impress them with its harmless character.”

The Hon’ble Sir Reginald Craddock: “ The general attitude of the Government in the matter of this Bill can be very clearly and concisely stated. In so far as the Bill seeks to leave it open to individuals to replace or supplement religious ceremonies by civil contract and in so far as it emphasizes that marriage is a civil contract and not a status, the proposed measure is in consonance with advanced Western ideas, and it is impossible for the Government to withhold their sympathy entirely from earnest reformers who desire to place this greater liberty within the reach of their fellow-countrymen. But we are asked now to legislate not for Indians as such, but for persons who fall within the category of those several faiths specified in the Act of 1872. And we are asked to pass a measure which will have the effect of declaring that religion is unessential to their marriage laws, and that not only as regards mere forms and ceremonies, but as regards the people who are to be permitted to marry one another. It has been an article of faith with the British Government to hold aloof from any interference with religion or from social customs which are closely inter-mixed with religion, and Government in this matter occupy a position of trust to the many millions who profess these various creeds. Such a step as that contemplated by this Bill can be taken under two, and only two, sets of circumstances. The first of these would be if the existing marriage laws, and the restrictions that they place upon the people and upon those who profess a religion, constituted an outrage on the fundamental laws of humanity; and the second set of circumstances would be if an overwhelming majority of the persons professing these faiths were to come forward and ask for the reform. But neither of these two conditions applies to this Bill. Whatever inconvenience might attach to a few on account of the restrictions imposed, and even though these restrictions may not appeal much to the Western mind, yet it would be most unwarrantable and most unjustifiable to describe these restrictions as being at all in conflict with the fundamental laws of humanity. After all there is not very much hardship and there are still a good many people who will be able to marry one another even if this Bill does not become law. As to the second condition, namely, as to the overwhelming majority, the overwhelming majority is at present certainly on the other side. On this point there is absolute unanimity in the

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reports of the Local Governments. And it is plainly manifest both from those reports and from the speeches that we have just listened to that the opposition to this measure is not confined to a very rigid and ultra-conservative orthodoxy or to ignorance and superstition, but is shared by the most enlightened and advanced members who belong to these faiths. In these circumstances, Sir, it is the plain duty of Government to oppose any further action with reference to this Bill until such time as the overwhelming majority, of which I have spoken, in favour of a reform of this kind, may be in clear evidence before Government."

The Hon'ble Mr. Subba Rao : " Sir, I should like to say a few words on the motion before the Council. When the Hon'ble Mr. Basu introduced this Bill in March last, I reserved my opinion on its merits and I ventured to point out that there were difficulties in connection with the measure, and that, though the amendment proposed by the Hon'ble Member was simple enough on the face of it, it was one of a far-reaching character, vitally affecting the Indian society as constituted at present. I anticipated that it would rouse opposition and provoke agitation. Since then it has been discussed with much heat all over the country, especially by those who have come under the influence of Western education and Western civilization. Without going into the criticisms that have been offered for and against this measure, I may say that, as far as I have been able to gather the feeling of the public, the Muhammadians as a body are opposed to the Bill. So also are the Parsis and the Jains. The Brahmans are in favour of the Bill, and it is curious that the Arya Samaj has refrained from pronouncing any opinion; apparently its members are divided on the subject. The Christian Missionary bodies are generally in favour of the Bill and some of them desire that certain safeguards should be embodied in the measure, and this attitude of sympathy on their part is attributed by the Madras Government mainly to the principle of freedom underlying the Bill with reference especially to its disruptive effects upon caste. As regards the Hindus, though the Bill has provoked a great deal of opposition from them and the volume of opposition is in my opinion rather formidable, I may congratulate the Hon'ble Member on the sympathy and support that has been evoked for the Bill. Ten years ago, it would have been impossible to obtain even that limited measure of support. Many eminent men are now ranged on opposite sides and the supporters of the Bill are found in all classes of the Hindu society, whether they are Brahmans or non-Brahmans, whether they are styled as reformers or defenders of Hindu orthodoxy, whether they are English educated or not. The outstanding fact is that there is comparatively a small but strong body of intelligent opinion that keenly feels that the Hindu marriage law has serious defects and requires reform in important directions. It has become evident that some members of the Hindu community, though few, find that the restrictions imposed by the customary marriage law unduly interferes with their freedom of choice and that the forms prescribed by it are revolting to their conscience. It is also evident that, though such instances are rare, men of culture and enlightenment now prefer to marry outside the pale of the Hindu religion rather than submit to the caste discipline and its rules. I am afraid that the inconvenience and rigidity of the present system will be felt more and more as time passes on. It is necessary, therefore, that the question should be seriously considered, and it is time that a solution was arrived at whereby the rights of individuals should be secured without their being forced to declare that they are not Hindus by religion. It must be remembered that in consequence of the rigidity of the law as administered by our Courts, no custom can grow up at the present day in violation of the law. I am, therefore, in sympathy with any measure which tries to remedy the defects in the present marriage law of the Hindus and give freedom to contract marriage within certain well-defined limits and under proper safeguards, without disturbing the rights of others and the religious instincts of the people and also without giving reasonable grounds for deep discontent among different classes of His Majesty's subjects. I am afraid the present Bill bristles with difficulties. After what has fallen from the Hon'ble the Home Member, it is unnecessary to point out in what direc-

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tions the Bill should be recast. I may, however, state that in the case of mixed marriages, the law of succession to the property of the parties to the marriage, the rights of the offspring to inherit to the ascendants or collaterals of the parties to the marriage, the right to make no adoptions, the applicability of the law of divorce, the right of a guardian to dispose of his ward in marriage to persons of other faiths, and other important matters, have to be carefully considered and determined. It is no answer to objections on these points that the present Act of 1872 makes no provision in regard to succession, which is no doubt an important defect; but when the scope of the Act is proposed to be extended by the present Bill to the followers of all the recognized faiths in this country, I consider it essential to provide in respect of all the matters mentioned above, so that they may know exactly how they will be affected by the Bill. I think it very desirable that a competent Committee should consider these important questions and arrive at some harmonious adjustment of the marriage system or find out a way out of the present difficulties.

"It is proposed in some quarters that the Bill should be confined to Hindus only, especially as persons of other persuasions—Muhammadans, Parsis, etc.—do not want it, and are satisfied with their personal law on the subject. I am glad that the Hon'ble Mover does not take that view. Such a proposal is inappropriate and out of place in connection with an Act which is specially designed for those who do not profess any of the recognized religions in this country.

"As the Hon'ble Mover desires that the Bill be referred to the Select Committee, where it is expected to be thoroughly discussed, I shall not raise at this stage any opposition to the motion before the Council."

The Hon'ble Mr. Muhammad Shafi: "Sir, I desire to express my sincere appreciation of the breadth of view, the spirit of toleration and the patriotic motives which have actuated the Hon'ble Mr. Bhupendranath Basu in placing this idealistic measure on the legislative anvil. But while I fully recognize the enlightened spirit in which the main principle underlying the Hon'ble Member's Bill has been conceived, I cannot lose sight of the fact that the problem which my Hon'ble friend seeks to solve by means of the proposed legislation is of a socio-religious character in reference to which this Council would not be justified in undertaking legislation unless there was a clear demand therefor by at least a majority of the people affected by it, or the evils resulting from the existing conditions, besides involving consequences highly detrimental to the welfare of the people, were irremediable by the forces of enlightened progress in actual operation all around us. I rejoice that these principles have been accepted by Government as alone justifying legislative interference. Judged by these two vital tests, the proposed legislation is, in my humble judgment, open to serious objection, and, in consequence, further consideration of the Bill by adopting the customary procedure would serve no useful purpose.

"Sir, the criticism to which this Bill has, since its introduction and publication, been subjected in the Press as well as at the numerous public meetings in which its provisions have been discussed and the opinions which have been received from all parts of the country, make it abundantly clear that not only is there no general demand for the reform embodied in the proposed legislation, but that the majority of the Indian peoples are strongly opposed to the enactment of this measure. So far as the province which I have the honour to represent is concerned, I am in a position to state that the consensus of Muslim opinion is, in common with the rest of Muslim India, absolutely averse to this measure finding a place in the Indian Statute-book. And excepting our Brahma friends who naturally are unanimous in their support of the Bill, the vast majority of my Hindu brethren, among whom I include Sikhs, in the Punjab, are entirely hostile to the proposed enactment. The majority of Hindu opinion even in the other Indian provinces is clearly opposed to the reform

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advocated by my Hon'ble and learned friend, and the enlightened Parsi community have, with almost one voice, protested against the application of the proposed law to their matrimonial usages. The signed representation sent up by a number of Hindu ladies of Bombay bears eloquent testimony to the unpopularity of the proposed enactment. These being the incontrovertible facts, it is absolutely clear that this unfortunate Bill has failed to pass the test of public opinion.

"Sir, the Muslim law of marriage is an essential part of the Islamic Code, its basic principles being founded not upon rules laid down by later Muslim jurists, but upon clear and express texts of the Holy Koran itself. Under these circumstances, it is not surprising that there should be such a complete unanimity of feeling among the Mussalman community with regard to a legislation which, in many respects, is directly opposed to the ordinances contained in our sacred book. The same observation applies equally to other non-Hindu communities who have their own matrimonial laws recognized as binding upon their individual members. To enable members of such communities to contract themselves out of their personal law and yet claim to enjoy the privilege of their memberships would be so utterly subversive of social order and communal well-being, that our Legislature ought to hesitate before taking such an ultra-radical step as is advocated in this Bill.

"Sir, I am not in a position to enter into a discussion of the merits of the proposed reform so far as it affects my Hindu brethren. There are among the Hon'ble members of this Council so many distinguished and representative Hindu leaders, that it would be inappropriate on my part to dwell on this aspect of the question at any length. This much, however, I may be pardoned for saying, that legislative interference for the realization of the two main objects which the Hon'ble Mr. Basu has in view appears to me to be utterly undesirable even in the best interests of the Hindu community. As I understand it, the main end which my Hon'ble and learned friend has in view is two-fold, one concerning the status of our Brahma friends, and the other relating to intermarriage between different castes as well as between members of the same caste residing in different provinces of India. Speaking as an outsider, it seems to me that legislative interference, in the existing circumstances, is hardly the proper remedy for the achievement of the contemplated object. The question of the status of our Brahma brethren as Hindus has been finally set at rest by the highest judicial tribunal of the Empire. In their judgment in the well-known case of Rani Bhagwan Kaur *vs.* Mr. J. C. Bose and others, regarding the validity of the will of that enlightened and patriotic nobleman, the late Sardar Dyal Singh Majithia, their Lordships of the Privy Council have made a judicial pronouncement in respect of this question which is absolutely conclusive and renders legislation for practically the same purpose entirely unnecessary. And if there is anything in the form of the Hindu marriage ceremony which is distasteful to the members of the Brahma Samaj, the real remedy therefor does not lie in the direction of legislative action. Nor is legislative interference the real remedy for facilitating intermarriage between the various sections and sub-sections of Hindu society. The Arya Samaj has already solved this problem, justifying its action in this respect by reference to the original fountain-head of the Hindu religion, *i.e.*, the Vedas. In regard to inter-provincial marriages, the Punjab has already taken the lead, and the signs of the times clearly point to the day, not far distant, when the insular provincial prejudices will have been swept away and spontaneous social evolution will bring about results which my Hon'ble and learned friend seeks to achieve by legislative mandate. The mist of old-fashioned social ideals unsuited to the rapidly changing conditions of modern society are already undergoing a process of automatic evaporation due to the widening of the mental horizon and to the new forces which modern culture and civilization have brought into play. This healthy growth, on spontaneous basis, of social ideals consistent with modern conditions, imparting new life and fresh vigour to the development of the social organization, and resulting in the progressive evolution of a compact and homogeneous whole, ought to be welcomed in preference to the hot-house growth manured by legislative action. Impatient idealism may

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be peculiarly attractive to ardent minds in transitional periods, but it is the steadily upward progressive movement which in the long run is of lasting benefit to an advancing nation.

