20th September, 1922

THE

LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

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LEGISLATIVE ASSEMBLY.

Wednesday, the 20th September, 1922.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

Mr. S. C. Shahani : May I put this question (No. 340 on the list) on behalf of Mr. Seshagiri Ayyar ?

Mr. President : Was the Honourable Member asked to do so ?

Mr. S. C. Shahani : No, I was not.

Government of India Portfolios.

340. *Mr. T. V. Seshagiri Ayyar : Has the attention of Government been drawn to the suggestion of Sir Michael O'Dwyer in an article in the *Fortnightly Review* for August last for the abolition of the portfolios of the Education and Revenue Members in the Government of India ?

The Honourable Sir William Vincent : Government have seen the suggestion.

Indianisation of the Indian Army.

341. *Mr. K. C. Neogy : (*a*) Has the attention of Government been drawn to an editorial paragraph in a recent issue of the *Nation and Athenaeum* in which reference is made to a scheme of Indianisation of the Indian Army, prepared at the instance of His Excellency Lord Reading, under which Indianisation would be gradually carried out in thirty years ?

(*b*) Is it a fact that, as stated therein, the British Cabinet has considered and rejected the said scheme ?

Mr. E. Burdon : (*a*) The attention of Government has been drawn to the paragraph mentioned.

(*b*) The question of the measures to be adopted for the Indianisation of the Indian Army at present forms the subject of correspondence between the Government of India and the Secretary of State, and the Government of India are not at present in a position to make any announcement on the subject.

Revenue Renewals on Railways.

342. *Mr. K. C. Neogy :(*a*) With reference to the answer to starred Question No. 29 of the 6th September last, has the attention

of Government been drawn to the statement in the Acworth Committee's report that the policy of undue postponement of revenue renewals is of long standing and not merely the result of the exigencies of the war period ?

(*b*) If so, is the said statement correct ?

Colonel W. D. Waghorn : (*a*) Yes.

(*b*) Yes ; but the situation was greatly accentuated during the war period.

TELEPHONE CORPORATION.

343. ***Sir Deva Prasad Sarvadhikary** : When the Secretary of State agreed that the Telephone Corporation should be entitled to the first 12½ per cent. of the net profits was he aware that the Corporation intended to capitalise its Reserve to the extent of Rs. 40,00,000 ?

Colonel Sir Sydney Crookshank : As far as the Government of India were aware, the exact details of the conversion had not been arranged when the Agreement with the Bengal Telephone Company was signed. The attention of the Honourable Member is invited to clause 4 of the Agreement placed in the Members' Library in connection with the reply given on the 6th September 1922 to his unstarred question No. 117.

Sir Deva Prasad Sarvadhikary : Is the Government aware that as a matter of fact conversion has taken place on the lines indicated in the question ?

Sir Sydney Crookshank : I understand that that is the case.

SITTINGS OF THE ASSEMBLY.

Sir Deva Prasad Sarvadhikary (Calcutta : Non-Muhammadan Urban) : Sir, I would like to ask you and the Honourable the Leader of the House as to the programme of work for the remainder of the Session. The notice as it went to us intimated to us that November meetings were in contemplation. Some of us represented to you that it would be desirable to have the November meeting somewhat later in the month than was indicated in the circular. Rumours have been rife in Simla for the past few days that there is not likely to be a November meeting. I desire to draw your attention to several facts in the light of which any announcement which the Leader of the House may desire to make may probably be reconsidered. In the first place, the Criminal Procedure Code Amendment Bill stands over. In the second place important Commissions and Committees have made their reports, for example, the Frontier Commission, the Fiscal Commission, the Railway Advisory Committee and the Racial Distinction Committee among others ; their recommendations ought to come up before the Assembly in order that we may formulate our recommendations, financial and otherwise, definitely in time. All these cannot be crowded into January or February meetings of the Assembly. The January meeting, I understand, will be late, and we shall barely have time to do all this intensive work in the course of a short five or six weeks, because March will have to be devoted almost entirely to the Budget. Having regard to all these facts, we would like to have an early announcement

in the matter. I may say that I have consulted my friends in different parts of the House ; there was an idea originally, certainly in the minds of some Members, particularly Madras Members, against the November Session ; we sympathise with them ; it is a great inconvenience for them to have to come up all this way, but it has been represented to them that there will be practical difficulties if there be no November meeting and they are at one with us that there should be a November meeting.

The Honourable Sir William Vincent (Home Member) : I was unaware myself, Sir, that it had ever been stated in any notice to Members of this Assembly that there would be sittings of the Assembly in November. I know that in a circular that went out in August from the Legislative Department it was stated that such a sitting was probable, but I do not think the Government ever went further than that. In any case the decision on this matter does not rest with the Government ; meetings in November would be part of the same Session and the decision really rests with the President of this Assembly and of course with the President of the Council of State.

Mr. Jamnadas Dwarkadas (Bombay City : Non-Muhammadan Urban) : Sir, may I be permitted to say a few words in regard to this matter. I know that the Government did not make any official statement with regard to the holding of a session in November, but, Sir, I think I must draw your attention to the fact that in the course of many discussions here reference was made to the November Sessions, I mean matters being postponed till the November Sessions, both by non-official Members as well as, and if my memory does not fail me, by some official Members too. I think, Sir, that you will take into consideration the importance of holding a session in November for this reason that there are certain matters on which Reports are expected soon. It is also desirable that some of the recommendations made in certain reports should be discussed and considered, for some of the proposals will come before us at the next Budget. It would be impossible to give proper consideration if we postpone discussion of these important Reports till January next. I hope, therefore, Sir, that you will give due consideration to the importance of holding a meeting of this Assembly in November next.

