

Friday, 18th July, 1930

# THE COUNCIL OF STATE DEBATES

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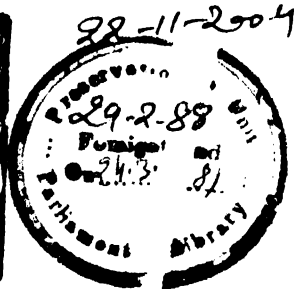
(9th July to 18th July, 1930)

## NINTH SESSION

OF THE

# SECOND COUNCIL OF STATE, 1930

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# COUNCIL OF STATE.

*Friday, 18th July, 1930.*

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

## QUESTIONS AND ANSWERS.

### ENHANCEMENT OF OUTSTATION ALLOWANCES FOR OFFICIALS OF THE RAILWAY MAIL SERVICE.

116. THE HONOURABLE DIWAN BAHADUR A. RAMASWAMI MUDALIAR :  
(a) Did the late Member-in-charge of the Postal Department, Sir B. N. Mitra, give the following reply regarding the enhancement of outstation allowances for Rail Mail Service officials at the time of the interview granted by him to a deputation of postal and Railway Mail Service employees in Madras City on 19th December, 1929, which was published on page 400 of the General Letter issued by the All-India Postal and Railway Mail Service and Union Circle :

“that any recommendation from the Director-General on the subject will receive his sympathetic consideration” ?

(b) Was any recommendation received by the Honourable Member from the Director-General, and, if so, what action has been taken in the matter ?

THE HONOURABLE MR. J. A. SHILLIDY : (a) Yes.

(b) The question was carefully examined by the Director-General who came to the conclusion that no increase of these allowances should be granted. In this opinion the late Honourable Member in charge of the Industries and Labour Department, Sir B. N. Mitra, concurred.

### RETRENCHMENT IN THE POSTS AND TELEGRAPHS DEPARTMENT.

117. THE HONOURABLE DIWAN BAHADUR A. RAMASWAMI MUDALIAR :  
(a) Will Government be pleased to state whether they have appointed any departmental officer to enquire into the possibility of effecting retrenchment in the Posts and Telegraphs Department, and, if so, what are the terms of reference, and who is the officer and when was he appointed ?

(b) Has he submitted his report and, if so, will it be placed on the table ?

(c) Have Government taken any action on the report and what is the nature of the action taken ?

(d) Are Government delaying the sanction of increase of establishment on account of retrenchment ?

(e) Have Government sanctioned a higher grade of pay to the Postmasters of Kumbakonam and Tanjore on account of the increased importance of those offices ? Have they postponed giving effect to the higher pay on account of retrenchment ? Do Government propose to give effect to it soon ? If not, why not ?

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THE HONOURABLE MR. J. A. SHILLIDY : (a) No such officer has been appointed.

(b) and (c). Do not arise.

(d) No.

(e) The reply to the first part is in the negative. The latter parts do not arise.

SELECTION OF CANDIDATES FOR APPOINTMENTS OF SUPERINTENDENTS OF POST OFFICES IN THE MADRAS CIRCLE.

118. THE HONOURABLE DIWAN BAHADUR A. RAMASWAMI MUDALIAR : (a) Will Government be pleased to state whether the Director-General has recently selected some candidates for Superintendent's appointments in the Madras Circle? If so, when and how many?

(b) What are the ages, present appointment and educational qualification of the candidates selected by the Director-General? Are the selected candidates related to any past or present official of the Department, and, if so, who are the past or present officials and how are they related?

THE HONOURABLE MR. J. A. SHILLIDY : (a) Yes, two candidates were selected in May last by the Director-General, for permission to appear at the Superintendent's examination.

(b) Mr. A. R. C. Nash, a Head Clerk at Bangalore, aged 30 years, who has passed the Cambridge Senior Examination, is the son of Mr. R. D. Nash, retired Deputy Postmaster-General; and Mr. G. R. Naidu, a clerk in the Postmaster-General's Office, aged 31 years, a B. A., is a cousin of Rao Sahib D. Naidu, Assistant Postmaster-General, and of Mr. B. Naidu, Assistant Postmaster, Madras General Post Office.

PAY OF LADY CLERKS IN THE POSTS AND TELEGRAPHS DEPARTMENT.

119. THE HONOURABLE DIWAN BAHADUR A. RAMASWAMI MUDALIAR : (a) Will Government be pleased to state whether the maximum pay of lady clerks in Madras City is lower than that of men clerks?

(b) Do lady clerks perform the same kind and quality of work as men clerks and are they eligible for as high appointments as men clerks?

(c) Do Government propose to sanction to lady clerks the same maximum as men clerks? If not, why not?

THE HONOURABLE MR. J. A. SHILLIDY : (a) and (b). Yes.

(c) The question of the pay of lady clerks in the Posts and Telegraphs Department is at present under the consideration of the Government of India and orders will be issued in due course.

STRENGTHENING OF THE ESTABLISHMENTS OF THE OFFICES OF SUPERINTENDENTS OF POST OFFICES IN THE MADRAS CIRCLE.

120. THE HONOURABLE DIWAN BAHADUR A. RAMASWAMI MUDALIAR : (a) Will Government be pleased to state whether a large number of Superintendents of Post Offices in the Madras Presidency have requested the Postmaster-General, Madras, to strengthen their establishments as the present establish-

ments are inadequate to cope with the work? Did the Conference of Postmasters-General held last year recommend strengthening the establishments of Superintendents' offices?

(b) Do Government propose to strengthen the establishments of Superintendents' offices? If not, why not?

**THE HONOURABLE MR. J. A. SHILLIDY :** (a) and (b). The reply to the concluding portion of part (a) of the question is in the negative.

As regards the actual strength of the establishments of the offices of Postal Superintendents in the Madras Circle, Government have no information. The strengthening of such establishments, should they in fact be inadequate in any office, is a matter entirely within the competence of the Postmaster-General, Madras, to whom a copy of the Honourable Member's question is being sent.