"Sir, the delicate nature of the socio-religious problem of which solution is sought by legislative enactment, the conflict of laws and usages certain to arise from the proposed legislation, the legal complications relating to the status of children, rights of inheritance and other important matters, some of which I have mentioned in the written opinion on this Bill submitted by me in response to a communication from the provincial authorities, make it impossible for me to agree to the motion now before us. While expressing my admiration for the remarkable courage, high-minded patriotism and the enlightened motives of the Hon'ble Mr. Basu, I regret I am unable to vote for the reference of this Bill to a Select Committee."

The Hon'ble Mr. Syed Ali Imam: "Sir, I have listened to the speech of the Hon'ble Babu Bhupendranath Basu with a very great deal of interest. The interest in my case had several aspects. One was that of an Indian who is deeply concerned in some of the problems that the Hon'ble Mr. Basu has dealt with in that speech. Another was as a Muhammadan, belonging to a community that has in the problem which is before the Council a deep interest. But by far the most important concern that I had when I was listening to the speech of the Hon'ble Mr. Basu was the concern that relates to the occupation of the office that I hold in the Government of India. I must confess that the speech which the Hon'ble Member has delivered to-day is remarkable for the earnestness—and I was going to say sobriety—but I have on wiser consideration withheld that word—I will say for earnestness, and at the same time effectiveness. It is one of those speeches that must be regarded as a powerful speech that may be made in any assembly. But, for all that he had to urge in support of the Bill, the conviction that came to my mind was this, that there was a very able counsel who was advancing every possible point that he could in support of his case, and yet behind it all he knew that he had a very weak one, and that it was not likely to be decided in his favour. The Hon'ble Babu Bhupendranath Basu must really be congratulated, as I have said, on that powerful speech; but I would ask the Hon'ble Member if he was not, in bringing forward this Resolution, attempting to force the pace. He instanced in support of his argument that there had been legislation where social reforms had been achieved by the very process that he wanted to apply to his case. He instanced before us the case of the reform in respect of the *sati* system, age of consent, and various other things. May I remind him that those cases stand on a different footing to the case which he puts forward now? Those were cases where there was no question at all of any intercommunal complications arising; those were cases confined to particular communities and particular sects; and those were cases that had behind them the very great forces of the cause of humanity. The case that the Hon'ble Mr. Basu has put before the Council is a case that has great intercommunal complications involved in it; it is a case behind which hardly anything can be urged on the ground of humanity; and, therefore, it seems to me that that is a distinction which should be kept in mind in order to understand him. The Hon'ble Mr. Basu's illustration of the other cases can be of no avail to him. Descending from these instances in his argument, the Hon'ble Mr. Basu began to put before the Council considerations as to whether or not already in India between communities that contract inter marriages the principle of aloofness has been broken, or is it not a fact that Hindus have married Muhammadans, Muhammadans have married Hindus and Christians, and so forth; and in drawing the attention of the Council to those considerations, he went a long way to show that after all those social barriers and dividing walls have been broken down, but did not show that there is any strong reason for the support that he seeks in favour of his Bill. I submit, Sir, that there is a very great deal in this particular Bill which demands very careful consideration and which ultimately I urge requires our rejection of that Bill. What has happened in India in various instances from the times of the Moguls—the inter-marriage between two castes—all that will not be of

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any assistance as long as there is any conviction in our minds that India, in spite of those few instances here and there, in the main is divided by water-tight compartments of race, nationality and community. Mr. Basu has not been able to show to the Council that those barriers have ever been removed. My Hon'ble friend has not been able to show to the Council that these barriers have ever been effectively broken down. The Hon'ble Member in support of his contention has made not only a reference to the very historic and romantic marriage of Akbar with Jodhbai, but also to the Muhammadan Emperors who married Rajput princesses. I am speaking purely in the capacity of an Indian and not as a Muhammadan. I take very great pride in recalling these unions to the Council to show the possibility of the unification of this country, but, alas, if history has got to be looked into, if research can help us, and if I were to quote that very case of the Muhammadan Emperors and the authority of the very eminent Jurist that the Hon'ble Member quoted in this Council, namely, Sir Rowland Wilson, I fear that my Hon'ble friend Mr. Basu will find himself reduced to this very painful consideration to which I am, and it is this, that in these instances it was found necessary before the imperiousness of the Muhammadan law for these ladies to make a formal profession of Islam before the marriage took place. If any authority is needed on that subject I have got the reference. If Hon'ble Members wish to have the authority I have it here before me; I could quote it and place it before them. That is a research to which Sir Rowland Wilson gives his own acceptance of the fact, that in these instances where these marriages took place, the marriages had to conform to the Muhammadan law by the profession of faith to which I have made reference before the Council.

“Such is the state of Indian society even to-day which shows that deep-rooted convictions die very hard. It is not easy to shut our eyes to the fact that India is divided into communities—communities that after all have in common with other communities no more than some civic rights, touching only the very fringe of social life. Each community in India is absolutely separated from other communities in matters of true social and domestic concerns. As a social system Hinduism has a great deal to command our admiration. Hinduism is hidbound. If the country, after 1,000 years under alien rule, did not submit to an invasion of Hinduism by structural innovations, I think it is incumbent on this Council to be careful and cautious when it proposes to adopt a measure involving radical change of conditions.

“Now, looking at the Bill itself, I am confronted with one or two difficulties which to my mind will appeal to all lawyers. I find that the Bill, as has been pointed out by the Hon'ble Maharajahdiraja of Burdwan, is really a very much bolder measure than was ever contemplated even by my eminent predecessor, Sir Henry Maine. When Sir Henry Maine put forward his Bill he took very great care to exclude the Christians from the operation of that Bill. In form his Bill was different from the form which the Hon'ble Member has given to his. But in substance, except in so far as Christians go, the Bill as originally put forward by Sir Henry Maine was exactly the same as has been put forward by my friend. Sir Henry Maine knew his difficulties and he had a very good reason for keeping the Christians out of it. My friend thinks that after a lapse of about 50 years it would be possible to group them all together, putting aside the exception that Sir Henry Maine adopted in respect of the Christians. But if I may be allowed to point out purely from the lawyer's point of view, there is a great defect in the Hon'ble Member's Bill, and that defect is that if his Bill is passed into law, we should have on the Statute-book of India two enactments, I submit, in conflict. If you look to section 4 of the Christian Marriage Act, you will find that that section tells us this: ‘every marriage between persons, one or both of whom is or are a Christian or Christians, shall be solemnised in accordance with the provisions of the next following section, and any such marriage solemnised otherwise than in accordance with such provisions shall be void. Our difficulty is this, that if you pass this Bill you will have on the one hand the Christian Marriage Act telling you that between a Christian and another either a Christian or non-Christian marriage has to be solemnised in the

manner provided for in that Act; and if you look to that Act you will find that the procedure there is wholly different from the procedure that is to be followed under this Bill of my learned friend. The result is that the Bill of the Hon'ble Mr. Basu, on the one side, and the Christian Marriage Act, on the other, will remain in disagreement, and, therefore, so far as the point of view of my own Department is concerned, I find that it is highly repugnant that we should permit such a conflict as this to exist between two enactments. But, Sir, this is not the only defect that is to be observed in this connection. What I find is this, that the Bill rides rough-shod on all laws and customs that govern the various communities in India, and to take only as an example I will put forward the two main communities, the most important communities in India, namely, the Muhammadans and the Hindus. It is not by instances of marriage between a Hindu and a Muhammadan that this question can be decided, but it is a matter of law. It is a matter of finding out as to what the law on this point of these communities is. Whatever may have been the law in its origin, certain principles have been accepted and these principles have been embodied in our case law. Therefore, it is not possible, I submit, for a moment to ignore these various principles of law as they have been formulated and expounded in the decision of our Law Courts. My Hon'ble friend opposite is much carried away by an enthusiasm, for which I have great respect and I make no concealment that I am in great sympathy with him, but my difficulty is this: how is it possible that these principles can be permitted to be brushed aside in favour of what is after all a mere enthusiasm? I may with confidence say that the enthusiasm which governs the attitude of my Hon'ble friend certainly is not one which affects the rest of India.

"Now let us first of all take the question of the Muhammadan law on this point. I do not propose to detain the Council at any great length, but I would like to make a reference to what the law on this point is. The Hon'ble Mr. Shafi has alluded to the fact that the Muhammadan law of marriage is deduced not from the sayings or doings of any particular jurist but as a matter of fact it emanates from Koranic dicta. Well, that is absolutely true. However much strong the case may be of a Hindu marrying a Muhammadan in Hyderabad or in any other part of the world, this and others will not for a moment discount from the clear and emphatic expression that has been given by Muhammadan jurists in regard to the direction which this law has received from the revealed verses of the Koran. The Muhammadan view is that the principal source of the Muhammadan law is their sacred book—the Koran. There can be no valid marriage according to Muhammadan law with a woman who is not a Muhammadan or a Kitabia—a Jewess or a Christian believing in Scriptures, the sacredness of which is acknowledged by Muhammadans. A Muhammadan woman as such cannot contract a valid marriage with one who does not profess that religion. When I put forward this principle before the Council I claim that this is not a mere principle that has been dealt with by jurists, but this is a living principle which has been accepted by our Law Courts, and the Hon'ble Member, than whom there is no better authority on that point, knows that this has been the guiding principle in the decision of our cases in the various High Courts of India and of the Privy Council. Therefore, when I venture to put forward this principle I say that it is a very grave question indeed, if such a principle as this can be brushed aside by such considerations as the Hon'ble Member has placed before the Council.

"I think it my duty to quote the very verse of the Koran, so that there may be no doubts left as to what the principle really is. I find in sura 2, verse 220, of the Koran it is laid down:—

'Marry not women who are idolators until they believe; verily a maid-servant who believeth is better than an idolator though she pleases you more. And give not women who believe in marriage to idolators until they believe; for verily a servant who is a true believer is better than an idolator though he pleases you more.'

"I think the language of the Koran is so emphatic and clear and the meaning that has been put upon that passage by jurists and the Law Courts is

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so obvious that there is hardly a lawyer in the country that will dispute the significance of it. Therefore it seems to me that to bring in a legislative enactment which does not only touch the social aspect of the conditions of life in India but goes a very long way indeed to create far-reaching changes in a law that is based upon religious obligations and religious ordinances, is indeed a very grave matter. Therefore, I find that I am unable, indeed, from the point of view of the Muhammadan law—much as I may sympathise with the Hon'ble Member—to give my support to the Bill.