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : Sir, no doubt, it will be somewhat inconvenient to Madras members to attend a November Session, but we have given consideration to really important questions which are pending and which ought to be taken up, and therefore, Sir, we are prepared to submerge our personal interests to public interests. There is the Report of the Racial Distinctions Committee which I expect will have been disposed of by this time by the Government of India and the Secretary of State and which I hope will be taken up in November. We have got the Emigration Rules which again have to be confirmed by this Assembly. There are various other important matters which require attention, and to take up all these matters in January will be taxing the energies of the members too much. Sir, above all, the Criminal Procedure Code Amendment will require at least a fortnight or ten days for consideration. Taking all these facts into consideration, I strongly press upon you, Sir, to arrange for a November Session, probably about the last week in November, if that will be convenient to the members of the Government.

The Honourable Sir William Vincent: Sir, I only want to add a few words to what I have already said to explain the difficulties of the Government in the matter. Until quite recently, indeed until to-day, we were under the impression that a large party in this House did not want a November Session. Of course, it is not unreasonable for Honourable Members to change their minds and to surrender their personal convenience to the public good. But, we had been informed by a number of people that they did not want a November Session. I believe I am right in saying—I am quite open to correction, honestly open to correction,—that the Democratic Party as a Party were opposed to a Session in November (*Cries of* 'No, no' from the Democratic Party).

Rao Bahadur T. Rangachariar: On the other hand, we considered it at a meeting, and although I pressed the question of my personal convenience, they pressed me the other way.

The Honourable Sir William Vincent: At any rate, the impression was conveyed to the Government by some members that a November Session was not required.

As to the business, I do not think the Racial Distinctions Bill can come on in November for consideration. The Report when it is published, after all—my Honourable colleague took 18 months to study another Bill, will require a study of at least three, or four or six months. (*A Voice*: 'No, no.') At any rate, those who are affected by it and live in remote parts of the country must have time to consider it. If we could have got it through this Session, it would have been a great convenience, for I should have the assistance of my Honourable colleague here. That not having been possible, I doubt seriously if it could be taken up in November. As regards the Code of Criminal Procedure, of course up to the day before yesterday I was not aware that this would not be considered this Session, and if there is any additional work on this account for the November Sessions, I can honestly say it has been only due to the action of this Assembly.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, the Honourable the Home Member will not be here in November, but in his presence it was stated by the Honourable Mr. Innes that he would accept postponement of the Resolution regarding State-managed Railways and have the discussion on it in the November Session at Delhi, and many of us were given to understand that there would be a Session in November. That was understood from the very beginning, ever since the 7th of September last,—that there would be a Session in November. Besides of course we had also a notice from the Secretary of the Legislative Assembly informing us that there will be a November Session (from the middle of November till the middle of December next). Therefore, it would seem that it has been decided to have a Session in November. If an important Resolution like the one I have mentioned and other work were not postponed till the November Sessions, we would not have agreed, and until this morning we were under the impression that there would be a November Session.

I do not think, Sir, there are so many Democratic Leaders (Laughters). So many of them approach high Government officials and say, 'I am the

leader of the party', and I hope, Sir, in future Government will never trust these people or allow such things to go on.

Mr. George Bridge (Assam : European) : It will be much more convenient, Sir, to us Members from Assam to have a short Session in November, instead of a longer Session from January to March as some of the business can be disposed of in the November Session. And it is difficult for business men to be away for 3 months at a time.

Mr. President : Before coming to a decision in this matter I felt it my duty to consult the Governor General in Council. I have been officially informed that, as things stood a few days ago at all events, there was not a sufficient programme of legislation to justify from the point of view of the Government of India the holding of a November Session. Moreover, it had been conveyed to me from various quarters that a November Session was not altogether convenient to the non-official Members of the Assembly. As the Honourable the Home Member has pointed out, some of them in changing circumstances may have changed their minds, and therefore I propose to postpone any announcement regarding the holding of a November Session till the latest possible moment. I do not wish to hold out the hope that there will be a November Session in spite of the fact that representation has been made here this morning. I shall have to consult not only the Governor General in Council but my colleague the President of the Council of State on the matter, and if any further definite representations reach me, of course I shall consider them with the greatest possible care.

WITHDRAWAL OF PROPOSED MOTION FOR ADJOURNMENT.

Maulvi Abul Kasem (Dacca Division : Muhammadan) : Sir, I have given notice of a motion to ask the leave of the House for an adjournment on a certain matter of public importance. But, Sir, we the Muhammadan members of the Indian Legislature are going to wait upon His Excellency the Viceroy this evening on exactly the same matter and we want to speak to His Excellency as to what we feel about this question. Therefore, Sir, I think it will serve no useful purpose to ask for leave to move for an adjournment of the House to take up my Resolution, and I therefore ask your permission, Sir, to withdraw the motion.

THE INDIAN MINES BILL.

The Honourable Mr. C. A. Innes (Commerce Member) : I beg to move, Sir :

"That this Assembly do recommend to the Council of State that the Bill to amend and consolidate the law relating to the regulation and inspection of Mines be referred to a Joint Committee of this Assembly and of the Council of State and that the Joint Committee do consist of 18 Members."

I explained, Sir, when I introduced the Bill the reasons why the Government thought it necessary to place this measure before the House, and I explained that the measure was necessary because under the Reform Scheme it is essential that we should demarcate the functions of the Central Government and of the Local Governments, respectively, under the Mines Act, a point in which the present Act is defective. I explained also, Sir, that we were taking the opportunity of introducing certain

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provisions to regulate employment in the mines. I now propose, Sir, that this Bill, which, I admit, is in some respects a difficult Bill, be referred to a Joint Committee of both Houses before it is again brought up before this Assembly.