**NUMBER OF MUSLIM POSTMEN AND MENIALS IN THE BANKURA HEAD OFFICE.**

121. **THE HONOURABLE MR. MAHMOOD SUHRAWARDY :** Will Government be pleased to state :

(a) how many Muslim postmen and menials there are in the Bankura Head Office ;

(b) if the answer is nil, why Muslims are not appointed ;

(c) was any attempt made to secure Muslims there ?

**THE HONOURABLE MR. J. A. SHILLIDY :** Sir, with your permission, I should like to answer questions Nos. 121 to 123 together.

The information asked for is being collected and will be supplied to the Honourable Member in due course.

**NUMBER OF MUSLIM CLERKS IN THE DIVISIONAL SUPERINTENDENTS' OFFICES IN THE BENGAL AND ASSAM CIRCLE.**

122. **THE HONOURABLE MR. MAHMOOD SUHRAWARDY :** Will Government be pleased to state :

(a) how many Muslim clerks there are in the Divisional Superintendents' offices in the Bengal and Assam Circle ;

(b) was any trial given to the Muslim clerks, who wanted to go to the Divisional Superintendent's office in each division ?

**NUMBER OF MUSLIM HEAD CLERKS OF OFFICES OF SUPERINTENDENTS OF POST OFFICES IN THE BENGAL AND ASSAM CIRCLE.**

123. **THE HONOURABLE MR. MAHMOOD SUHRAWARDY :** Will Government be pleased to state how many Muslim Head Clerks to the Divisional Superintendents there are in the Bengal and Assam Circle ?

**APPOINTMENT OF A MUSLIM AS POSTMASTER-GENERAL OR ASSISTANT POSTMASTER-GENERAL IN THE BENGAL AND ASSAM CIRCLE.**

124. **THE HONOURABLE MR. MAHMOOD SUHRAWARDY :** Will Government be pleased to state whether a Muslim has been appointed as Postmaster-General or Assistant Postmaster-General in the Bengal and Assam Circle ? If not, why not ?

**THE HONOURABLE MR. J. A. SHILLIDY :** No. The reason is that postings of officers are not made and cannot be made on communal grounds but are governed by considerations of administrative requirements.

**NUMBER OF MUSLIMS EMPLOYED AS POSTMASTERS-GENERAL AND ASSISTANT POSTMASTERS-GENERAL IN INDIA.**

**125. THE HONOURABLE MR. MAHMOOD SUHRAWARDY :** How many Muslim Postmasters-General and Assistant Postmasters-General are there in India and where are they posted ?

**THE HONOURABLE MR. J. A. SHILLIDY :** One Muslim officer is officiating as Postmaster-General, Central Circle, his substantive post being that of Deputy Director-General, Postal Services. There are four permanent Muslim Assistant Postmasters-General, one in the Bihar and Orissa Circle, two in the Punjab and North-West Frontier Circle and one in the United Provinces Circle. Two other Muslim officers are at present officiating as Assistant Postmasters-General, one in the Punjab and North-West Frontier Circle and the other in the Central Circle.

I may add that there are also one permanent and one officiating Muslim Deputy Postmasters-General, the former in the Punjab and North-West Frontier Circle and the latter in the United Provinces Circle.

**NUMBER OF MUSLIMS EMPLOYED IN THE ZOOLOGICAL SURVEY OF INDIA.**

**126. THE HONOURABLE MR. MAHMOOD SUHRAWARDY :** Will Government be pleased to state :

- (a) the number of officers in the cadre of the Zoological Survey of India ;
- (b) how many, if any, are Muslims ;
- (c) whether any temporary appointment is held by a Muslim ;
- (d) if so, since when ;
- (e) when does the term of the temporary appointment terminate ?

**THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN :** (a) There are at present seven permanent officers in the cadre of the Zoological Survey of India.

- (b) None.
- (c) Yes.
- (d) Since 1925.
- (e) On 3rd September, 1930.

#### HINDU GAINS OF LEARNING BILL.

**THE HONOURABLE MR. P. C. DESIKA CHARI (Burma : General) :** Sir, I move that the Bill to remove doubt as to the rights of a member of a Hindu undivided family in property acquired by him by means of his learning, as passed by the Legislative Assembly, be taken into consideration.

The Bill was originally introduced into the Legislative Assembly during the Simla Session of 1929. During the Delhi Session of the current year it was

sent to a Select Committee consisting of six distinguished Members of the Legislative Assembly, including the Honourable the Law Member. The Bill emerged from the Select Committee with only formal amendments to clause 4. Mr. Kelkar was the only Member who wrote a minute of dissent and that too with regard only to a minor point. He approved of the principle of the Bill. So that the Bill was practically approved by the Select Committee as it stood, and it was passed by the Legislative Assembly without a division. The Bill has been before the country for about a year and no protest or representation against the passing of the Bill has been received. The Bill seems to reproduce the true rule of Hindu law relating to personal acquisitions or separate property of a member of a joint Hindu family acquired by means of learning according to the Smritis, the Manu Smritis, the Narada Smritis and other Smritis, with the exception of Katyayana. All these lay down that acquisitions made by any individual by learning are his own exclusive property. Later commentators however, relying upon the text of Katyayana, by a peculiar rule of interpretation which is not justified by the Smritis, created or rather imposed restrictions on the right of an individual member with respect to gains made by him by his learning. According to these commentators, the property acquired by an individual member of a joint Hindu family by means of learning was partible and divisible if the learning was imparted to him at the expense of the family. According to these commentators, acquisitions made by a person on account of his learning, whether due to general education or any special education, were regarded as family property and divisible among the members of the family. The rulings of the courts have fluctuated with reference to the rights of a member of a joint Hindu family in regard to property acquired by him by means of learning. At first, the courts were inclined to the view that all acquisitions made by an educated member was partible whether the education was of a special kind or only of an ordinary general nature. In all such cases the property was regarded as partible if the education was imparted at the expense of the family or if he was maintained out of family funds when acquiring education, even though of a general character. Later on, the courts took a more liberal view and held that property acquired by an individual as the result of general education was the exclusive property of the individual, while property acquired by special professional or extraordinary education was regarded as partible when the members of the family provided the education ; in other words, when the education was provided to the detriment of the family estate. Whatever may be said about the law applying to the Hindu joint family in ancient days it began to work hardship under the present conditions. As Their Lordships of the Privy Council point out in *Gokalchand vs. Hukamchand* in a case reported in 2 Lahore page 40, the old rule, which is applicable to a state of society which was probably simpler and certainly very different from present-day society, creates a good deal of incongruity and anomaly in the existing system of law. The present law is therefore hopelessly out-of-date and it is in the fitness of things that these anomalies and incongruities should be removed. Though there are instances of cases which were free from doubt, the difference between ordinary general education and special professional or extraordinary education was not workable practically and created great complications so that a good deal of litigation was the result, and very often it worked very great hardship as litigation generally started several years after the death of the individual who had acquired the property



[Mr. P. C. Desika Chari.]