“Furthermore, there is more to urge in opposition to the Bill in the case of the Hindus than in the case of Muhammadans. I find that the law of marriage among the Hindus is far more based on religious obligations, rites and ceremonies than it is amongst the Muhammadans. Amongst the Hindus it is a sacrament—not only a sacrament of an ordinary character, but it is of such a deep character that even death does not obliterate it, and there are various authorities to show that even after death the sanctity of the nuptial bond, and the sacredness of the knot, remains. Now as to the manner in which the Hindu law will be affected, I find that the law of marriage of the Hindus will be in various particulars absolutely up-rooted. I do not want at all to use any expression that may be hurtful. Inter-marriage amongst Hindus between persons not belonging to the same primary caste is void. Instances have been quoted that intermarriage amongst the lower castes and intermarriage between sub-castes have been held to be valid; but here we are not dealing with sub-castes; but we are dealing with an omnibus Bill that affects the whole of India. It spares nobody—Christians, Jews, Parsis, Muhammadans, Hindus, Buddhists, Jains, etc. Well, so far as the Hindus are concerned, the four primary castes are of course of the greatest importance, and if this Bill makes marriage possible amongst them all I can say is that the Bill at one stroke of the pen will quite upset the decisions of the various High Courts and of the Privy Council.

“Further, I find that another principle has been invaded. No Hindu marriage is valid without a substantial performance of the requisite religious ceremonies. It may, for instance, be urged that an advanced Indian may think—what good is there in these ceremonies; what does it matter if a certain fire is not lit; what does it matter if oblation of ghee is not poured on the fire; what good is there in making an appeal to an imaginary being like Agni? That is all very well for the advanced Indian to say. My question to him is—what is the idea of those who are not advanced as you are; what is the idea of those who represent the bulk of the country; what is the idea in your own family for instance of those who are your elders and what is the idea of those people who have a fervent faith in their religion. With regard to these ceremonies, one more word is to be said. These ceremonies are not governed by any purely social observance; they have their birth in the sanction, direction and command of the Shastras. Therefore it seems to me that so far as the law of marriage of the Hindus is concerned, the Bill is wholly opposed to Hindu sentiments and Hindu religion.

“Furthermore, we find that the question of divorce is involved in the consideration of this Bill. This is a matter of deep concern to Hindus. Divorce is altogether foreign to Hindu law. Various decisions support my contention that divorce is not permissible amongst the Hindus, even in instances where there is a case of outcasting or faithlessness. No such grounds under the Hindu law are allowed to be put forward in favour of divorce because as a matter of fact the Hindu law had never contemplated a thing like divorce. Therefore, it seems to me that in regard to this Bill there is such an amount of opposition from all the various points of view and especially from the point of view of the lawyer, that I find it almost incredible that my Hon'ble friend, who is himself a lawyer of very great repute, ever really believed that he would be able to carry this Bill through this Council. What I really think his object as a reformer is that he has put forward the Bill as the cutting of the first sod. He knows very well that he has a very long journey before him and that it will be a long time before India has advanced so far as to obliterate all these castes and communal distinctions and the unification

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of the country has been effected on nationalistic lines. I do not know whether he is a nationalist or not. I personally think that if my friend is, he does honour to that community and to the members of that creed. But he has certainly rendered a very great service to those Indians who have the aspiration that this vast country will be united one day in its religious, social and moral sentiments, because behind these sentiments I expect there will be a very great deal of good that will come to this land, and as such I admire the courage with which he has come forward and put this Bill before the Council. If I know anything of the ability of my Hon'ble friend and his extraordinary courage in these matters, I may tell the Council that even if the Bill is rejected to-day, that won't be the last of it. I am perfectly certain that my Hon'ble friend will come to the charge again when he has been able to get greater co-operation and popularity than he has so far received to-day. It seems to me that my friend need not despair; every day that passes brings him nearer, however slowly it may be, to the goal. In these circumstances, I find that it is absolutely impossible that I can give my support, much as I may sympathise with the object that my friend has in view, to the motion which the Hon'ble Member has put forward before the Council."

The Hon'ble Mr. Jinnah: "Sir, a matter of this importance which is contained in this Bill is so difficult that I can quite understand there being two opposite views in the country. Sir, the position of the Government, as far as I understand, is this: that if there is any measure which is necessary on the grounds of humanity or on the ground that there is a clear majority in favour of a particular measure in the country, the Government will pass that measure. That standard, as far as I can see, is a standard which would appeal to any one as just and reasonable. Now, the Hon'ble the Home Member said that there was not a clear majority in favour of this Bill. I do not think that that can be disputed. There is certainly not a clear majority in favour of this measure. Then the Hon'ble the Home Member said that on the second principle that he laid down, namely, on the ground of humanity, no case was made out. Now, Sir, I submit to the Council, that I have heard all the speeches of the various Hon'ble Members, including the Law Member and the Hon'ble Home Member who have opposed this measure. Nobody has denied this proposition that equity, in the strict sense of the word, is in favour of the measure. Can you deny that there is a certain class of educated and enlightened people who rightly think that the gravest injustice is done to them so long as liberty of conscience is withheld from them. Can that be denied? I say, Sir, that it cannot be denied. Then, Sir, if the equities are in favour of this measure, the next question is—should the Government not accept this measure. Of course, the position of a representative in this Council, be he a Hindu or a Muhammadan, is awkward because the orthodox opinion is against it; but that, I submit, is no reason for a representative who owes a duty to his people to refrain from expressing his own convictions ^{freely}. It does not necessarily follow that because the majority are against it, they are right. If a representative in this Council is convinced in his mind that this is a measure which is good for his country and his people, he ought to support it. Well, now, Sir, let us consider the merits of this Bill. I will deal with the Hon'ble the Law Member first, if I may, as to his points. The Hon'ble the Law Member said that so far as Musalmen are concerned, you have a clear authority in the Koran that a Muhammadan cannot marry any one except 'Khetabia.' Well, I will assume that proposition to be correct. May I ask the Hon'ble Member—is this the first time in the history of the legislation of this country that this Council has been called upon to override the Musalman law or modify it to suit the times? This Council has overridden and modified the Musalman law in many respects. For instance, the Musalman law of contract is not recognised. The Musalman Criminal Law, which was administered after the advent of British rule, has been abrogated absolutely; the Law of Evidence, known to the Moslem law, does not exist any more in this country, and what is more, there is a very recent enactment

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known as Lex Loci Act, XXI of 1850, or otherwise known as Caste Disabilities Removal Act, to which I may draw the attention of Council, and that is this, that although there is as clear an injunction in the Koran about the forfeiture of inheritance by a Muhammadan in case of apostasy, as the Hon'ble Law Member pointed out in the case of marriage, still it is abrogated by this Act. A Muhammadan now can change his religion, and yet he does not forfeit his right of inheritance, and the law laid down in the Muhammadan texts is to that effect absolutely abrogated, and the same argument applies to the Hindus so far as this Statute is concerned. Well then, Sir, are these not precedents (I do not wish to dispute the Muhammadan law that the Hon'ble Member has laid down; I assume that it is correct), are these not precedents which stare us in the face? Of course, provided there is a good and a strong case made out, I say these are the precedents, which we ought to follow to keep abreast of times and modern requirements for which there is ample authority in the Muhammadan law and jurisprudence itself. Then the Hon'ble Law Member said that it will conflict with the Christian Marriage Act, and he pointed out that that created a sort of an *impasse* and the Hon'ble Mover had forgotten to take note of the Christian Marriage Act. I have not read that Act very recently, Sir, but I should have thought that that is not an insurmountable difficulty. That would be a question which could properly be dealt with by the Select Committee. From what I remember—for I have not read this Act recently and I can only speak off-hand when Act III of 1872 was brought before the Council, the Christians were expressly excluded, and it was exclusively intended for one particular class, *viz.*, the Brahmos. It seems that soon after that the Christian community had to be dealt with, because there was similar difficulty with regard to the Christians; and when they came to deal with the Christians by Act XV of the same year, namely, the Christian Marriage Act, XV of 1872, they had to deal with this community, and in dealing with this community they had to lay down the law for that particular community only. But surely, Sir,—assume, now, that there may be a conflict and that there is this difficulty—it is a matter entirely of detail, and not of principle, and it is a question which can be dealt with by the Select Committee quite easily so as to avoid any conflict of any kind whatever between the two Statutes; *viz.*, the Christian Marriage Act, XV of 1872, and the one now before the Council. Therefore, I submit, that this difficulty is not a great difficulty, but a very small and minor one.

“No doubt, Sir, as far as I see, the Hindu law or the Muhammadan law, whichever you take (I speak with great diffidence so far as the Hindu law is concerned, and with diffidence so far as the Muhammadan law is concerned because I am not a scholar in San-krit or Arabic and I can only go by translations), does create a difficulty in the way of a Hindu marrying a non-Hindu or a Muhammadan marrying anyone who is not ‘Khetabia’; but is that difficulty not to be remedied by means of legislation? Is there a case made out or not for the legislature to interfere in this matter? As it has been already pointed out, this is an entirely optional character of legislation and it is not at all compulsory; it does not say that every Muhammadan shall marry a non-Muhammadan or that every Hindu shall marry a non-Hindu. Therefore, if there is a fairly large class of enlightened, educated, advanced Indians, be they Hindus, Muhammadans or Parsis, and if they wish to adopt a system of marriage which is more in accord with modern civilisation and ideas of modern times, more in accord with the modern sentiment, why should that class be denied justice unless it is going to do a serious harm to the Hindus or Muslims in one way or the other? It was said by the Hon'ble Law Member and others that it would do this harm to the Hindu and Muhammadan society, namely, that it would introduce into their society a revolution. Why? Because of the rules of succession and inheritance; because of the divorce laws. Now, as to the rules of succession and inheritance, I think that lawyers in this Council know—and I think I am speaking correctly—that so far as the father or the mother (we will take it now for example that the father is a Muhammadan and the mother a Hindu, or *vice versa*) is concerned, if the father dies leaving property, I think it will be conceded that

this property will go to his children according to Muhammadans law, his personal law, because he is a Muhammadan. I think it will be conceded that according to Muhammadan law it will go to his heirs: because he dies as a Muhammadan and whoever his heirs are will succeed to his property. There can be no dispute on that point. Similarly, in the case of a Hindu, because he marries a non-Hindu, his personal law does not cease to operate, it cannot be given up by him, therefore his heirs would succeed to him according to his law. Then as to the succession and inheritance to the property. Of the issue of the marriage the children are presumed to follow the religion and law of the father, but they declare to the contrary on their attaining the proper age. But the difficulty which may arise is with regard to the children, who declare against the faith and law of the father, as to what is to happen to their property; and for that difficulty, I submit, we have already got a remedy, so far as I understand, in the Indian Succession Act. I think it was Mr. Subba Rao who said that this Act, when it was passed (Act III of 1872), seemed to be defective in so far as it has never made any provision for the succession or inheritance of the property; but it has been advisedly left out I think. Probably they do not like to deal with this problem, and they left it out; and that problem, so far as I am able to understand, is governed by the Indian Succession Act, because the Indian Succession Act regulates the succession and inheritance of everyone except those who are saved under that Act; and the people who are saved under that Act, I think, are the Hindus, Muhammadans, and Buddhists.