Mr. N. M. Joshi (Labour Interests : Nominated Non-Official) : Sir, although I am rising to speak on this motion, I make it quite clear at the outset that I do not propose either to move any amendment to the motion or to oppose it. My object in making a few remarks on the motion at this stage is to show the deficiencies and the omissions in this Bill in order that the Joint Committee should make good those deficiencies and omissions and that the Bill should be in keeping with the spirit of modern times.

Sir, it will be readily admitted that mining work entails more hazards and is more unhealthy than factory work of other kinds. It is certainly more hazardous and more unhealthy than agricultural and other open-air work. When we admit this, we must also admit that the mining work requires to be regulated more stringently than any other kind of work, more than even factory work. But, Sir, it is rather surprising to me that the attitude of the Government of India towards mining is very different to their attitude towards factory work. They began regulating factory work much earlier than they thought of regulating work in mines. Not only that, but, if we look at the present Factory Act, we shall find that it is much in advance of the Bill which is placed before us to-day.

Sir, I have stated at the beginning that mining work requires to be regulated much more than any other kind of work. If we look at the history of labour legislation concerning mines, we shall find that in all other countries regulation of work in mines has preceded the regulation of work in factories. As far back as 1842, women's work underground was prohibited in England and, since that time, there is hardly any period in the history of the English Parliament when mining regulations were not improved from time to time. But what do we find here in India ? I am told that the first coal mine to be worked in India was started in 1820. But for seventy long years the Government of India did not see the need for any regulation of work in mines. I do not know whether they ever inquired in this interval as to the conditions of work in mines. It also seems to me that at least in this matter the Government of India depends upon some outside stimulus for being moved to action.

Sir, it was the International Conference held in Berlin in 1890 at the instance of the Government of Germany that the Government of India was first moved to inquire whether the conditions in Indian mines were satisfactory from the point of view of labour or not. And, then, after three or four years, the Government of India appointed the first Inspector of Mines. Then, Sir, nearly seven years after the appointment of this Inspector, the Government of India passed its first legislation regulating work in mines.

Sir, we must be thankful to the Government of India for having passed that legislation because something is better than nothing. But

those who have studied that legislation will agree with me that there are hardly any provisions in that Mining Act which protect the interests of labour. I do not say there are no regulations at all but from the point of view of the interests of labour there are hardly any regulations. Unfortunately, there were some difficulties in the way of Government in those days. There were Legislative Councils, but in those Councils mine-owners and capitalists only were represented, labour having no representation whatever ; therefore Government could not take a very bold step. There may therefore have been some excuse for Government's action in these circumstances ; I do not know.

Sir, since the year 1901, it is now twenty years when Government is moving to improve their mines regulations. And what makes them move again ? It is the International Conference held at Washington. I do not mind what makes the Government move, whether their own initiative or the stimulus given by the International Conference, but I am glad that after all the Government of India has begun to move in this matter. I am therefore very thankful to them and I express these thanks on behalf of the working classes of India. But, Sir, let us examine what this Bill does for the working classes who work in mines. There is no doubt a clause regarding the prohibition of the employment of children in this Bill. Not that in the previous Act Government had no power to prohibit child labour under certain conditions. Government did possess that power but unfortunately they never thought of using the limited power which they had under the first Act. I am glad in this new Bill they are going to prohibit the employment of children in mines up to the age of 13. They have also in this Bill put a limit to the total number of hours to be worked by miners during the whole week. But, Sir, those who have studied the conditions of work in Indian mines know that this regulation will not be of much practical use. The miners, in this country, generally do not work during the week for more than the period which Government has fixed in the Bill. Not only that, but, Government proposes to make an exception in the case of those people to whom alone the limitation of hours is likely to be applicable. From the Explanation given in some Clauses, I find that Government proposes to make an exception in the case of those people, people who work at the pumps. I do not know why they should make an exception in the case of these people, because it is these very people who want protection as regards the total number of hours to be worked in a week.

Then, Sir, Government have also provided for a weekly rest day for the miners. This again is not of much use, for already the miners take not one, but usually two holidays in the week. They have also been kind to give some partial representation to the employees in the mines on the Mining Boards and the Mining Committees. I again thank the Government for introducing these features in the present Bill. But I feel it my duty on this occasion also to point out its deficiencies. The main feature of any mining legislation in all civilised countries is the prohibition of the employment of women underground. I said in the beginning of my speech that in England this prohibition was placed in the year 1842 and there is hardly any civilised country in the world at present where women

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are allowed to work underground. But, Sir, in our new Bill, which is being considered in the year 1922, 80 years after England prohibited the employment of women underground, we are not making any provision for such a prohibition. I also said in the beginning of my speech that work underground in mines is more unhealthy and hazardous than any other kind of work. It naturally produces harmful effects upon the health of women, because it exposes them to accidents. Although it may be necessary for the men to do this hazardous work, it is but proper that we in India should not expose our womankind to these dangers to health and to safety of life. Then, Sir, let us consider the effect of the employment of women underground upon their family life and upon their morality. A woman who works underground goes there early in the morning and returns home in the evening along with her husband. Under these conditions she cannot be a good wife, nor could she be a good mother. Sir, we all expect when we come home after a hard day's work that we should meet our young ones and our wives and that gives us great comfort. (Laughter.) What happens to the miner? He goes along with his wife underground at 6 or 7 o'clock in the morning and returns home at 5 or 6 or 7 P.M. The result of this is that the miner who does not get any comfort at home seeks a kind of relief and rest in the grogshop. Sir, it is said that 75 per cent. of the miners drink. I for one would attribute this high percentage of drinking to the employment of women underground, and I am quite sure that I will be supported by authorities which the Government of India will not be able to challenge. The evil does not stop here. The employment of women underground makes people drink. But what happens further? When a man becomes addicted to drink, he spends away his money. He wants some additional income and he therefore compels his wife against her wish to go underground and add to the family income. This is therefore a vicious circle. The man drinks because the woman goes underground to work with him and does not give him the happiness of home and family; and the man forces her to work simply because he wants more money for his drink. If this vicious circle is at all to be broken, the employment of women underground must be prohibited. There is no other way. If the facts are these, what makes the Government of India and the mine-owners of India allow the employment of women underground? Sir, it is said that in India miners work on the family gang system, the whole family goes underground, man, woman, children and even babies, and therefore the evil effects of this system are not so great in India as in other countries, and so the system may be tolerated or permitted in India. Personally I believe this argument does not hold water. Simply because women work underground in a family the atmosphere of the mine does not change, and the hazards of the occupation are not reduced. But it is said that there is an effect upon the morality of women, and the husband likes his wife to work in his presence. Sir, when this argument is used, I feel that we, the educated classes, we who belong to the upper classes, attribute feelings and sentiments which really belong to us, namely, the feeling of the male jealousy for the other sex, to those classes among whom these feelings do not exist at all. The working classes place full confidence in their womankind. Look at Indian society. Which classes have got their