Under the present law, an individual getting specially trained and receiving scientific or extraordinary professional education is not under an obligation to reimburse members of the family the amount of money spent on his education. He is entitled to demand a partition of family property just like other members as soon as he begins to earn his own living. Though the member was entitled to effect a partition of the family estate like the other members of the family, yet normally, having regard to family ties in the Hindu family and having regard to the delicacy of feelings which are generally entertained by educated members not to desire partition as soon as they begin to earn, the educated member continues a member of the family. He does not want to effect a partition; the other members of the family are not generally hostile to the earning member and they generally treat him with great respect and consideration for fear he may effect a partition, thereby depriving them of their right to share in the fruits of his subsequent earnings. This goes on, and the man acquires property and he does not know where he stands. He is not sure whether the acquisitions he makes after helping the other members of the family in various ways would be left to his own heirs or whether it will be regarded as family property. This uncertainty very often acts as a sort of check to the natural impulse to earn and save, and even when he has much savings the individual acquirer is very often tempted to have recourse to fraudulent subterfuges like *benami* transactions. He is induced to make unprofitable investments, he is induced to spend large sums of money on jewellery or to keep his earnings in the iron safe, keeping the capital idle. But whatever may be the secrecy with which he may keep his gains, very often it leaks out and there is a suspicion that he withholds a portion of the savings from the joint family and the result is distrust—there is distrust between the member and the other members of the family, and this hardly conduces to the peace, goodwill and harmony of the joint Hindu family. This is one aspect which has to be taken note of, because the Bill, if passed into law, would remove all these uncertainties and would make the member of the joint Hindu family who has had a special education or who makes a large earning to make profitable investments, feel confident that, whatever he may acquire by his own individual exertions will go to his heirs, his widow or daughter. This also will serve as a very great inducement to the individual member to remain in the joint family. Otherwise there is a strong tendency on the part of the individual making large acquisitions on account of his learning to go out of the family for fear that the other idle members would claim an equal share with him or with his male issue after his death, and the hardship of the rule would be obvious in the case of a person dying without a male issue. Take the case of a person dying without a male issue leaving a wife and daughter. There is the more difficult question of the nature of the education imparted to him, the means or the funds out of which he was educated, and there is generally an elaborate enquiry. This generally takes place several years after the man's death. And then we find all the other members of the family ranged on one side and this poor widow or daughter ranged on the other. There is an unequal contest. Added to it, there is the heavy onus of proof on the widow or the daughter who has got to prove that the property was actually the self-acquisition of the deceased member, and that the widow or daughter was entitled to it,

By that time, the evidence relating to the nature of the education and the funds out of which the person was educated is all gone, and very probably no accounts have been kept, and if any accounts were kept, they are all long lost, and the acquirer himself is not present to tell the court how he acquired the property. More often than not, the litigation results in the widow or daughter being deprived of the right of inheritance and they are left with only the bare right of residence and bare right to maintenance, and the daughter would have no other right except the right to be married at the expense of the family if she was unmarried. The bulk of the property goes to the idle members who are heartless enough to fight against an unfortunate widow and daughter of the deceased person who was the bread-winner and who accumulated all this property. If the Bill is passed into law, all the property of a member of a joint Hindu family which was acquired by him by means of his learning will go to his own heirs or to his widow or daughter and not to collateral relations who may be members of the family. As I pointed out, there is absolutely no objection to this Bill on the part of any section of the Hindu community. Honourable Members of this House are aware that Hindu society, at any rate that section of it which is opposed to all social reforms, has been particularly vigilant and active during the last year on account of the passing of the Sarda Act. They have been meeting very often in conferences, and if really there was any objection to this Bill, it would have been voiced in those conferences, and they would have taken time by the forelock to make proper representation to the proper authorities. The fact that there has been absolutely no objection to this Bill shows that it is universally acceptable to the Hindus.

There is no question of interference with religion or interference with orthodox principles. We only want to restore the law to what it stood according to the Manu Smritis and this will be welcomed by the orthodox community. Forty years ago, a similar measure was introduced and passed in the Madras Legislative Council by the late Sir V. Bashyam Aiyangar, one of the greatest jurists India ever produced. He was a type of orthodox gentleman belonging to a family of Aiyangars, a community noted for its orthodoxy in Southern India. If really there was any objection on account of orthodoxy or on account of interfering with the well-established Manu Dharma, he would certainly not have been a party to bringing in a measure of this kind and getting it passed. But the Government somehow thought that at that time sentiment was not sufficiently advanced for the acceptance of the Bill, and assent was accordingly withheld. Now, 40 years have elapsed and Hindu sentiment has advanced very rapidly during these 40 years, and it cannot be contended now that this Bill will be in advance of public opinion. The present measure is a very desirable measure. It seeks to prevent unnecessary litigation and to ensure to the earning member that he will be left in enjoyment of his property, uncontrolled and unfettered, and that his own wife and children would be in possession of it without molestation from the other members of the family. It is a very desirable measure, and I hope and trust that this Bill will meet with the support that it deserves.

Sir, I move.

**THE HONOURABLE THE PRESIDENT:** The question is :

“ That the Bill to remove doubt as to the rights of a member of a Hindu undivided family in property acquired by him by means of his learning, as passed by the Legislative Assembly, be taken into consideration.”