Anyhow, the children if on their attaining proper age declare any faith which is neither Hindu, nor Muhammadans, nor Buddhists, their property will descend by way of succession or inheritance according to the Indian Succession Act. Therefore, I submit to the Council that there is really no difficulty about the succession. What looks like confusion in the law of succession apparently is nothing but conflict of laws which exists in all the civilized countries where you have several systems of jurisprudence existing side by side, and a person brought up under one comes to deal with the person who is brought up in another, like a Hindu and a Muhammadan. And this is already known to us in India in many other matters. Then with regard to divorce; it has already been pointed out by Mr. Basu, and I do not wish to repeat, that there are recognised judicial authorities, and that divorce is known to Hindu law according to custom, and there are a number of cases in India judicially decided to that effect.

"Therefore, the question of divorce is not at all unknown to the Hindu law. But, Sir, what is most important is this. Why should you deny a man who wants to follow a monogamous form of marriage? Why should you deny a man who wants to have the rules governing his matrimonial contract by the most civilized standard if he chooses to abide by those rules? Why should that be denied to him? I say, Sir, that the position is no doubt a difficult one, but Government have hitherto acted always on principles, and those principles are that if they found that there was any ground of equity in favour of a particular class, they would come to their rescue, and I see no reason whatever why, if the Government is convinced that equity is in favour of a certain class of people, they should not come to their help in the present case when it does no harm to others, nor does it prevent those who wish to follow their own laws or system of marriage now prevailing. But it is said that we shall incur the dis-favour of the masses of the people. There are some measures undertaken by Government of momentous character and enforced by Government without even any consultation of anybody. Here, at least, you have got a very strong minority—intellectual minority—supporting this measure, and surely under these circumstances, is it too much to ask this Council to allow this Bill to go to the Select Committee and let the Select Committee make a report on it?"

The Hon'ble Nawab Abdul Majid. "Sir, when the Hon'ble Mr. Basu introduced this Bill last year, I was one of those who had opposed the introduction of this Bill and had then declared that the Bill, so far as Muhammadans

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were concerned, was unnecessary and that it would be unacceptable to them. Now that the Bill has been circulated and the opinion of the people has been taken upon it, and I am glad to find that the majority and substantial majority of Muhammadans is against it. Even the speakers who have preceded me they have also admitted that the general consensus of opinion of Muhammadans is against any innovation in their marriage law. I was somewhat astonished to hear my friend opposite to me, the Hon'ble Mr. Jinnah, say that just as the people are advocating on the other side on grounds of religion, and on grounds of majority, why should not one have free conscience, why should not one be given free conscience; that is to say, on equitable principles a man should be allowed to do just as he likes. But, Sir, that is begging the whole question. Here the question is this: whether those who profess to be Muhammadans, those who profess the Muhammadan religion, whether they like that this Bill should be introduced and their law of marriage should be altered or not. If one who declares himself to be a Muhammadan and wishes to abjure the Muhammadan religion and follow a Civil Marriage Act, that is quite a different case. But when you admit that you are a Muhammadan, you must abide by the law of that religion. The whole question is this: whether the introduction of this Bill will cause an alteration of Muhammadan law or not. It will cause confusion, not only in Muhammadan law of marriage, but also in other branches of Muhammadan law as well—I mean for instance succession and divorce. For instance, one may contract a marriage under the Civil Marriage Act and there may be children of that marriage. Supposing the question arises after some time, what will be the status of those children; will they be considered legitimate, or whether they will be considered to be illegitimate; whether they will have the Muhammadan law applicable to them, or some other law will be applied to them. I submit that these are difficult questions, which questions should not be brushed away simply by the reforming spirit which I see has taken possession of many Members in this Council. What I say is this, that the Muhammadans have never wanted such a measure. So far as their marriage law is concerned, it is complete in itself. They have never complained that their marriage law fell short of their requirements. That being so, why is it that my friend the Hon'ble Mr. Basu should embrace within the pale of his reforming legislation a community which has never clamoured for such a privilege which he wishes to introduce by such a Bill? Then coming to other difficulties that may arise by the introduction of this Bill, I will point out one, and it is this, and it was pointed out by the Hon'ble the Law Member, that the real and the true Muhammadan law is this: that a Muhammadan can never marry an idolator. That is the Muhammadan law; it cannot be denied that it is the Koranic law. And if this is so, then when you legalize such marriages by the introduction of a Bill in this Council and by its enactment into law, certainly that will repeal the Muhammadan law itself. It may be said, and it was said, that this was not the first time that other branches of the Muhammadan law have been repealed. I agree that they have been repealed, but at the same time it is our duty as Muhammadans and as representatives of Muhammadans in this Council to safeguard the interests of our Muhammadan brethren and of our constituents. If we see, when any matter comes before us, that our religious rights, a branch of our religious law, is going to be changed by the introduction of such a measure, I say it is our duty to oppose it. Because things have happened in former times, that is no reason why we should not oppose it. We should oppose it and say that this is an intervention in a religious matter.

“ Sir, the case of Muhammadans has been very well put in the opinion given by one of the most enlightened rulers of a Muhammadan State in my own Province. I mean His Highness the Nawab of Rampur. That is a State in which the Muhammadan law is enforced. I say that His Highness's opinion is one which should carry great weight; in fact His Highness's opinion has also been relied upon by the Government of the United Provinces. His Highness says:

‘I do not think that such a law would be acceptable even to the orthodox Hindu opinion. But even admitting that it is needed for the Hindu community, the proposed measure goes

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far beyond its avowed object, by embracing in its scope the Muhammadans and other communities. The Muhammadans enjoy the greatest facilities as regards marriage amongst their own co-religionists and to a limited extent also with persons of certain other persuasions. As far as they are therefore concerned, no such law seems necessary. Nor can a Bill be passed without interfering with the Muhammadan law of marriage and succession as enjoined by their religion. Inasmuch as they Muhammadans regard their law of divine origin and that it is unchangeable by human agency, they will continue to regard civil marriages as immoral, placing the issues of such marriages in awkward position.

"I think that whatever is expressed here is quite true and quite correct. Sir, I say therefore that looking to the fact that the majority of opinion is against this Bill, and also looking to the serious consequences which might ensue if this Bill is passed into law, I submit that I am opposed to its being referred to a Select Committee."

The Hon'ble Mr. Mudholkar: "Sir, I find it difficult to understand the position that Government have taken up in regard to this Bill. There was a time when the Government of India associated itself with individual liberty and freedom of conscience; and whenever there was any custom or usage which interfered with people's acting according to their conscientious scruples, unless there was anything in their procedure which violated fundamental humane laws or the laws of justice or the law of the land by which those persons were governed, the Government of India not only expressed their sympathy with them but did their best to help them out of their difficulties. On this occasion, however, when a case based on the existence of hardship in numerous cases is placed before the Government, instead of allowing it to be considered on the merits, and any faults or any deficiencies in it to be corrected, we find that the Government puts itself in opposition to it. This opposition seems to be based on two reasons. One reason which evidently seems to weigh with the Government is the cry that in this matter what the persons who are advocating this Bill ask is a thing which is so contrary to Hindu religion and to Hindu law that the Government would be acting very unwisely in lending their support to it. I am led to think that this was the view taken by the Government from what the Hon'ble the Law Member said in his remarks just now. I understood the Hon'ble gentleman to say that the Bill will uproot the Hindu law in regard to marriage. If I have understood him rightly (and I am open to correction and would be very glad if I be shown to be mistaken in my understanding of the gentleman), then I would point out this thing, that instead of the Bill being in any way against the Hindu law what it seeks to do is to bring about a fuller recognition of that law, a fuller, and proper enforcement of that law, and not at all any violation of it.

"In the eloquent speech of my friend the Hon'ble the Maharaja Bahadur of Burdwan, there prevailed the underlying belief that the Bill was going to revolutionize the Hindu law and Hindu society. I would only point out one small thing in regard to this matter, and it is that every Sutra writer, every Smriti writer and every Nibandha writer, including the great writers of the Mitakshara and Dayabhaga, every one of them recognized not only marriages between different sub-castes but marriages between different castes. Manu himself lays down that a Brahmin may take a woman belonging to the Brahmin caste as his wife, or he may take one from the Kshatriya caste or one from the Vaishya caste or one from the Sudra caste. Similarly the Kshatriyas, the Vaishyas and the Sudras may marry women of the same caste themselves or from an inferior caste.

"This is called the Anulom form of marriage, in which a man belonging to a superior caste marries a woman belonging to the same or an inferior caste. There is another form of marriage called the Pratilom form of marriage, in which a woman belonging to a higher caste marries a man belonging to an inferior caste. These latter kind of marriages were discountenanced in the same way as misalliances among Western peoples. But such marriages were never considered invalid or illegal. There is, so far as my knowledge goes, only in one Purana, the authority of which is apocryphal, is it said that marriages out of caste are forbidden in the Kali Yuga. The Hon'ble the Law Member knows how many Puranas there are, and what a large number of

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[Mr. Mudholkar.]

Smritis and Nibandhas we have got; and yet in this long array of legal authorities and jurists there is only one writer who has pronounced against such marriages. We have to remember that there exist two great schools of Hindu law, the Mitakshara and the Dayabhaga, and both these works belong to the post-Puranic period. And it is very curious that neither the Mitakshara nor the Dayabhaga contain any prohibition against marriages between persons of different castes. That is a thing in regard to which there can be absolutely no doubt. So far as scriptural authority is concerned, it is distinctly and entirely on the side of those who are for this rule. It is only a custom which has grown up, which we are justified in calling a latter-day custom, similar to these other customs which have sprung up in opposition to the scriptural law.