purdah, the veil ? The upper classes and the educated classes, not the working classes. Therefore, if any man says that a miner wishes his wife to go down with him because he cannot trust her away from him, I for one shall not believe that statement. I believe it is a libel upon the working classes of India.

Sir, the real motive of the mine owners in employing women is that in the first place woman's labour is very cheap. In the second place, woman naturally, as they belong to the weaker sex, are more docile and accept service on easier conditions than men do. Moreover, women care for the family much more than men, and therefore for the maintaining of their family they are more steady in their work than men. For this reason alone, the employers want women to work underground. I have said that the argument that women work for domestic reasons has no substance. And for this statement I propose to quote the authority of Lord Curzon, who was Viceroy and Governor General of India when the first Mining Bill was considered. This is what Lord Curzon said :

"I think too that Government should not shut its eyes to the fact that in a good many cases the labour of women and children is really engaged not for domestic reasons but simply for economy's sake ; in other words, because it is cheaper than that of men."

Sir, not only is woman labour cheap, but as a matter of fact women do more work. While throughout the whole world it is an acknowledged rule that women should be given a little less work, we in India give women much more work. Sir, I want to support my statement by quoting the authority of the first Inspector which the Government of India appointed to inspect the mines. This is what Mr. Grundy says in his report for the year 1894, page 93 :

"Taking the sum total of women's work, they appear to do more work than most men, for they have to act as the servant, bearer and provider to the men and so in various ways work a greater number of hours in a day."

This is another reason why the employer prefers women's work. Then, Sir, I have also explained why some of the workmen want their women to go to work. Some of these workmen, as I stated, get into the habit of drink and they compel their womenfolk to go underground. Womenfolk in a large number of such cases are not willing to go underground. Sir, I have explained so far why the employment of women underground is not desirable. I have also placed before the Assembly the reasons which the employers use when they support employment of women and I have shown very clearly how those arguments do not hold water, and they ought not to be entertained by this Assembly. Sir, I would also like at this stage very briefly to point out a few more deficiencies and omissions of this Bill. The second one to which I would like to refer is that although Government have placed a limit upon the number of hours to be worked in a week, they have not placed any limit upon the number of hours of work to be done in a day. Sir, they have done this in their Factory Act, but I do not know why Government should not place this limit also in the new Mining Bill. Government not only does not place any limit upon the hours of work for the adult males, but does not even put any limit upon the hours of work for children and women in a day. No doubt they prevent the

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the employment of children under 13 but what about children over 13 ? Is the Government of India prepared to say that a child of 13 is as good a worker and as strong a worker as an adult male ? In Factories, Government has placed a lower limit on the total number of hours of work to be done by children between the ages of 12 and 15, but in the case of mines where the work is harder, Government allows a child of 13 to work as long as the child wants to do or the parent or the father of the child wants to make him do it. There is no limit, and, Sir, you will find some statements authoritatively made that at least some people in some mines in India work for all the 24 hours of the day. Sir, I do not wish to allow this statement to go unsupported. I would therefore quote my authority, and that is the report of the Coal Fields Committee, 1920, page 30.

In several parts of the Raniganj coalfield " the miners come from distances up to 8 miles and remain at the colliery for 24 hours, working at intervals during that time." (*A Voice* : ' At intervals.') Yes, at intervals, but no body will deny that the miner lives on the mine for 24 hours. Sir, facts are not wanting to show that they remain there even longer than 24 hours. (*A Voice* : ' Per day ? ') Yes, for two or three days together in a week. I therefore hope that when the Joint Committee consider this Bill they will not fail to put some limit upon the daily hours of work to be done in the mines ; at least let them be pleased to put a limit in the case of young persons and women. I hope there will not be a single Member of this Assembly who will not support Government, if Government comes forward with that proposal.

Sir, there are many other deficiencies in this Bill. In the English Bill they have made provision that if there are any disputes between the mine-owners and the employees about wages and other conditions of work, the matter should be decided by pit Committees, District Committees, etc. I do not want to spend much time in discussing this matter. Sir, I do not wish to close this part of my speech without referring to the greatest need of the miners at present, namely their education. Sir, only this morning while reading the report of a Committee on mining, I read that a witness, a manager of a mine, before that Committee stated that if miners were educated, they would not work in the mines, but they would like to become clerks. I do not know whether this motive actuates the Government of India and the Governments of Bengal and Bihar and Orissa. But the fact is that there is not sufficient provision for the education of the children of the miners, and I draw the attention of the Government of India to this fact.