The Council will see that to that motion there is an amendment in the name of the Honourable Mr. G. S. Khaparde :

“ That discussion of the motion be adjourned to the next Session of this Council.”

The Rules and Standing Orders of the Council do not specifically provide for such an amendment in regard to a Bill and it has always been held, in this House at all events, that an amendment of this nature or any motion for the adjournment of a discussion can only be made with the permission of the Chair. The Chair is guided in deciding whether such a motion should be made or not to some extent by the intentions of the would-be mover, and in calling on the Honourable Mr. Khaparde I do not wish him to understand that thereby I am giving him my permission to move his amendment. I am asking him first of all to justify his reasons for moving for the adjournment of the discussion. I am giving him a hint, and that is, that if a motion for the adjournment of a discussion is merely the result of a genuine desire to give more time for the consideration of an important Bill, the Chair will ordinarily find no difficulty in giving its sanction. If, on the other hand, a motion for the adjournment of a discussion is merely the result of a desire that the Bill should expire, a result which could be achieved perhaps in some other way or at some other stage of the Bill, then ordinarily I think the Chair would not be prepared to give its permission.

**THE HONOURABLE MR. G. S. KHAPARDE** (Berar Representative) : Sir, in obedience to what has fallen from you, I shall first of all give my motives for moving this amendment. My motive is that this is a very serious change and it should be made only after a good deal of thought. The Bill is, really speaking, an invasion of the joint Hindu family. The system of the joint Hindu family is by this movement going to be destroyed in some part. That is a serious matter, and we would like to think it out. I have had no time to think it out, and as my friend has pointed out, the Associations have never made any representation. Probably the Associations never knew that a Bill of this kind was coming up. It was going from post to pillar and pillar to post, so that nobody knew what it was. It is a lawyer's Bill. It is not a Bill which could be easily understood by all and sundry. It is a technical thing. So, I believe it has not attracted that amount of attention which it deserves.

The second point is that far-reaching changes of this kind should be made after a great deal of thinking and caution. You remember that a small thing like marrying a deceased wife's sister took 60 years in England to be brought about, and then also it did not come about very easily. But in India a law of inheritance can be changed perhaps in one year, or in two months or even in one hour. I feel that we ought not to go in haste like this. We have been always advised, and advised by very good and wise people, that we should “hasten slowly”. Hasten slowly is a contradictory term, because if you hasten you cannot be slow, and if you are slow you cannot hasten. But it means have a change if you like, but have it gradually, carefully and after full and mature thought. Lord Bacon has got a saying on this point which

fortunately came to my notice only yesterday, and I have got it, that "the counsels to which time hath not been called, time will not ratify". If you do not call time to your assistance in thinking out matters, if you do things hastily, time will not ratify, meaning that those things will not survive. Let us in this instance call time to our counsels and let us have full time to think it out. I am not against all change, nor am I in any way particularly interested in getting this Bill destroyed or extinguished. I recognise that time must make changes, but I also recognise that the change must come in time and not before its time. The thing must be thought out, carefully considered, and be gradual, in the same way as we see in our own time how winter gradually changes into summer and how summer into the rainy season. There is an interval of time between two seasons and the change is very gradual. My object in bringing this motion is not at all to defeat it or to destroy it or to extinguish it or to kill it in some way. There is no sinister motive in my mind about its being delayed and eventually killed. My motive is that I shall get time and people of my ideas and persuasion will get time to think the whole matter over. We recognise that there should be a change. We are anxious that the change should be natural and gradual, so as not to make it objectionable. That is all my object, Sir. This being my object, I trust the Council will kindly give me permission to go on.

The next point is why I desire this time. I have given partly the reasons and partly I wish to reserve what I have to say till the matter goes further.

**THE HONOURABLE THE PRESIDENT:** The Honourable Member has not entirely answered my points. He has explained what his motive is not in this case, but he has not also explained to the Council how, if this amendment of his is carried, the Bill will remain alive in view of the impending dissolution.

**THE HONOURABLE MR. G. S. KHAPARDE:** About that, as to how the Bill will remain alive, I argue that there is no distinct prohibition in the case of a Bill of this kind being kept alive. I rely on rule 85 and my friends who do not agree with me are afraid that it will be killed under rule 86. Rule 85 reads like this :

"On the termination of a session, Bills which have been introduced shall be carried over to the pending list of business of the next session."

Bills remaining undisposed of at the end of a Session automatically and naturally get carried over to another Session, and my application is made under that. I say that this Bill requires a great deal of consideration, honest and careful consideration, as I have thought it over, and I am not saying this with a view to kill the Bill. I am willing to help and make it acceptable. Automatically this Bill will go to the next Session. My other friends probably think that rule 86 applies and they rely on it. They think that if this Council is dissolved, the Bill will die a natural death and natural death will come to their child. Quite right. I quite sympathise with them, but I submit that the question does not arise. Dissolution has not been declared and the Executive Government are in no way under our control, and the Executive Government may never dissolve this Council, in which case this Bill will automatically survive. There is no harm. How does harm come to this Bill? Supposing His Excellency the Viceroy, for reasons of State, does not dissolve this Council, the Bill will come up in the next Session. There is no

[Mr. G. S. Khaparde.]

necessary consequence that adjournment will necessarily kill it. Even granting that the worst comes to the worst and this Bill dies as a result of the dissolution, the galaxy of gentlemen sitting opposite to me can easily revive the Bill. They can surely bring it up again. There will be nothing lost. There is no sinister motive in me in that respect. In my opinion the Bill will not die. I am willing to argue that the Bill will not necessarily die because of its being adjourned to-day. It is conditional on another event which is not within our power, and as that contingency has not happened, the question about its death does not arise to-day. Even if such a thing happens, it will not die, because my friends can easily revive it. If there is any other point which I have omitted, I will have to be told about it.