"Sir, as the British Government consider it their duty to interpose only when they perpetuate an act of injustice, in this case is the sympathy and support of Government asked by the people who are for this reform on that very ground. The Widow Remarriage Act was one which sought to remove an injustice which latter-day customs introduced into Hindu society. The old Sastric authorities and all the old jurists sanctioned the remarriage of women. In later times, however, widow remarriage fell into disrepute, and it was considered improper. Authorities far more numerous than those who have pronounced against marriages among different castes came into existence in regard to the remarriage of widows. But on grounds of justice the British Government interposed and recognized and legalized the remarriage of widows. Now there exist the very same grounds in regard to this matter. I would ask the Council to see how many cases of hardship there really exist. Not only cannot persons belonging to the different castes intermarry, but persons belonging to the same caste but who inhabit different localities may not marry. Not only that; the Saraswats even in the same Province cannot always intermarry. I shall give an instance in regard to the Maratha Brahmins which will give a point to what I have been saying. There are three main divisions of the Brahmins among the Marathas, and these three may not intermarry. Latterly an injunction was issued by one of our spiritual heads recognizing these marriages. Still we find some orthodox people, stalwart and strong in their own views, saying that the Acharya cannot override the fact which exists at present. Not only is therefore intermarriage difficult among those three sub-divisions of the same caste, but there are still greater difficulties. There are sub-divisions of these sub-divisions based upon the particular Veda which they hold in special reverence, the Rig Veda or the Yajur Veda or the Atharva Veda. Now if all these divisions existed only as mere speculative distinctions, there would not have been much to complain of. But a great practical difficulty arises when we have a usage springing up which forbids marriages among sub-divisions of divisions of sub-castes. Many persons considered, and rightly so, that these restrictions had no justification whatever. In scriptures, they say, such marriages are recognised, and they proceeded to contract them. But what happened long after the marriages were contracted? In some cases after the persons who contracted them were dead and gone, relations ten or twelve degrees removed came and instituted suits which were carried up to the High Court and at times to the Privy Council, causing no end of anxiety and trouble. There have been conflicting decisions in regard to this matter. At one time the Courts said that they could not recognize the marriage of persons belonging to different sub-castes. Latterly the trend of authorities has been in the direction of recognizing the validity of marriages of persons belonging to different sub-castes but of the same main caste. But can we count upon the present view being maintained, where even the Privy Council have changed their minds, not only in regard to Hindu or Muhammadan law but in matters relating to the law of evidence. I do not wish to take the Council into technical discussions, but this is a thing which every lawyer friend of mine will corroborate. These are matters in regard to which different rulings have often been given. Now, can people count upon the continuance of immunity? Even supposing such immunity exists, should there be a loophole allowed by Government in regard to these matters?"

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[Mr. Madhokar.]

"I was very glad to note what the Hon'ble the Home Member has said, namely, that the Government is in sympathy with the general principle that if these civil marriages were supplementary to marriages carried out according to the religion of the parties, the Government would not disapprove of that course. Now what I have to point out is, that in a large number of these cases the marriages had been performed not by the civil form but by the religious rites laid down by the Hindu Shastras. I know of certain marriages between persons belonging to different castes inhabiting different Provinces. The full ceremonies laid down by the Hindu Shastras were performed. But the carrying out of the ritual and the observance of the rules about ceremony will afford no protection to those persons if the question is ever raised as to whether a marriage of persons of different castes is legal or not. If the Privy Council confines itself to what exists at the present day, and to the custom which has sprung up in later times, they will say all these marriages are invalid, though the scripture says differently. Now what I ask Government to consider is this. We are told that Government ought not to interfere in social and religious matters. That is a principle which should be always kept in view, but along with it also is a different principle, namely, of the free scope which should be afforded to conscientious scruples so long as they do not involve any violation of the moral law or the dictates of true religion. Now here in this matter, what is that which we ask? Do we say that the general rules, about rituals and ceremonies to be observed, are in any way to be affected? That persons, whether they agreed or not, should be subjected to the changes which are just now suggested? All that is asked is that an enabling measure may be passed which would put it in the power of persons, who following the dictates of their conscience and acting according to the scriptural law, contract marriages in the form laid down in the Shastras, but who, seeing the difficulties imposed by custom, wish to supplement all those ceremonies and rites with the sanction and the further security given by the civil law. Now is there anything unreasonable or improper in the demand? Does it not deserve the sympathetic consideration of Government? This is an aspect which I wish had been seen more fully.

"Then it is said that the Bill is opposed by an overwhelming majority of the Hindus. Now, Sir, we have seen what kind of opposition there was in 1891 to the Age of Consent Bill. In places where large meetings were not accustomed to be held, we find thousands and thousands meeting and denouncing the measure that the Government had introduced. At Amroli, in a meeting attended by no less than 5,000 people, there were only twenty of us who stood there entering our protest against their resolutions. There were only twenty persons from that town who supported the Age of Consent Bill. In Poona such venerable persons as Sir Ramkrishna Gopal Bhandarkar and others of his position were practically mobbed for giving their adhesion to the Bill. As to Calcutta our friend the Hon'ble Mr. Basu has given his experience. And in spite of this vehement opposition, the Government carried the measure through. I shall give another example of a cognate matter which had happened only a few years previous to this. There was a slight alteration proposed to be made in the Civil Procedure Code in regard to the abolition of imprisonment in execution of decrees for restitution of conjugal rights. There was on that occasion also a storm of indignation, a storm in which both Hindus and Muhammadans participated. Well, if the Government paid no heed to those things, why should Government not interfere in the present case? It was guided then by higher considerations and by more enlightened views of the position of women.

"Then in regard to purely social matters also, have not Government interfered on other occasions? There is first of all the law under which persons who have changed their religion, were declared not liable to forfeit their rights of inheritance. Now, Sir, if there was any interference with the law of inheritance and with the religious observances and religious laws of any community, Hindu or Muhammadan, it was that law. But again higher considerations of individual liberty and conscience weighed more with Government and that measure was passed into an Act. Then we have the Hindu Widow Remarriage Act, and

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later on the Act III of 1872 to grant relief to Brahmans? Now, is the case of the Brahmans and persons belonging to the Hindu religion who scrupulously follow the essentials of that religion but hold views regarding marriages between different castes other than those held by the persons who have been opposing the present Bill less entitled to consideration? They are men several of whom lead a purely orthodox life and who perform their marriages according to strict orthodox rites. They are the persons who are entitled to the same kind of sympathy, support and relief that was granted in the days of yore to the Brahma Samaj. There it was an infinitesimal minority, you may even call it a microscopic minority or whatever you like. It was a minority, anyhow; yet the claims of that minority were so strong that they appealed to the conscience of the Government and Government consented and gave its support. This case is precisely like that, and on these grounds I think that the portion of the Bill which relates to Hindus should certainly receive the favourable consideration of Government.

“Now in regard to my Muhammadan countrymen; if the bulk of the Muhammadan community does not want the Bill, and there is no important Muhammadan minority which demands it articulately in the same manner as the demand is made on behalf of the Hindus, they might be left out of the present Bill. But this is a matter that can, I think, be dealt with in the Select Committee.

“Similarly in regard to the Parsis. The Parsis do not want it; the demand has not come from a sufficiently large number of Parsis; so the Parsis might also be eliminated.

“But omitting these communities there is left a residuum of no little importance, an important minority which deserves to be taken into consideration. Pray, Sir, what is an overwhelming majority in a case of this description? If we were to go even by mere numbers and by the right of intelligence of those consulted, even then the weight of opinion is, I think, in favour of the Bill. So far as the Hindus are concerned, the bulk of educated opinion is distinctly in favour. I was sorry to hear my learned friend the Hon'ble Law Member suspect that nationalistic sentiments had possibly some weight with the mover of the Bill. Well I cannot pretend to go into the depths of the mind of my friend Mr. Basu, though he is an intimate friend of mine. I can say this much that never in the discussions that we had, were political considerations ever adverted to for a moment. But what is certainly more conclusive than this. A man like Dr. Sir Ramakrishna Gopal Bhandarkar, a man who has been always honoured not only by the Government of his own Province, but also by the Government of India, who has kept clear of politics and was devoted to literary and philosophical pursuits, a man who has devoted his whole heart to social and religious reforms, has strongly supported this measure. Certainly a man like him would not at all have joined in this matter if there were political considerations behind it. Then, we have Sir Narayan Ganesh Chandavarkar, a stalwart and a strong supporter of social reform, a man who scrupulously follows the rule which enjoins upon Government servants, especially the judiciary, not to take part in politics; and that man has given his emphatic opinion in favour of the Bill. Another thing which ought to weigh with Government is this. If there is any Province in India where orthodox beliefs, genuine orthodox beliefs, have greater weight and strength than anywhere else, it is Madras. It is there that we find that the observance of rigid caste rules is carried on to a far greater extent than elsewhere, and there we find that the majority of the educated people are distinctly in favour of Mr. Basu's Bill. That again is a matter which should have shown that these things could never have been so repugnant to Hindu opinions and to the Hindu scriptures as has been supposed by some of my friends who opposed it.

“I do not wish to take the time of the Council any further, but there is one thing which I would wish to emphasize. Our plea is a plea for toleration; our plea is a plea for individual liberty; our plea is a plea for allowing people to act according to their conscience and not to compel them to smother it. What is it that these friends, I mean my Hindu friends, what is it that they

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would impose upon their own countrymen. There are persons who strongly believe that these things can be carried out under the laws; at the same time they wish to protect themselves. The option accorded to these people is to leave a great danger hanging over their children or to perjure themselves if they go to the Registrar, take a false oath and say we are not Hindus, though in the heart of their hearts and in actual practice they might be far more Hindus than those who speak in the name of Hinduism. Now this is a thing which the Government I hope will weigh when the question comes before them again as it is bound to come. My Hon'ble friend the Law Member said that the first sod has now been broken, yes, but not for political reasons, but on grounds of social and religious elevation; for securing to womanhood that dignity and that position which it is entitled to.

"I shall make only a reference to the section about divorce. My friends who say that the Bill seeks to introduce a novel principle have ignored that divorce as a matter of fact exists amongst the majority of Hindus. It is only amongst the higher classes, the twice-born classes (Dwijas) that divorce has become obsolete. The old Ghataspote has gone out of fashion among them. But in regard to the masses, the Sudras, the law of divorce exists there and it has been recognised by our Courts and is in force everywhere. Now these are persons who would be entitled to enforce the law of divorce irrespective of Mr. Basu's Bill. Then again, the section relating to divorce is not one essential to this Bill. It would be very easy to make alterations in the Select Committee, and there is no reason why on that ground alone this Bill should be thrown out. As I said, we have the demands of justice behind us, and we hope that these demands will receive the consideration of Government in spite of what has fallen from the Hon'ble the Home Member and the Law Member."

The Hon'ble Khan Zulfikar Ali Khan: "Sir, while fully appreciating the admirable effort of the Hon'ble Mr. Bhupendranath Basu towards infusion of different castes and creeds in India by means of the Bill which has come up before this Council to-day for discussion, I cannot refrain from saying that his laudable desire is to my mind rather too ambitious for any reasonable hope of its being generally approved by the followers of numerous creeds in this country for whose avowed benefit my Hon'ble colleague has designed the Marriage Bill.

"The Hon'ble Member will perhaps agree with me that the time has not yet come for such arbitrary re-adjustments of social arrangements which have the sanction of centuries of unchallenged practice. Sir, in matters social and religious, reform should always be initiated by the awakened conscience of the people themselves, unless of course the evil desired to be remedied is of such a nature as to endanger public morality and safety. In the Statement of Objects and Reasons, or even in his speech, the Hon'ble Mover of the Bill has failed to demonstrate the existence of any such imperative necessity. Besides this the attitude of Government in such matters has generally been one of strict neutrality, and any departure from this wise policy will, I venture to say, be keenly resented by the people.

"If national well-being is likely to be promoted by legislation, let the voice of the people in harmony and perfect accord be raised in its support, and Government will, I believe, respect the united will of the people; but in the present case there is a vast majority opposed to the proposed measure. The Hon'ble Mr. Basu might have excluded the Muhammadans from the scope of his Bill for the simple reason that the 'nikha' ceremony among them is based on the injunctions of the Koran, which is believed by them to have divine origin, and any law which tends directly or indirectly to supersede, abrogate or add to Muhammadan law of marriage as prescribed in their scriptures will be repugnant to their feelings and should not be countenanced.