Then, Sir, I cannot close my speech without expressing surprise as to why the Government of India should take this halting and hesitating attitude as regards mining legislation. I have made it clear in the beginning of my speech that there were no doubt some difficulties in the way of Government in getting legislation passed in their Councils against the solid opposition of the capitalists, who alone were represented in the Legislative Councils of those days. But things have now changed. In this Assembly, I am quite sure there are several Honourable Members

who will support Government in their endeavour to better the conditions of work for the working classes in this country. (Hear, hear.) Sir, only a few days back, a number of Members of this Assembly had an opportunity of studying the conditions of work under which Indian emigrants have to work in the colonies, and after having seen the spirit of the Members for reformation and improvement in their conditions of work, I feel quite sure that in this Assembly there will be a very substantial support to the Government of India, if they bring forward a much bolder measure than they have brought forward on this occasion. Sir, the Members of this Assembly should consider very calmly one point, especially those Members of this Assembly who are Members of the Standing Committee on Emigration. Let them consider why people from India should emigrate to the colonies, if the conditions of work in India were good. I remember to have read in one of these reports that the employers and the mine-owners in India wanted a prohibition to be placed upon the emigration of labour from the districts surrounding the coalfields. Sir, why should the working classes from Bihar and Orissa districts emigrate to Assam and also to distant colonies, if the conditions of work on the coalfields in Bihar and Orissa were good ? Sir, this is a point which deserves our serious consideration. I do not wish to take up the time of the House any longer. I thank the Government of India for bringing forward this measure, but I hope they will not stop their endeavour to do good to the working classes of this country here, but in the Joint Committee they will show a very generous spirit and accept amendments which will go to improve this measure.

Mr. B. Venkatapatiraju, (Ganjam *cum* Vizagapatam : Non-Muhammadan Rural) : Sir, the Honourable champion of labour has now pointed out certain defects in the Bill, but I would like to draw the attention of this House particularly to the way these Bills are now being referred to Joint Committees. It is certainly an honour to the Members of the Assembly to associate with the Honourable Members of the Upper House, but I do not understand why we should give up our responsibility and accept this divided responsibility. There is a provision, of course, under the rules by which it can be referred to a Joint Committee, but I think it is an extraordinary step only to be taken in non-contentious subjects where it would be easy to dispose of in shorter time. But in such difficult matters where a humanitarian spirit on the one hand and a commercial spirit on the other clash, is it not necessary that this Assembly should shoulder the whole responsibility in the matter ? Why should we say that we want the help of the other House in the initial stage ? No doubt they are eminent men, but we naturally accept that the originating Chamber must do all the spade work; but I do not understand why matters are always being referred to a Joint Committee. At the same time I have to offer a few observations in regard to the employment of women. You find these same labourers when they go abroad, and work in places where they get decent wages, are not obliged to have their women work at all. Go to Colombo and you will find no woman working, but the same labour, both men and women, are to be found in the fields, because wages are low, 7, 8 and 9 annas. In several colonies women are not working at all. The reason why women work is in order to supplement the wages of their husband,

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Provide decent wages and when you have decent wages, there is no necessity for women to work.

Then they say that children under 13 should not go underground. May I respectfully ask what would become of these young children when their mothers have to work underground. Now we know of cases where old women are employed as nurses over 20 or 30 children, and the immediate consequence is an increase in infantile mortality. How can we expect a woman to look after the interests of a number of children? Moreover, it is admitted that women should not work at night. What difference does it make when they go some hundreds of feet underground; does it make any difference whether it is day or night? I do not think that the Government of India would prevent women working overground, if women are willing to work overground.

I propose to add a few observations with regard to the children, and I do not know whether the Government made any proposal for the education of the children. Of course they may cite the cases in other countries, but in western countries the State provides compulsory education for children, whereas in India there is no such thing. Either the State should come forward or the employers must be compelled to share in the cost of education. The Honourable Member in charge warned us that most of the people working in these mines are not of an advanced section, but are Sonthals or hill men. What he means is that they belong to some of the depressed classes, therefore we should not encourage them by our visionary notions. I think the very observation of the Honourable Member should be sufficient cause for us to protect their interests, but anyhow I may assure the House, though some of us may think that the workmen have not got sufficient intelligence, that they have got sufficient common-sense. Government should not be satisfied with consulting labour organisations only, as we have very few of them in India, but they should consult the workmen themselves, in order to arrive at their grievances. They should inquire under what circumstances they work in the coal mines. The Honourable Member also made us understand that it is a key industry, and therefore we ought not to put any obstacles in the way of its expansion. It is a necessary industry no doubt, and as we are told, in India we have sufficient coal, more than what we can possibly expect in other countries, and that though the quality may not be so good, we have sufficient quantity to enable us to run our industry in this country. We know also that business men do not work on philanthropic lines, but that is no reason to work an industry to the detriment of our fellow men. Is it not the duty of Government as well as that of the Members to see that the persons who are working in these mines get decent wages and work a reasonable time. At any rate let them get a living wage, so that by the earnings of the husband the wife and children might live, instead of necessitating the wife's working to supplement the husband's wages. These persons who come out of the coal mines are completely covered with coal dust. I do not know what sort of bathing facilities are provided. Perhaps under the heading of Sanitation some rules might be framed.

12 noon.

These are matters into which the Government and the Committee should look into, and I hope, when the Bill emerges from the Select Committee, all these defects will be remedied and it will be brought into line with the way these things are worked in western countries.