**THE HONOURABLE THE PRESIDENT:** The Honourable Member has introduced a novel and, if I may say so, ingenious argument, which I do not think will convince the Council. If there were any force in it, rule 36C, which the Honourable Member has referred to as rule 86—paragraph 86 of the Manual—would never have any application, because necessarily a notification dissolving a legislative body cannot be issued until that legislative body has finished its business, and therefore it might be held, if there were any force in the Honourable Member's argument, that in no Council of State or Legislative Assembly or Provincial Legislative Council could it be held that a motion for the adjournment of a discussion was in effect causing a Bill to lapse. I think there can be no question that paragraph 86, which is rule 36C, is the rule which applies to this case. It is true that there is as yet no notification dissolving this Council, but it is a matter of common knowledge that His Excellency the Governor General will dissolve this Council in the very near future; and as rule 36C applies, the Council cannot give any direction that will affect the application of that rule. It is a rule made under section 67 of the Government of India Act, and it is a rule made by the Governor General in Council with the previous sanction of the Secretary of State in Council, and section 129A of the Government of India Act lays down that that rule cannot be altered by the Central Legislature; therefore its application cannot be altered. It follows therefore that whatever the Honourable Member's motive may be in moving this amendment, the Council must give him credit for a desire that this Bill should expire, and in view of that I think I must hold that, as he has an opportunity on the second reading of the Bill to defeat the Bill, and another opportunity on the third reading to defeat the Bill, it will be perhaps wasting the time of the House to let him attempt to achieve the same object by an amendment which is not specifically provided for in the rules. The Honourable Member is at liberty to speak on the motion, but not to move his amendment.

**THE HONOURABLE MR. G. S. KHAPARDE:** Well, this is the last alternative to which I have been driven now; I shall avail myself of it and argue that the Bill should not be considered at all. This motion should not be considered for this reason that all that has been said up to this time here and elsewhere on this motion and on this Bill takes for granted that the people living at home and sending their sons to England spend their money, but they themselves are idlers and people who do not deserve sympathy at all. All the sympathy is concentrated on the young man who is sent to England or other

places. I humbly submit that this assumption at the bottom of this discussion is not true. All the stay-at-homes are not necessarily idle people. They are not bad people. They have no bad motives in the matter. What happens usually, here in India as elsewhere, is that there are families which have fallen on evil days; they are anxious to improve and restore their fortunes. Some do it by contracting good marriages; other people send their boys out for learning so that they may be able to return and earn good money and so restore the fortunes of the family. These are the motives which guide us and have guided most of our people throughout all time. Therefore, to assume that the stay-at-homes are idlers does not at all agree with the facts of the case. But the principle which in effect is being introduced here is that the stay-at-homes have no business even to exist. My humble submission is that the stay-at-homes are not such bad people after all.

Lastly, there is another argument which is always urged and to which I object. Suppose a boy returns successful, either as a great engineer or as a member of the Civil Service, when is he to seek partition? I say that he should be able to do it immediately after his return or after staying on in the joint family for some time. That is, he should have a choice in the matter. Supposing he comes at once and claims partition. What happens—I know because I have often as a lawyer assisted in these things—is that they sit down together; they say, this is the property, we are so many and there are so many shares. Now you went to England and deprived us of so much; we underwent privations in order that you may lift us out of our troubles and now the least you can do is to give us back what we spent. And that is arranged amicably and the boy is at liberty to earn as much as he likes and keep it for himself. I have personally assisted in arbitrations of this kind. But supposing he does not want to be separated at once; he should be at liberty to carry on. After all he can get his share separated at any time during his lifetime. I do not understand this endeavour to raise sympathy on behalf of the poor widow and the poor children. I say that is all beside the point. After all he has gone to England at the expense of the joint funds. So all these arguments fall to the ground. This Bill therefore in my humble opinion is not worth considering, and it should not be taken into consideration.

\*THE HONOURABLE DEWAN BAHADUR G. NARAYANASWAMI CHETTI (Madras: Non-Muhammadian): Sir, as a layman I heartily welcome this measure. Forty years ago, the late Sir V. Bashyam Iyengar got a similar Bill passed in the Madras Legislative Council. Unfortunately orthodox opinion was against it and they maintained that the joint family system was in danger. Accordingly assent was withheld. Had that Bill been passed it would have saved a good deal of litigation during the last 40 years. Last year Mr. Jayakar brought forward this measure again in the Legislative Assembly, and I am glad to see that the Assembly has passed it. I was wondering in my mind all these long years why a measure of this sort was not introduced in the Council or Assembly or the local Legislative Councils. I decided that politics dominated and no one was keen about bringing forward a piece of social legislation on the lines of this Bill. I think India and the Hindu community will be very grateful to Mr. Jayakar for this piece of legislation which has been successfully carried in the other House. Sir, at present as soon as a member of a joint family begins earning he has to find ways and means for the investment of his money so that

\* Speech not corrected by the Honourable Member.

[Dewan Bahadur G. Narayanaswami Chetti.]

it may not be partitioned later on among the undivided members of the Hindu family. He has to keep his money either in hard cash or locks it up in jewellery. This Bill will remove all these drawbacks and difficulties and there will be contentment and happiness among the members of the family. I hope this House will unanimously pass this Bill. As a layman I heartily welcome it.

**THE HONOURABLE THE PRESIDENT :** The question is :

“That the Bill to remove doubt as to the rights of a member of a Hindu undivided family in property acquired by him by means of his learning, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

Clause 2 was added to the Bill.

**THE HONOURABLE THE PRESIDENT :** The question is :

“That clause 3 do stand part of the Bill.”

**THE HONOURABLE MR. G. S. KHAPARDE :** Sir, I beg to move :

“That :

(i) clause 3 of the Bill be numbered as sub-clause (1) of clause 3 ;

(ii) after sub-clause (1) of clause 3 as so numbered the following sub-clause be added, namely :

“(2) The provisions of sub-section (1) shall not apply to any gains of learning unless the acquirer has repaid to the joint funds of his family any amount expended to the detriment of the joint funds in imparting such learning to the acquirer.”