"Sir, although the bill is wholly optional as regards the contracting parties, the legislation of the marriages which it contemplates is sure to involve infringement of the recognised law of inheritance, and guardianship of the Muhammadan-Hindus and thus affect the rights of relations who are orthodox followers of these creeds. In view of these difficulties, which, in my opinion, are inseparable from the operations of this Bill, I suggest that the proposed measure be dropped."

[26TH FEBRUARY 1912.] [Mr. Shamsul Huda.]

The Hon'ble Mr. Shamsul Huda : " At this late hour, I do not desire to detain the Council for more than a very few minutes. I represent in this Council the orthodox Muhammadans of Eastern Bengal. I do not take the conception of my duty, as a representative, from what has been said by my Hon'ble friend Mr. Jinnah. I really think that if at any time I found that I was not able to represent the views of those through whose indulgence I am here, it will be my duty to give them an opportunity of sending another representative here. Sir, as a representative of the Muhammadans of Eastern Bengal, I feel it my duty to strongly oppose this measure. I appreciate the commendable motive with which my learned friend has introduced this Bill; but at the same time, Sir, I must say that even if I looked upon it as a real measure of reform, I would not support a measure, even a measure of reform, which is to be forced upon an unwilling people. The question should always be ' If it is the reform, are the people prepared for it ? ' Some of my friends say, well the opinions of the masses do not matter when the more intellectual people say, ' take our opinion, we shall think for them.' This is a view which may be pushed a little too far. The necessity for a Legislative Council may not be proved and the official members may say ' we are much more intelligent than the Indians ; their opinions do not matter much ; we will think and legislate for their benefit.' That is a position which I am not prepared to accept. Now, Sir, from the speeches made by some of my friends, to an outsider it would appear that what this Bill was intended to remove was something as iniquitous in principle as the burning of the sati or infanticide. Does the existing law really impose any disability upon any individual ? It allows a Hindu or an Indian, if he chooses to marry against the tenets of his religion, to do so with perfect freedom. There is nothing that compels him to do anything. My friend wants to satisfy the very peculiar sentiments of certain people and the sentiment has appealed so strongly to my Hon'ble friend Mr. Jinnah that he would even consent to an interference with Muhammadan law in order to satisfy this sentiment. I am not prepared with a light heart to say that the Muhammadan or the Hindu law should be interfered with in this manner. And after all, what is this sentiment ? The sentiment is this : a man is not prepared to obey the dictum of his religion, whether the Hindu religion or Muhammadan religion, in one of the most serious concerns of his life and yet insists on calling himself a Hindu or Muhammadan. I do not think, Sir, that this is a very commendable sentiment. There is a great deal of hypocrisy in this world, especially in matters of religion, and I do not feel that we are called upon to give it a legislative sanction. Some of my friends have adverted to the fact that the introduction of the measure would bring in a very great conflict in the laws of the country. I would like to say one or two words in addition to what has been said on the subject. Suppose a Muhammadan and a Hindu intermarry under the Act, supposing that the Bill is passed into an Act ; what happens is that the Muhammadan continues to be a Muhammadan and the Hindu continues to be a Hindu ; and then the question arises, what is the offspring of such a marriage—a Muhammadan or a Hindu ? My learned friend, the Hon'ble Mr. Jinnah, says he is neither a Muhammadan nor a Hindu and he is governed by the Succession Act. If the effect of this measure on mixed marriages in the next generation is to take out the offspring from the category of both the Muhammadan and the Hindu religion, I am afraid the Hon'ble Mr. Basu will not thank his own Bill for bringing in such a result. I submit that various difficulties will arise if such a child is not to be called a Muhammadan or a Hindu. My learned friend says that so far as the law of Succession goes, the Succession Act will apply if he is neither a Muhammadan nor a Hindu. I do not think that he can be a third something. As to the law of Succession and the law of marriage, you will not know where you are and I say that you will be treading on very dangerous ground if you supported this measure. My friend, the Hon'ble Mr. Jinnah, has said that in matters of contract the Muhammadan law has been abrogated, and if the Muhammadan law has been abrogated in one instance there is no reason why it should not be abrogated in other respects. If this is the frame of mind in which interference with the religion of Muhammadans is looked upon by the Hon'ble Member, I think that he does not represent the wishes of his constituency."

The Hon'ble Pandit Madan Mohan Malaviya: "Mr. Vice-President, the pronouncement that has been made by the Hon'ble the Home Member regarding the attitude of the Government towards the Bill before us makes it unnecessary to discuss it at the length at which it would have been necessary to do so in the absence of such a pronouncement. But the arguments which have been urged in support of the Bill make it desirable that the reasons which underlie the views of large sections of the community who are opposed to the Bill should find a little more expression here in the Council. And this is the only consideration which leads me to take up the time of the Council at this late hour.

"When the Hon'ble Member asked for leave to introduce the Bill last year, I opposed the motion, because I felt sure that the Bill would not meet with the approval of the great bulk of the people of the country. Events have justified that view. The opinions that have come in from those that were consulted show that the great bulk of the people of all the different sections of the community are entirely opposed to it. These opinions and the opinions of the Local Governments leave no doubt whatever about the matter. But the Hon'ble Mr. Basu says that he has got on his side the support of a large number of persons, and he has given us both the number and the names of some of those supporters. It becomes necessary therefore to examine his position a little. Now, Sir, an analysis of the names of those who have supported the Bill will show that they are mostly gentlemen who are known to hold opinions on questions of religion and social reform widely different from the opinions of the general body of the people of the community to which they belong. Their opinions do not in such matters carry any weight with the community, and it is nothing but right that they should not carry more weight with the Government in dealing with such questions affecting the community.

"In discussing the Bill I wish in the first place to invite the attention of the Council to the nature of the amendment which has been proposed. It is an amendment to Act III of 1872, which was an Act to provide a form of marriage for persons professing the Brahmo faith. The nature and history of that Act has been told, and I need not repeat it at length. That history shows that the first Bill which was drafted by Sir Henry Maine was of a rather comprehensive character, and was therefore universally condemned as such. When the Hon'ble Mr. Stephen took up the measure in 1872, he kept the principle clearly before his mind that Hindu marriages are, even by Anglo-Indian law, to be regulated by Hindu law, and that 'in relation to the subject of marriage Hindu law and Hindu religion are two names for one thing.' Mr. Stephen recognised that the Bill that had been drafted by Sir Henry Maine 'did constitute an interference with Hindu law,' that 'it would change very deeply the native law of marriage,' that 'in short, it would introduce the European conception of marriage in the Hindu and Muhammadan communities, and give to it, by law, a place amongst Hindu and Muhammadan institutions.' He very rightly pointed out that a law might be changed by addition as well as by other forms of alteration. It was for these reasons that the Bill was modified and special provisions were introduced in it to confine its operation to the Brahmo community. The Bill was passed in that modified form with the consent of the leaders of the Brahmo community. In that form the Act stands in the Statute-book to-day. The Brahmo community did not complain of any hardship under the Act as it has existed for these many years. But the Hon'ble Member has said that it is with a view to relieve the Brahmos of the hardship which, he says, they feel, that he has introduced this Bill. He says that they feel it a hardship that when marrying under the Act they should be required to make a declaration which has been described as a negation of faith in all the religious systems of India. But is that a correct statement? Can any one who professes the Brahmo faith feel any conscientious scruple or regard it as a serious ground of objection that he should have to make such a declaration. The declaration is that 'I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jain religion.' Now confining myself to the Hindu religion, can there be any

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doubt that the words distinctly and plainly refer to the Hindu religion as it is understood by the bulk of the people of this country and by Courts of Law administering justice to Hindus in matters of marriage, inheritance, etc. Clearly Hindu religion there only means the religion followed and adopted by the great bulk of the Hindus. Can any of my Brahma brethren say that they follow that religion? Is not the faith that they follow different from the Hindu religion as it is generally understood? And how does the Hindu community, divided as it is in matters of faith, stand at present? The last census returns show that among Hindus there were more than 21 crores and 78 lakhs of persons who were classed as following the Brahmanic faith, 2,18,514 who followed the Arya faith and 5,504 persons who followed the Brahma faith. Now, Sir, in the case of these 5,504 persons it is clear that they have got a certain faith which is by this time well-defined. It is clear that the Brahma faith cannot by any stretch of language be regarded the same as the Hindu religion which is spoken of in the declaration. Any man of common sense would accept the view that the Hindu religion referred to there is different from the Brahma faith and that it is the religion which is referred to as such in the administration of justice to Hindus in Courts of Law and in legislation undertaken by Government. I submit therefore that there is really no hardship in the case of Brahmans who are required to make the declaration in question. But assuming that there is, a simple mode of remedy will be to introduce a Bill to lay down that, when marrying under the Act, Brahmans will not be required to make such a sweeping declaration, but that it will be sufficient for them to say that they are Brahmans or that they follow the Brahma faith. In that way a simple modification of the Act could be made to meet any real hardship that may be felt.

“ But, Sir, the object of the Hon'ble Mover of the Bill is much larger, and he has not concealed that it is so. In his opening speech, when asking for leave to introduce the Bill, he said that a simple law of marriage like what he proposed was needed to help those who desire to introduce inter-marriages between different sub-sections of the same caste and between members of the same caste inhabiting different Provinces of India; also marriages between members of different castes and marriages between Hindus and non-Hindus. While seeking therefore to mitigate the real or fancied hardship of our Brahma friends, the Hon'ble Member has sought to introduce radical changes in the Hindu law of marriage, which would very seriously affect Hindu society. Now with regard to the first two of these, namely, marriages between sub-sections of the same caste and between members of the same caste residing in different Provinces, it has been urged that doubts have been raised as to the validity of such marriages. If it is so, it is extremely regrettable. Such doubts can find no sanction or support anywhere in the Hindu Shastras. What is prohibited is marriage between persons of different castes. Members of sub-sections of every independent caste are free to marry among themselves. The issue of such marriages will be perfectly legitimate and fully entitled to inherit. If custom does not approve such marriages, that is, if the particular society to which an individual belongs does not look with favour upon such marriages, that may affect the social intercourse of those who enter into such marriages. It cannot affect the legal status either of the parties to the marriage or of their children. It is purely a social question which can be solved by agitation within the society. So also is the question of marriages between members of the same caste residing in different Provinces. They are perfectly valid according to law, that is, there is absolutely no religious prohibition against them.