The Honourable Mr. C. A. Innes : Sir, I do not propose to follow all the points that have been raised in the speeches of the Honourable Mr. Joshi and the Honourable Mr. Raju, but I should like to make a few remarks of general application with reference to the general tenor of Mr. Joshi's speech, namely, that this Bill is a halting and a hesitating measure. Before I deal with Mr. Joshi's speech, I venture to hazard the statement—Mr. Joshi will no doubt correct me if I am wrong—that he has not studied this problem of mining labour in the most important mining area in India, namely, the coal-fields of Bengal and Bihar and Orissa. I venture also to suggest that Mr. Raju has never studied this problem in the coal-fields. Now, Sir, we, on the Government Benches, have the advantage both of Mr. Joshi and of Mr. Raju in this matter. To begin with, in the drafting of this Bill, we had throughout the advice of the Chief Inspector of Mines, probably the greatest expert in mining in India at the present time, and an officer who lives and has his being and has spent all his life in India in the coal-fields. Secondly, Sir, my friend, Mr. Chatterje, has been down not one but a dozen mines, and I venture to say that there is nobody in this House who is a more profound student of labour legislation or more in sympathy with reasonable measures of reform. Finally, Sir, I myself flatly declined to introduce this Bill till I had been to the coal-fields, till I had been down a mine, till I had seen conditions for myself and till I had discussed the provisions of this Bill with some of the leading mine managers in the coal-fields. It all comes back to this, as I said in my opening speech, that in this problem we have to hold the balance between what we should like to do and what we think we can safely do. Mr. Joshi naturally stresses the former aspect. Mr. Joshi, of course, represents labour in this House, and, if I may say so, he represents it with great force, vigour and earnestness. (Hear, hear.) But he emphasises the labour aspect only ; he does not take into account other considerations. Now, for us, on the Government Benches, the outlook is not so simple. We naturally try to take into account as much as we can the labour interest, but we have to look at the problem as a whole. We have to take into account all relevant considerations. It must be remembered that, if by premature legislative changes, we dislocate a key industry, it is the Government of India and this Assembly, mark you, that will take the responsibility ; it will not be my friend, Mr. Joshi ; and that simple fact accounts possibly for our difference in outlook.

Now, Mr. Joshi's main points are that in the Bill we have not provided for any daily limit of hours for adult labourers ; that we have not introduced any half-time system for children between the ages of 12 and 15, and that we have not prohibited the employment of women. He bases his argument very largely upon the analogy of the Factory Act. I deny that that analogy is a valid one. The conditions of labour in mines and the conditions of labour in factories are totally different

[Mr. C. A. Innes.]

problems, and the mining problem is in many ways, at any rate in India, a much more difficult problem than the factory problem. It must be obvious that there is one main difference between a factory and a mine. The factory is a small self-contained unit within a ring fence ; the mine very often covers hundreds of acres of underground workings. In the same mine different seams of coal are very often worked, and, therefore, the mine may be worked simultaneously in different stages.

Then, again, I do not know whether any Member of this House or many Members of this House have been down a coal mine. Therefore, I make no apology for giving some description of the method of work. Coal mines in India are usually worked by the Bord and Pillar method. That means that galleries are driven into the coal, and that great rectangular pillars are left to support the overburden. In time the mine becomes a regular honeycomb of workings and you may have work going in different galleries, in different parts and at different levels in the same mine. Then, again, entrances to these mines are not only provided by shafts down which the miners can go in cages, but very often entrances are provided by inclines down which the miners can walk at their own sweet will and at their own times. The House will at once see that in conditions like these supervision by mine managers is difficult, surprise inspections by our Inspectors are almost impossible, and it is out of these conditions that the system (or the want of system) of working mines has grown up. A further contributory cause is the character of the miners themselves. They frequently come in long distances from surrounding villages, they are primarily agriculturists ; with them mining is only a secondary occupation ; they do not depend upon it, and they are very independent. Thus, the system has grown up of working by piece-work, and the miners very often do not work directly under managers but they work under raising contractors. They go down with their wives and their families. The men cut the coal, the women load it into tubs, and, when the men have cut enough coal for their immediate earnings, they leave the mine. They go down when they like and they leave when they like. I am perfectly prepared to admit that it is a bad system. Every mine manager in the coal-fields will tell you that the one thing they want in the mines is shifts, and, if anybody in this House can devise a system by which we can induce these miners to work, say, six days a week and eight hours a day, every mine manager in India will rise up and call him blessed. If we could only get a system of shifts we should be on the way to solve many of the difficulties to which Mr. Joshi has drawn attention ; we should be on the way to solve the question of fixing a daily limit of hours ; we should be on the way to solve the question of a half-time system for young persons.

Sir, this question of shifts has been inquired into more than once. I should like to correct Mr. Joshi on this point. We were not moved to inquire into this question of labour in the mines by the Washington Conference of 1919. On the contrary, before that Conference ever sat, we had imported from home a mining expert, who was directed to

inquire, among other things, into this very question of labour. What this mining expert said was :

"It is most important for the proper and economical working of the coal-fields that regular shifts should be adopted. Under present conditions this is impossible and it is very difficult to find efficient remedies. Whatever reforms may take place, they should be very gradual and only put into effect after full and serious consideration."

That was the report of the expert in 1919. That "full and serious consideration" has been given to the problem. On receipt of the report we appointed a Coal Fields Committee which sat in 1920. Some of the evidence taken by that Committee is extremely illuminating on this subject. Here is the evidence of one mine manager :

"The adoption of shifts would make for efficiency and provide better for control and discipline ; but the human element here presents itself for consideration. If legislation be adopted, you introduce compulsion."

"We know that the miner is an agriculturist first and a miner second. He has often to walk long distances to his work. You cannot compel him to be a miner. Anything in the nature of compulsion might be disastrous to recruiting. Many now following the avocation would merely remain until they had made other provision."