My object in bringing this amendment is not to destroy the Bill but to give it a corollary. As it is at present, the whole thing is based, as I said before, on the assumption that the boy who goes out is a very good boy and the people who stay at home are lazy rascals who do not deserve any consideration shown to them. My idea is different. A boy may go to England and if he is capable he may pass into the Civil Service, but after doing so he may fall a prey to the allurements of some Continental city and he may marry a Bolshevik girl. Suppose he comes back with a Bolshevik wife, who is the bad party then, the boy or the stay-at-homes? I say therefore it is no use judging people one-sidedly. And since we are altering the law let us also provide that in the event of such a boy turning out peculiar and demanding on his return not to stay in the family, the family should be able to claim the return of all that they have spent. It has been said, how will you do this? That is not in the ancient law. To that my reply is that, if you are going to destroy the ancient law, if that law is bad enough for you to change it, it must be bad enough for me also to amend the ancient law. I want to change it in this way, that on his coming back if he chooses to stay in the family it must be distinctly understood that his earnings will remain in the family; if he does not, then let him pay back and make good all that has been spent on him, even if he has to borrow for the purpose. That is only an equitable doctrine. This whole Bill has been bolstered up on grounds of equity. But equity is a dangerous mistress. If you appeal to her she imposes her conditions; if you seek the support of equity you also must be equitable. Whoever appeals to equity must appeal with clean hands. Here you say that you are making the old law conform to new ideas. That is all right, but it is also a new idea that you should not derive benefit out of the affection of the other side. Those people out of affection forego comforts and live poorly, denying themselves of many things that make life

worth living, in order that this young gentleman may go to London and acquire knowledge and power to earn good money. Afterwards, if he does not desire to share the profits of his learning with those who have sacrificed themselves for him, it is but fair that he should render back to the family what has been spent on him.

Out of what will he pay? Well, he may borrow or beg, or even steal or pay out of the family funds that fall to his share. It is no good telling me there is no such right. I say that is not so. You are changing the law as it stands now. Let us change it in a better way and make it completely equitable. If you want it equitable, have it equitable. And that is therefore the gist of my amendment that I have put in.

The other argument that has been put forward—or at least I have heard it casually—is that this will be completely unworkable. I say, no. Why is it unworkable? If the boy returns to his family, he has the option of joining the family. Or if he chooses to live with them for some time and then at any time in his life he wishes to separate, he can always go away. When he is taking his share of the property, the old people will take care that what has been spent on him should be repaid. There is nothing unworkable or illegal or inequitable in that. On the contrary, the inequitable thing is that to save the fortunes of the family we collect the money.

Well, I suppose out of these two things, what I say is the more reasonable. Therefore, I commend my amendment to the attention of the Council.

**THE HONOURABLE DEWAN BAHADUR A. RAMASWAMI MUDALIAR** (Madras: Non-Muhammadan): Sir, I beg to oppose this amendment on three grounds. First, that it makes the present law more restrictive than ever; secondly, that it is unworkable; and, thirdly, because the amendment goes much further than the Honourable Member intends it should. Sir, at the present moment there is no obligation on the part of a gentleman who has been educated and given even special education to return the amount that has been spent on such education. Without a contract to that effect, there is no obligation on the person to refund to the family or to bring to the hotch-pot the amount that has been expended on his education. It might be argued that when the question of the partition of the property is taken up, the amount that he has earned since the date of his learning up to the date of the partition will also be brought into account as part of the joint ancestral property and therefore this obligation does not arise. But, as the House is aware, the right of partition is inherent in every member of a joint family and directly the member begins to earn, it is open to him to demand a partition. At that stage no question of his own acquisition arises, and yet the obligation to repay what the family has spent on him does not arise. Under the present law, as declared by the Privy Council, a unilateral declaration of intention to divide is sufficient. No question of any question of division by metes and bounds is taken into consideration. A mere declaration, howsoever made, in whatever document, written in a letter to a friend, has been held sufficient proof of the fact that a partition has taken place, and therefore, Sir, it seems to me that when my Honourable friend is suggesting that the amount that has been spent on him should be returned to the family he is restricting the present law and not enlarging its scope. The object of the Bill is to enlarge the scope of the present rights of



[Dewan Bahadur A. Ramaswami Mudaliar.]

he acquiring member and not to restrict its scope. On that ground, first of all, I oppose the amendment.

Secondly, my Honourable friend knows that only in the special case of what has been termed technical or scientific education is there an obligation on the part of the acquirer to put the property into the joint family. Where the acquisition has been merely through his general education, through that general learning that has been given to him, there is no such obligation and if there is acquisition of property by a member who has merely had a general education, it cannot be said that that property ought to be brought into the hotch-pot. The definition of the word "learning" that has been given in this Bill will show that learning includes not merely technical education but that learning means "education, whether elementary, technical, scientific, special or general, and training of every kind which is usually intended to enable a person to pursue any trade, industry, profession or avocation in life." My Honourable friend's amendment says that:

"The provisions of sub-section (1) shall not apply to any gains of learning unless the acquirer has repaid to the joint funds of his family any amount expended to the detriment of the joint funds in imparting such learning to the acquirer."

So that it comes to this, Sir, that funds expended on general education have also to be repaid to the joint family—a proposition which goes very much further than the existing state of the law.

Thirdly, Sir, the object of this measure is, first and foremost, to see that all avoidable litigation is done away with—litigation which takes into consideration the question whether that education is general or special, whether it is of such a character that the member of a joint family is entitled to it as a matter of general right or whether extraordinary steps or pains have been taken to impart that education to the member. As times are progressing, ideas are changing and what was once special education has to-day come to mean merely general education. What was once special education imparted to a member of a joint Hindu family which was once considered as creating an obligation on that member to put his acquisition into the joint family, is to-day considered such general education that such obligation cannot possibly arise. Again, Sir, if my Honourable friend has followed the reasoning which is so excellently given in the Statement of Objects and Reasons by the Mover of the Bill in another place, he will realise that it is a very varying code, that it differs from place to place, from locality to locality, from community to community, and from family to family. Like the Chancellor's foot, its measure is most uncertain and one of the objects of this Bill is to remove that uncertainty altogether. In fact, Sir, as the Preamble says, the object of the Bill is to remove doubt and to provide an uniform rule, as to the rights of a member of a Hindu undivided family in property acquired by him by means of his learning. It is not as if we are making a fresh law for the first time, but we want as far as possible that all uncertainties should be removed from this law as to the class of property. Again, Sir, this is a matter which will generally arise, as the Honourable Member has said in another place, after the death of the member who has acquired the property. The widow is then forced to come forward with her case and prove whether the amount has been spent on her husband's

general or special education. And my friend, Mr. Khaparde, wants to put in a further terror to that widow. Sir, I have heard that Bolshevism is dangerous, but I do not know whether a Bolshevik girl is a very dangerous person, but even if it be, my friend's sympathy will go to the unfortunate widow.