“ As regards marriages between members of different castes, they stand on a quite different footing. My Hon'ble friend has quoted ancient authority to show that at one time marriages between different castes were permitted. He need not have taken all the trouble he has taken to establish this point. Anyone who is at all acquainted with the Hindu Shastras can say that in the early days marriages did take place between Hindus of different castes. There were two kinds of marriages: marriages between a man of a higher caste with a woman or women of a lower caste. There were also marriage connections

between a man of a lower caste and a woman of a higher caste. The latter were called *pratiloma* connections. They were always condemned, and their issue were condemned to a lower social and legal status. The first kind of marriages were called *anuloma* marriages. Under these a Brahmin was permitted to marry a Brahmin, a Kshatriya, a Vaishya and a Sudra wife. A Kshatriya was permitted to marry a Kshatriya, a Vaishya and a Sudra wife. A Vaishya was permitted to marry a Vaishya and a Sudra wife. A Sudra was permitted to marry only a Sudra wife. These unequal marriages involved other inequalities. Rules had to be laid down regarding the positions that a man's wives of different castes were to occupy among themselves. The Brahman wife was to take precedence over wives of other castes. She was to officiate in all important ceremonies, and whenever there was a competition between wives of different castes, the wife of the humble origin had to stand in a humble position. There were also different rules regarding inheritance. It was laid down that sons born to a person of the higher caste out of a marriage with a woman of a lower caste, would receive a smaller share of the inheritance than sons born of a woman of the same caste. Thus the permission about marriages between different castes, that is, between a man of a higher caste with a woman of a lower caste, was accompanied by these differentiating rules regarding precedence among wives of different castes and regarding inheritance among the issues of such marriages. Naturally marriages of this kind never became common, and those who were responsible for the welfare of the Hindu community—the custodians of Hindu law—recognised that where they did take place they led to disagreeable distinctions and heart-burning, and they rightly thought that these ought to be put an end to. It was for this reason that not less than three thousand years ago it was laid down by our lawgivers that marriages between persons of different castes ought not to take place in this present age. That, Sir, is the history of the rules of marriages between persons of different castes in early days among Hindus. I should like to know if my Hon'ble friend is prepared to revive such marriages with all the inequalities incidental to them, as they are laid down in the Shastras. The custodians of Hindu religion, as I have said, thought it wise to prohibit such relationships a long time ago. Their decision has been accepted by the Hindu community. They have condemned marriages between different castes throughout these three thousand years and more. Such marriages are not considered respectable by any section of the community. Every caste considers it respectable to marry within its own independent and well-defined body. There have practically been no departures from these principles. They are accepted not only by Brahmins, but by all castes throughout the whole of India. They are as strongly adhered to by the humbler as by the higher castes. My humble brother, the sweeper, will as much object to marry his daughter to a member of the brotherhood of the Hon'ble Mover and even to a Brahmin, as a person belonging to any of the higher castes. He considers this rule of marrying within one's own caste as an honourable and respectable rule, and follows it with as much tenacity as any member of the higher caste. But my friend now comes forward with a measure proposing to introduce radical changes in the Hindu law of marriage against the established rule of three thousand years and more, and supports it by argument that at an earlier period in the history of the Hindus some such marriages were permitted. It should not have been necessary to say that it is not what was permitted three thousand or four thousand years ago in a certain community that determines what would be acceptable to it today. It is the laws, the rules, the customs, the sentiments which prevail in the Hindu community at large today that ought to be taken into consideration in determining what legislation would and what would not be acceptable to them. The measure put forward by the Hon'ble Member runs counter to those laws and beliefs. It is not surprising therefore that, so far as marriages between different castes are concerned, the Bill of my Hon'ble friend has met with opposition from the great bulk of the community. And I am very thankful to find that the Government have rightly decided not to support it.

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"I may say in passing that it is regrettable that in his zeal to find some support for his proposal from Hindu history, the Hon'ble Member misquoted that history (as for instance, in saying that the mother of Veda-Vyat was a fisherwoman, for she was really the daughter of a Kshatriya brought up by a fisherwoman) and made an unjust and vehement attack upon the Brahmins. I can only characterise the attack as impertinent. I will not take up the time of the Council by replying to it. It is not even relevant to our present discussion. I hope that in his calm and sober moments my Hon'ble friend will regret having made many of the remarks which he has made today regarding the purity of castes and the relations of the different castes among themselves.

"But there is a still wider aspect of the measure which my friend has advocated, namely, marriages between persons professing different creeds, about which I must say a few words. The idea of such marriages is most repugnant to the Hindu mind. It has always been so. There is no doubt in one sense only one caste of man in this world and that is co-extensive with mankind. But the state has not yet arrived, and I do not think that it is ever likely to be arrived when the bulk of mankind will be willing to give up, in relation to social and religious questions, all distinctions of country, caste and creed which are at present observed in one form or another by nearly all the important communities into which, owing to one cause or another, mankind is divided. Whatever may be said in theory, we find that in practice Christians object to marry non-Christians, Muhammadans to marry non-Muhammadans, Parsis to marry non-Parsis, and so on. Hindus therefore do not stand alone in their objection to marry non-Hindus. And this sentiment is not of recent growth in any of the communities. My friend has referred to certain cases of marriages between persons of different creeds. But they are conspicuous exceptions and, by their very rarity and conspicuously exceptional character, they lend strong support to the general rule. He has referred to the one or two well-known instances in which marriages took place between certain Hindu princesses and Akbar and his son. The Hon'ble the Law Member has explained what probably the true nature of these marriages was, that they were not marriages between a Muhammadan and a Hindu but between a Muhammadan and a Hindu converted to Muhammadanism. But whatever the truth about it may be, there can be no doubt that these marriages never commended themselves to the Hindus. The Hindus showed in an unmistakable manner that they regarded them with disapproval. This is abundantly clear from the fact that though certain Hindu Chiefs did, under the overpowering pressure of the unfavourable circumstances in which they found themselves, most reluctantly agree to give their daughters away in marriage to the Mughal Emperor or his son, they steadily refused to accept a Muhammadan as a wife or a daughter-in-law as it would have affected the purity of blood in the community. A great deal of history entwines round this question. The depth of Hindu feeling against marriages with non-Hindus is attested by the fact that the Maharajas of Udaipur are held in the highest respect not only among Rajputs, but throughout the whole Hindu world, because they refused to enter into and even recognise marriage alliances with the Mughal Emperors. This feeling is as strong to-day as it was ever before. Only the other day in the course of a conversation an enlightened Rajput Chief told me that the opposition to Mr. Basu's Bill was as strong among Rajput Princes, both orthodox and un-orthodox, as it was in any other section of the community, for they valued the purity of their blood and were proud of it. But as I have said before, this feeling is not confined to the Rajputs only. It is shared by all sections of the community. And I submit, Sir, that this being so, it is wrong on the part of my Hon'ble friend, the author of the Bill, and his supporters to ask the Government to ignore this feeling and to press the proposed piece of legislation which is clearly calculated to disintegrate Hindu society by introducing into it a law of marriage, repugnant to the traditions and beliefs of that society.

"I regret I have not the time to deal with the many other objections to which the Bill is open--its disturbing effects upon the laws of succession

and adoption, its destructive influence upon the joint family system, etc. My friend has tried to show that the objections which have been urged on these and other grounds are all equally untenable. He does not feel any difficulty in sweeping aside any of the objections which have been raised. It has been pointed out that the measure will create confusion in the matter of succession. That does not matter, says he. Confusion there already is and his measure would not make it worse confounded. It has been urged that the Bill will create dissensions among members of a joint family. Let them end it by a partition, is my friend's answer. That is indeed a novel way of supporting a new piece of legislation. Nor has he found greater difficulty in disposing of the objection that the Bill will introduce divorce into Hindu society. It should be welcome, says the Hon'ble Member, for is there not much to be said in favour of it? Now, Sir, there may be much to be said in favour of it. Divorce may be reasonable in a particular set of circumstances. But when you are to judge an institution, you ought in fairness to judge it as a whole. And the Hindu law of marriage ought to be judged as a whole. Divorce may have its advantages, but the absence of it also, I submit, has certain advantages. And I venture to think that Hindu society has lived happily during these many thousand years, under its own marriage laws, not less happily on the whole than communities among whom divorce is permitted. At present no doubt we have fallen low in the scale of nations in certain respects, but we have not fallen low altogether. And for a long time this same code of law, which has been so light-heartedly condemned by a Hindu brother of mine to-day, helped the Hindu community to attain to and maintain a position of prosperity and power which was second to none in the world. Our laws ought not to be judged piecemeal. Judge them as a whole and then consider whether they are not fully calculated to promote the well-being of the society which follows them. There may be something in Hindu law which is less acceptable than a particular item of Muhammadan law. There may be a third provision of Christian law which may be more acceptable than either, and *vice versa*. But it is not given to each individual follower of a faith to introduce eclecticism in the matter of law any more than in the matter of religion; at any rate the bulk of the community have not yet made up their mind that it should be so. If I believe in a particular religion or I choose to live as a follower of that religion, I have to accept that religion in all its essentials, and the marriage laws are among the most essential among the Hindus. A member professing to belong to a large community is not justified in asking the Government to amend or modify a particular provision of the law of the community against the wishes of the community. Today my friend asks that the marriage law should be altered; tomorrow another friend may come up and say that the law of adoption should be ended; a third day another Hindu Member might urge that the Muhammadan law of inheritance should be substituted for the Hindu in the case of daughters, for he sees no reason why his daughter should not inherit in the same way as his son. For every one of these proposals a certain amount of support will always be forthcoming, and yet it would undoubtedly be unfair to the community as a whole to entertain any such proposal against its collective wishes. It would be a very dangerous procedure also. And it is a matter of much satisfaction to me to find that the Government has decided to oppose the Bill.

"I do not think that I need detain the Council any longer. But before concluding I should like to remind the Council of certain observations which occur in the speech of the Hon'ble Mr. Stephen made in introducing the Bill which subsequently became Act III of 1872. In the course of that speech, after explaining the nature of Indian personal law, the Hon'ble Member said :

'It is, I think, self-evident that it (the personal law) ought not to be changed except in extreme cases. Laws relating to such subjects as marriage have their root in the whole history of a nation; nor is it easy to imagine a more tyrannical or a more presumptuous abuse of superior force than that which would be involved in any attempt to bring the views and practices of one nation upon such subjects into harmony with those of other nations, whose institutions and characters have been cast in a different mould.'

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“Proceeding further the Hon'ble Member said :—

“I should wish to act justly by the Hindus and the Hindu law, because, as I said, I believe justice to be the rock on which our rule should be founded; and I have already shown in what manner this great principle bears on the present subject. But quite apart from the question of justice, it would not please me at all to strike an indirect blow at the Hindu law or religion. I cannot regard it or any of the other creeds under which countless multitudes of men have lived and died, as simply evil. I should be grieved at the thought that English civilisation was a blind agent of destruction like the cannon-ball shattering that it may reach and what it reaches.”

“That, Sir, was the view of the Government of India when the Act which it is now proposed to amend was passed. And I am thankful to find that the same view is held by the Government to-day. The Government have earned the gratitude of large communities of the people by showing that deference to public opinion which they have shown in deciding to oppose the measure. I hope that it will not revive for a long time to come.”