This Committee decided that it would be quite impossible to fix any daily limit of hours. They thought that in certain circumstances shifts might be introduced ; but their final conclusion was that they could not recommend the compulsory and forced introduction of shifts by legislation. They said it was premature. Now, Sir, what is the position of the Government of India in this matter ? On the one hand, we have an expert committee composed of people who know what they are talking about, composed of people who made special inquiries in the coal-fields ; and they tell us that legislation in this matter, legislation to enforce a system of shifts—which, mind you, is not asked for by labour itself—is premature and might dislocate the industry. On the other hand, we have Mr. Joshi. Mr. Joshi is speaking merely on the theoretical aspect. Mr. Joshi has never been down a coal mine. Mr. Joshi has never studied the problem on the spot. I think the House will agree with me that we have no option in this matter but to be guided by the advice of our expert Committee.

Then, Sir, let me take this question of the employment of women. I myself frankly admit that I would much prefer that women should not be employed down the mines. Not that I regard the occupation as particularly hazardous, nor that I regard the occupation as particularly unhealthy. But I agree myself on general principles that it is undesirable that women should be employed down mines. But we have to look at facts as they are. And what are the facts ? I have already explained that the system of work in mines is a family system. A man goes down there with his wife. The wife carries the coal which the man cuts. We have in these coal-fields an average labour force of 170,000 persons. Of that labour force, one-third are women that is to say, we have got fifty thousand odd women working in these mines at the present time. Now is there anyone in this House who is going seriously to say that by drastic legislation passed here and now we should prohibit at once the employment of those 50,000 women in the mines ? What would be the effect upon India ? And what would be the effect upon India's industries ? Mr. Raju said that India produces enough coal for its own consumption.

[Mr. C. A. Innes.]

He led the House to believe that we did not prohibit the employment of women because we were anxious to put nothing in the way of the expansion of the coal industry. Mr. Raju was entirely wrong. India does not produce enough coal for its own consumption at the present time ; otherwise we should not have imported during last year one million tons. The coal problem is an extraordinarily difficult problem and an extraordinarily serious problem. We produce about 18 million tons in these two coal fields, and those 18 million tons are barely if at all sufficient for India's industries. Is anyone in this House going to say that we should at once cut off the employment of women and thereby reduce our production of coal by one-third, by six million tons per annum ? Surely it is not practical politics. Moreover, the effect might be worse, because if we prohibit the employment of women, it is very probable that many men now employed in the mines would not go down the mines. They would not leave their wives up above. We have taken the first step. We have tentatively proposed that children up to the age of 13 should not be allowed in a mine at all. The effect of that may be to reduce the employment of women in the mines, for women who are mothers very probably will not go down the mines at all if they cannot take their young children with them. That is the first step, and a time may come when Local Governments may think it possible to utilise the powers which they have under clause 30 (*d*) of this Bill to prohibit the employment of women in mines altogether. But that time has not come yet. There are, however, signs of hope. As mechanical coal-cutters come more and more into use in the coal fields, the effect will be to eliminate or reduce the human factor. Collieries will become less and less dependent on a precarious labour supply. And if that process goes on, as I hope it will go on, then it may not be so very long before we may feel justified in introducing a reform which *per se* I admit to be very desirable.

I do not think I need say any more, Sir. I think I have dealt with Mr. Joshi's main points. They will no doubt be fully considered by the Joint Committee ; but after what Mr. Joshi had said, I felt it incumbent upon me to explain why Government have not felt justified in going further than we have gone in this Bill. I want the House to realise that the problem is a very difficult one, and that if we take too hasty, too premature and too drastic steps, we may dislocate an industry upon which all the other industries of India depend.

The motion was adopted.

THE INDIAN EXTRADITION (AMENDMENT) BILL.

Mr. Denys Bray (Foreign Secretary) : Sir, I beg to move :

"That the Bill further to amend the Indian Extradition Act, 1903, as passed by the Council of State, be taken into consideration."

The Bill, Sir, is simplicity itself, and what little is necessary to explain it I can compress into a few sentences. Under the first schedule of the Indian Extradition Act, desertion from any body of the Imperial Service troops is declared an extraditable offence. But the Indian States

have re-organised their troops. The designation "Imperial Service Troops" exists no longer, and in its place we have the Indian State Forces. Now it might be assumed that the consequent amendment would take the form of 'desertion from any body of India State Forces.' But the Indian State Forces include not merely what corresponds to the old Imperial Service Troops but also local forces which are merely police or *quasi*-police; and desertion from police or *quasi*-police is obviously not an offence for which extradition would either be given or required. Hence the wording introduced into the Bill. Extradition will be restricted to desertion from any unit of Indian State Forces declared by the Governor General in Council by notification in the Gazette of India to be a unit desertion from which is an extradition offence. And it is the intention to restrict those units to units which correspond approximately to the old Imperial Service Troops. Sir, I move that the Bill be taken into consideration.

The motion was adopted.

Mr. Denys Bray: Sir, I beg to move that the Bill, as passed by the Council of State, be passed.

The motion was adopted.

THE INDIAN MUSEUM (AMENDMENT) BILL.

Mr. M. S. D. Butler (Education Secretary): Sir, the motion which stands in my name, and which I now move, is:

"That the Bill further to amend the Indian Museum Act, 1910, as passed by the Council of State, be taken into consideration."

This Bill is a formal measure; it provides for the addition of the Superintendent, Archæological Section, to the list of *ex-officio* members of the Board of Trustees of the Museum. It also provides for the Director, Zoological Survey of India, who was formerly on the Board under another name, to be designated by his proper title. The Bill is a formal measure and there is nothing further to be said about it.

The motion was adopted.

Mr. M. S. D. Butler: Sir, I now move that the Bill, as passed by the Council of State, be passed.

The motion was adopted.

THE INDIAN TRANSFER OF SHIPS RESTRICTION (REPEALING) BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): I move, Sir:

"That the Bill to remove the restriction imposed on the transfer of ships registered in British India be taken into consideration."