**THE HONOURABLE MR. G. S. KHAPARDE :** Not to the Bolshevik.

**THE HONOURABLE DEWAN BAHADUR A. RAMASWAMI MUDALIAR :** And, Sir, that widow if my friend's amendment is carried out, will not merely be faced with the present difficulty, such as proving whether the gains of learning have been made out of general education, but she will be faced with the new difficulty of proving the exact amount that has been spent on the general or special education 30, 40 or 50 years ago when her husband was trained by the family, and you have to take account of the amount spent on his education, find out how much has been spent, and then deduct it from the property. As my Honourable friend himself says, these questions do not generally arise during the lifetime of the acquirer. Sir, it is not that anyone wants to be very hard on the drones of the family but my Honourable friend who has said that we who seek equity should seek it with clean hands must realise.....

**THE HONOURABLE MR. G. S. KHAPARDE :** I object to the term "drones of the family".

**THE HONOURABLE DEWAN BAHADUR A. RAMASWAMI MUDALIAR :** Sir, if my Honourable friend is dissatisfied with my phraseology I will accept his own phraseology and call them "the idle members of the family".

The Honourable Member will realise that this special education need not be given only to the acquirer. It may be spent equally on all members. If three sons of a family have all been allowed to educate themselves and Rs. 30,000 has been spent and one of the members makes good and the other two members never make good, there is no obligation on these two to return the Rs. 30,000.

**THE HONOURABLE MR. G. S. KHAPARDE :** Why ?

**THE HONOURABLE DEWAN BAHADUR A. RAMASWAMI MUDALIAR :** But it is on the person who has acquired the money that the obligation is cast by the Honourable Member. On these grounds, Sir, I strongly oppose this amendment.

**THE HONOURABLE MR. P. C. DESIKA CHARI :** Sir, I find that the amendment goes probably much further than what my friend the Honourable Mr. Khaparde really intended to go. Clause 2 defines "gains of learning". The effect of this amendment will be to create an obligation on the acquirer not only to reimburse to the family the funds expended on him in the matter of his special or extraordinary or professional education but also an obligation which does not exist now on the part of any member of the family who has had any sort of education, however elementary it may be, from the family. The result of this amendment will be to put a sort of deterrent on education, and to prohibit even a general education being imparted to a member of the family. I think my Honourable friend has great respect

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[Mr. P. C. Desika Chari.]

for the Hindu Smritis, and he would agree with me when I say that according to the Manu and other Smritis the ancient Rishis always regarded *vidya* as a sort of gift. *Vidya* being a gift, according to the Smritis, I do not think it will be the intention of my Honourable friend to go against the conception of ancient texts regarding *vidya*, and to make it a matter for bargain and contract. He wants us to presuppose that in the case of a joint Hindu family, there is no natural desire to give education to the son or to the junior member of the family. He seems to think that the desire to educate the son proceeds more or less purely out of selfish motives and he failed to take account of the real sentiments which operate in the minds of members of a joint Hindu family. The father generally gives education to the son, and if he finds the son diligent and properly qualified for certain courses of study, he gives him that amount of education which will give him a place in the world for which he is fitted.

Then again, my friend wants to introduce the word "detriment" which has been giving a lot of trouble to persons who have had to fight out cases of self-acquisition of properties left by a person who acquired it by means of learning. The definition of "learning" which is sought to be placed beyond the possibility of doubt will again be clouded if this amendment is accepted, because the word "detriment" comes in here—"to the detriment of the joint funds". It is a very difficult expression, and will create litigation which it is the object of this Bill to avoid. My Honourable friend said that he who seeks equity must do equity. This question of reimbursement does not come in under the Hindu law as it is. It does not exist under any known system of civilised law.

THE HONOURABLE MR. G. S. KHAPARDE: Is it so?

THE HONOURABLE MR. P. C. DESIKA CHARI: He wants to introduce a new principle which is not recognised by any existing system of law—not even the Muhammadan or any other system of jurisprudence known to law. He wants to introduce this principle for the first time, and we cannot by any stretch of imagination call this a conception unknown to any well-known system of law as a principle of equity. My friend seems to presuppose that taking away the legal obligation will remove the moral obligation which is felt by all the members of a joint Hindu family. I suppose my friend will not say that simply because a man has been highly educated, he loses this moral instinct of his love for his family and his moral obligation to the family, and he seems to think that the moment he has been educated, he will be anxious to.....

THE HONOURABLE MR. G. S. KHAPARDE: I never said so.

THE HONOURABLE MR. P. C. DESIKA CHARI: That is what I understood. If it is not so, then I will not labour the point. I hope my Honourable friend will not desire to introduce a principle which is opposed to the spirit and the wording of the Smritis with regard to *vidya* which is regarded as a gift and not as a thing for which any legal obligation is incurred.

**THE HONOURABLE THE PRESIDENT :** The original question was :

“ That clause 3 do stand part of the Bill.”

Since which the following amendments have been moved :

“ That :

(i) clause 3 of the Bill be numbered as sub-clause (1) of clause 3 ;

(ii) after sub-clause (1) of clause 3 as so numbered the following sub-clause be added namely :

‘ (2) The provisions of sub-section (1) shall not apply to any gains of learning unless the acquirer has repaid to the joint funds of his family any amount expended to the detriment of the joint funds in imparting such learning to the acquirer.’ ”

The question I have to put is that those amendments be made.