The Hon'ble Mr. Mazharul Haque: “Sir, the fate of this Bill, a very necessary and reasonable Bill, is sealed. The Hon'ble the Home Member has refused to accept it on behalf of the Government, and, much to my surprise, the Hon'ble the Law Member has also given his weighty support to that refusal. We have had the semi-official view of the Hon'ble Maulvi Shamsul Huda, who has also opposed it. Sir, when this Bill was introduced by my Hon'ble friend last February, I had the honour of giving my support to it. I had expressed the view that my sympathies were entirely with the principle of the Bill. Since then an enormous amount of literature has accumulated round this measure. I have gone through them very carefully, although it has been rather a tedious task, and I must say that I have to make a similar confession. I remain unconvinced by the arguments of the opponents of this measure. I still believe that this Bill is a very necessary Bill, and ought to be passed. But before I proceed to discuss it in some of its details, I should like to guard myself from one misapprehension, and that is that the views that I am giving expression to are my personal views. It would not be honest of me to fasten them upon my community. I know that for the present it does not share my views and will have to be educated.

“Sir, to my mind, speaking here as a Musalman (I will not trespass on the Hindu law which I leave to others), the only question is, whether the principle which is involved in this Bill is permitted by the Musalman law. If it is in conformity with the Musalman law, then there should be no difficulty on the part of the Government to accept it. But if it is against the Musalman law, I would be the last person to advocate its acceptance. Let us see what is the Musalman law on the point. I was rather surprised to find such an eminent lawyer as the Hon'ble the Law Member expounding the proposition of law that the marriage of a Muslim with a Hindu is illegal under the Musalman law. I, with the greatest respect to my Hon'ble friend, demur to that proposition. Sir, my own opinion may not carry much weight in this Council, but I have the opinion of one of the most eminent Musalman jurists of India, whom I believe my Hon'ble friend Mr. Muhammad Shafi will also admit to be as such—I mean the Right Hon'ble Mr. Amir Ali. India has not produced up to this time among the Muhammadans—barring perhaps the late Mr. Justice Mahmood—a more eminent jurist than the Right Hon'ble gentleman. Last February when I was discussing the subject I was giving my own interpretation of the law, and I was not then aware that the Right Hon'ble Mr. Amir Ali had in almost identical words expressed his opinion in his book on Muhammadan law. Mind you, this opinion was given by the Right Hon'ble gentleman not as a politician, but as a lawyer, as an eminent Judge of the Calcutta High Court. I hope this Council will bear with me in reading a passage from his book. It is a short one. ‘But it is a mistake to suppose that under the Musalman law a Musalman may marry a woman belonging to the revealed faiths *only*, by which are meant Islam, Christianity and Judaism.’ Here the word ‘only’ has been italicised by Mr. Justice Amir Ali himself. ‘Marriages are allowed between Muslims and the Ahl-ul-Hawa (free thinkers), the Sahaens, Zorostrians’

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(Mr. Dadabhoj will please note that) 'as well as the Jews and the Christians a Moslem may, therefore, lawfully intermarry with a woman belonging to the Brahmo sect. Nor does there seem to be any reason why a marriage with a Hindu woman whose idolatry is merely nominal and who really believes in God should be unlawful. The Mogul Emperors of India frequently intermarried with Rajpoot (Hindu) ladies, and the issue of such unions were regarded as legitimate and often succeeded to the Imperial throne. What the Muhammadan law requires is that any such union should not lead to the introduction of idolatry in a Muhammadan household.' Sir, if I err, I err in the company of the Right Hon'ble Mr. Amir Alli, and I refuse to follow others, however eminent they may be. This is the real Musalman law, and I stand by it. When I express the view that this Bill should be passed, I express the correct proposition of Muhammadan law.

"Sir, this point being disposed of, let me advert to certain objections which have been raised against the measure. A friend of mine made the remark—and this objection, I believe, is taken in one of the printed papers as well—that if really the Musalman law allows a Moslem to marry a Hindu, then there is no need for this legislation. I reply that people who raise this objection forget that there are two parties to the transaction of marriage. The Musalman law may allow, as it does allow, such intermarriages; but the question is whether the Hindu law allows them. The Hon'ble Pandit Mohan Malaviya, the representative of the orthodox Hindus, says that the Hindu law does not allow them. The Hon'ble Mr. Basu, the exponent of the opposite school of thought, would not perhaps have brought this Bill if he had been sure that the Hindu law allowed them. Such being the case, I say that it is necessary that this legislation should proceed.

"Sir, something has been said in this Council as regards the status of the children born of this intermarriage. Further, that how and by what laws of inheritance these children will be governed. I entirely agree with my Hon'ble friend Mr. Jinnah that to me there seems to be no difficulty whatever on these points. The children will follow the law of their father if they inherit from him; they will follow the law of the mother if they inherit from her. Muslims are allowed to marry Christians, they are allowed to marry Jews, and in those cases there has been no difficulty about inheritance. Why should there be any when they marry Hindus? As regards the religion of the children, they should be allowed to follow whatever religion they like. In these enlightened days why should we force our religion upon any one? If they like to be Hindus, let them be Hindus; if Muhammadans, let them be Muhammadans. That is their business, not ours. There should be perfect freedom of conscience in the choice of religion. I was rather surprised to hear from my friend the Hon'ble the Law Member that in the opinion of Sir Roland Wilson, when the Moghal emperors took Hindu ladies as their wives, these ladies had to abjure their religion, and make a nominal profession of Moslem faith. I deny the correctness of this proposition, although it is based upon the high authority of Sir Roland Wilson. If Sir Roland had read the great histories written in the Persian language, he would have known that these Hindu ladies had apartments reserved to them for their devotion and worship according to Hindu faith. That is a fact which history proves to the very hilt.

"Sir, there is another consideration which induces me to give my hearty support to this measure. I have been thinking for a long time that there is some reason for the general stagnation of the followers of Islam throughout the world. We find that country after country is passing away from the hands of the Muslims—countries which were under their sway for centuries and centuries. We find that Musalmans all over the world are standing still and not progressing at all. Surely there must be some reason for this deplorable state of Muslim society, and I have come to the conclusion that it is because my community has ceased to produce liberal thinkers, that we have reached the zenith of our degradation. We have no Abu Hanifa or Ghazali in our midst who could fearlessly interpret the text in a liberal spirit. We see that the old rules of law, which have no bearing upon modern life and

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modern civilization, are still being adhered to. Sir, a time must come when Muhammadans in India will have to revise their views about marriage laws. In my opinion their present views are not in accordance with Muhammadan law, and they must revise them in conformity with the true spirit of their religion. There is a silent, but sure and steady, revolution going on in the precincts of the zenana. Indian ladies, Muhammadans and Hindus alike, are being educated, and the day is coming when they will demand their rights—rights given to them by God and nature but denied to them by man in India. That day is soon coming, and before it actually comes, let them, whoever they may be, Musalmans or Hindus, revise their laws of marriage. Young men will meet young girls, nature will have its own way, and no law will be able to prevent them from contracting marriages according to the dictates of nature. Otherwise, they will go to England and other countries where they can easily get themselves married. That time is coming. Let us take it by the forelock and see whether we cannot mitigate its possible hardships by the revision of our present laws.

“I believe I have expressed my views as honestly as I could, but I must again guard myself by saying that these are my personal views. At the same time I do not agree with my Hon'ble friend Mr. Shamsul Huda that because on one particular point I happen to disagree with my community, I must resign my seat in this Council. I have an individuality of my own, which I must preserve at all costs. Perhaps my people will be annoyed with me to-morrow; but what of that? I do not like to give opportunity to people with conservative views to come into this Council and give expression to them. We must advance with the times. Are we to go back to the olden times of thirteen hundred years, fourteen hundred years, or even two thousand or three thousand years ago? We are in the twentieth century, and we have to regulate our lives by the standard of modern civilisation; otherwise we better not talk about elective and representative Governments. We are unfit for these institutions if we stick to old, rusty ideas. Sir, with these words, I strongly support my Hon'ble friend.”

The Hon'ble Mr. Gokhale: “Sir, after the speeches of the Hon'ble the Home Member and the Hon'ble the Law Member, it is clear that there is no chance of this motion being adopted by the Council. In spite of this, however, I would like to say a word, by way of appeal, to the Government to ask them to reconsider their position even at this last moment and let the Bill proceed to the proposed Select Committee. It is quite true that a very large majority of our countrymen are strongly against this Bill. At the same time even the strongest opponent of the Bill cannot deny that there is a very influential and enlightened minority in support of the Bill. That being so, I think it is due to the supporters of this Bill, to their position in the country and to the interests of Indian progress which they represent, that the Government should allow the Bill to be examined by a Select Committee; because it is only a Select Committee that can properly examine a measure of this kind. Personally, Sir, I am strongly in favour of the Bill. It is quite true, as we have seen from opinions expressed both in this Council and outside, that the Bill represents ideas which are in advance of the views of the bulk of the Hindu and Muhammadan communities to-day; but I am quite sure that with the spread of higher education among Indian women, with late marriages coming more and more into vogue—and late marriages must lead to choice marriages, *i.e.*, to free choice by the marrying parties—with these things coming, with the dignity of individual freedom realised better and better, and last, but not least, with the steady fusion of different creeds and different races, which is bound to take place under the stress of our growing nationality, to which my Hon'ble friend Mr. Ali Imam referred—a reference which seems to have been misunderstood by my Hon'ble friend Mr. Mudholkar—I say, under all these influences, the day cannot be far distant when a measure like the one before us will find its way to the Statute-book. And, Sir, when that day comes, the labours of my Hon'ble friend will

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be duly recognised. For the present, however, we must admit that owing to the apprehensions of orthodox people that have been aroused, and the attitude which the Government have adopted in this matter, the passing of this Bill becomes practically an impossibility. But that does not mean that the opportunity which has now arisen to examine the question of amending the law of 1872 need be thrown away altogether. Sir, there is a strong feeling in some quarters that this opportunity may be utilised at least to give relief to certain sections of the Indian community—certain denominations—who have a real and reasonable grievance under the existing law, without wounding the susceptibilities of other sections. To mention only one suggestion out of several, if the Bill were so amended that, instead of omitting the present negative declaration of the Act of 1872, that declaration was retained with an *alternative* positive declaration added, saying that a person belonged to one of the Churches enumerated, that, I think, would meet the requirements of the Brahma community and I do not think that there would be any objection to this on the part of even the most orthodox people. Under such a provision, a person would be able to come under the Act either by declaring that he or she did not profess this, that, or a third faith, or by saying that he or she was a member of this or that Samaj or Church. I gather from what the Hon'ble Maharaja of Burdwan and the Hon'ble Mr. Malaviya said to-day that they would have no objection to such an amendment. If the Select Committee is disposed to examine the question in this spirit and find some such way out of the difficulty, I do not see why that should not be allowed by the Council. I do not see, Sir, why the whole of the Bill should be lost altogether—why we should not try to save as much of it as we can.

“ One more thing. My Hon'ble friend has proposed a Select Committee on which official Members are in a majority. The question will therefore remain under the control of the Government even in Select Committee. If my Hon'ble friend the mover of the Bill takes at any stage a line in the Committee which the Government are unable to approve, they can prevent a favourable report being made to the Council, and even at the last moment they can throw out the Bill in Council. I would therefore make a strong appeal to the Government to reconsider their decision and allow this Bill to go to the Select Committee. ”

The Council adjourned to Friday, the 27th February 1912.

W. H. VINCENT,

*Secretary to the Government of India,
Legislative Department.*

CALCUTTA :

The 8th March 1912.