The motion was negatived.

**THE HONOURABLE THE PRESIDENT :** The question then is :

“ That clause 3 do stand part of the Bill.”

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

**THE HONOURABLE MR. P. C. DESIKA CHARI :** Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

Sir, I take this opportunity of thanking Mr. Jayakar who introduced this necessary piece of legislation in the other place, and I also take this opportunity of thanking the Honourable the Law Member and the Government of India who have given support to this measure. Sir, doubts have been expressed by my Honourable friend Mr. Khaparde and I can assure him that if really this Bill was opposed to public opinion in this country, Mr. Kelkar would certainly have opposed the principle of the Bill. It will be observed that Mr. Kelkar was only anxious to put in a provision on the lines of the amendment which has been moved by my friend. He was whole-heartedly in favour of the principle of the Bill and if he would only take the trouble of going through the proceedings. . .

**THE HONOURABLE THE PRESIDENT :** The Honourable Member probably forgot to make these remarks on Mr. Khaparde's amendment ; I cannot allow him to make them on the third reading of the Bill.

**THE HONOURABLE MR. P. C. DESIKA CHARI :** I am not anxious to make any remarks about Mr. Khaparde. I took it only as an indication of the lines on which he is opposed. It is not my object to delay the passing of this measure, and I hope and trust that the Bill will be passed unanimously by this Council.

**THE HONOURABLE MR. G. S. KHAPARDE :** I wish to say a few words. Last time I gave a piece of legislation the blessing which Desdemona's father gave her when she decided to stay with the Moor. This time I shall also give this measure a blessing. There is a small story. In one village a buffalo was drinking water out of a large pot and her face and horns went into the pot and could not be taken out. The buffalo could not get out of that position. So they sent for the wisest man of the village, and he came riding a camel. The

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door was so small that he asked that the door should be broken open to enable him to get in. Then he went and saw and asked, "Have you got a sword?" They gave him a sword and he cut off the head of the buffalo with the sword; that severed the neck of the buffalo from the pot and the head fell into the pot. Then he asked for a stone, with which he broke the pot, and presented the man with the head of the buffalo. He killed the buffalo, pulled down the door, broke the pot and saved the head of the buffalo.

**THE HONOURABLE THE PRESIDENT:** The question is :

"That the Bill to remove doubt as to the rights of a member of a Hindu undivided family in property acquired by him by means of his learning, as passed by the Legislative Assembly, be passed."

The motion was adopted.

#### AJMER-MERWARA COURT-FEES (AMENDMENT) BILL.

**THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan):** Sir, I rise to move that the Bill further to amend the Court-fees Act, 1870, in its application to Ajmer-Merwara, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration.

Sir, I beg to state that my object in moving this motion is to afford some relief to the poor widows who reside in Ajmer-Merwara. Ajmer-Merwara, as Honourable Members know, is a province where the masses are very poor and comparatively only a few people are very rich. The present clause 7 sub-clause (ii) of Chapter II of the Court-fees Act in question runs as follows :

"In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year."

This, Sir, in my opinion, is a great hardship to the poor widows who sometimes have to borrow money on disastrous terms for this purpose, and it is with the intention of removing this hardship that I move this Bill, by which, if it is passed, the court-fees on such suits will be reduced to one-tenth.

Sir, I move.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

**THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS:** Sir, I beg to move that the Bill further to amend the Court-fees Act, 1870, in its application to Ajmer-Merwara, for a certain purpose, as passed by the Legislative Assembly, be passed.

The motion was adopted.

#### MUSSALMAN WAKF VALIDATING BILL.

**THE HONOURABLE KHAN BAHADUR SHAH MUHAMMAD YAHYA (Bihar and Orissa : Muhammadan):** Sir, I beg to move that the Bill to give retrospective effect to the Mussalman Wakf Validating Act, 1913, as passed by the Legislative Assembly, be taken into consideration.

Sir, in moving this Bill, I beg to say that bequests to children for their benefit by the testators have been the practice not only in all Muhammadan countries but in India also till it came into conflict with the law of perpetuity, and it was decided by the Privy Council that as it was in conflict with the law of perpetuities, so there have been decisions against it. So the necessity arose of bringing an enactment for this very purpose which was done in the year 1913. After that, Sir, there have been some cases in which it was held that only the Wakfs which were brought into existence after the year 1913 were valid and some cases were decided against those Wakfs which had been existing before 1913. So really it was an anomaly that the Wakfs existing before 1913 should be made invalid by the law and those Wakfs which were made in 1913 were only valid because of the Act which was passed in 1913. Therefore to remove this anomaly, this Bill has been introduced and has been passed by the Legislative Assembly.

With these words, Sir, I move.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE KHAN BAHADUR SHAH MUHAMMAD YAHYA: Sir, I move that the Bill to give retrospective effect to the Mussalman Wakf Validating Act, 1913, as passed by the Legislative Assembly, be passed.

The motion was adopted.

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THE HONOURABLE SIR BROJENDRA MITTER (Leader of the House): Sir, there is no more Government business left over.

THE HONOURABLE THE PRESIDENT: In view of the Honourable Leader's statement it only remains for me to say good-bye to Honourable Members and adjourn the Council. But before doing so, I should like to make one observation. This is not only the end of the Session, it is the end of the life of the second Council of State. I, with numerous other Honourable Members, have been here throughout the five years. To them and also to those Honourable Members who have been here for a shorter period I desire to express my deep sense of gratitude for the great co-operation they have given me and the great assistance they have rendered to the Chair throughout the life of this Council. It is due to Honourable Members that the Council has added to its traditions, that it has maintained and indeed enhanced its reputation, its prestige, and its dignity. This being the end of the life of the Council I should esteem it a privilege if Honourable Members would come to the Chair and enable me to shake them by the hand and say good-bye before I finally adjourn the Council.

(Honourable Members then shook hands with the Honourable the President.)

THE HONOURABLE THE PRESIDENT: The Council now stands adjourned.

The Council then adjourned *sine die*.