Now, Sir, as I explained before, this Bill was passed in different circumstances; it is not required any longer and it imposes some slight restriction on trade; for that reason we propose to repeal the Act.

The motion was adopted.

The Honourable Mr. C. A. Innes: I move, Sir, that the Bill be passed.

The motion was adopted.

ELECTION OF PANELS FOR STANDING COMMITTEES.

Mr. President : The Assembly will now proceed to the election of a panel of nine members from which the members of the Standing Committee to advise on subjects in the Department of Revenue and Agriculture will be nominated. But before actually proceeding to that business I have to announce that the following members have been elected to the panel from which members to serve on the Standing Committee for the Departments of Commerce and Industries will be nominated :

Mr. Manmohandas Ramji.

Mr. Darcy Lindsay.

Sardar Gulab Singh.

Mr. Barodawala.

Mr. Saklatvala.

Mr. Jamnadas Dwarkadas.

Rai Debi Charan Barua Bahadur.

Khan Bahadur Zahiruddin Ahmed.

Rai Sahib Lakshmi Narayan Lal.

The panel from which members to serve on the Standing Committee for the Home Department will be nominated is as follows :

Chaudhuri Shahabuddin.

Mr. N. M. Samarth.

Dr. H. S. Gour.

Mr. Kabeeruddin Ahmed.

Rao Bahadur C. S. Subrahmanayam.

Pundit Jawahar Lal Bhargava.

The following members have been nominated for election to the panel for the Standing Committee for the Department of Revenue and Agriculture :

Mr. Bagde,
Rai Bahadur Bakhshi Sohan Lal,
Babu Ambica Prasad Sinha,
Sardar Bahadur Gajjan Singh,
Mr. T. V. Seshagiri Ayyar,
Baba Ujagar Singh Bedi,
Khan Bahadur Abdur Rahim Khan,
Khan Bahadur Zahiruddin Ahmed,
Rai Bahadur Lachmi Prasad Sinha,
Mr. Jamnadas Dwarkadas,
Rai Sahib Lakshmi Narayan Lal,
Rai Bahadur Srinivasa Row,
Mr. Sambanda Mudaliar,
Mr. B. Venkatapatiraju,
Mr. K. C. Neogy,
Mr. Wali Mahomed Hussanally,
Mr. Syed Nabi Hadi,
Khan Bahadur Sarfaraz Hussain Khan,
Mr. J. Ramayya Pantulu, and
Babu Jogendra Nath Mukherjee,

Rai Bahadur Girish Chandra Nag having been withdrawn from the list of nominations.

Mr. Jamnadas Dwarkadas : May I be permitted, Sir, to inform the House that I do not intend to stand as a candidate for this panel ?

Mr. B. Venkatapatiraju : I also do not intend to stand.

Mr. President : Members will advance to the table as before to receive the ballot paper.

After the Ballot paper was distributed :—

Mr. President : The names to be scored off in this list are those of Mr. Jamnadas Dwarkadas, Mr. Venkatapatiraju and Rai Bahadur Girish Chandra Nag.

The Ballot was then taken.

Mr. President : Order, order. The Assembly will now proceed to the election of a panel of six members from which the members of the Standing Committee to advise on subjects in the Department of Education and Health will be nominated. The following nominations have been received :

Mr. J. P. Cotelingam.
Rai Bahadur S. P. Bajpai
Lieutenant-Colonel H. A. J. Gidney.
Mr. Mahommed Yamin Khan.
Sir Deva Prasad Sarvadhikary.
Lala Girdharilal Agarwala.
Mr. T. Muhammad Hussain Sahib Bahadur.
Maulvi Miyan Asjad-ul-ullah.
Mr. K. Ahmed.
Maulvi Abul Kasem.
Mr. M. K. Reddi.
Mr. Bhupati Venkatapatiraju.
Mr. K. C. Neogy.
Mr. W. M. Hussanally.
Rai Bahadur G. C. Nag.
Dr. H. S. Gour.
Mr. Syed Nabi Hadi.
Mr. J. R. Pantulu.
Khan Bahadur Saiyid Muhammad Ismail.
Mr. Saiyed Muhammad Abdulla.

There are certain withdrawals from the list as actually printed.

Mr. W. M. Hussanally : Sir, I want to withdraw my name.

Mr. B. Venkatapatiraju : Sir, I beg to withdraw.

Khan Bahadur Saiyid Muhammad Ismail : I would also like to withdraw, Sir, with your permission.

Mr. President : Before Honourable Members record their votes, they would probably like to hear the corrected list read once more.

I must draw the attention of Members to the fact that the following names are withdrawn from the list of nominees :

Mr. Jatkar.
Mr. Agnihotri.
Khan Bahadur Mir Asad Ali.
Maulvi Abul Kasem.
Mr. Reddi.
Mr. Venkatapatiraju.
Mr. Hussanally.
Khan Bahadur Muhammad Ismail.

So there are 8 names to be struck off the ballot paper.

The Ballot was then taken.

THE LEGAL PRACTITIONERS (AMENDMENT) BILL.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan) : Sir, I move for leave :

"To introduce a Bill to amend the Legal Practitioners Act, 1879."

Honourable Members will remember that at the last Delhi Session the question about the eligibility of women otherwise duly qualified to practise at the Bar in British India was raised by me and the Honourable the Home Member promised to look into the question. He has since done so. All the provincial Governments and the various High Courts have been consulted, and I hold in my hand a compilation of opinions received from the various Governments. I am glad to find, Sir, that Madras, Bombay, the Punjab, Bihar and Orissa, are in favour of the Bill. Assam and Delhi are neutral. Burma says : "As an abstract proposition we are in favour of the Bill but the question is of academic interest." Of the several High Courts, the Madras High Court is divided in opinion. The Chief Justice, however, supports the measure. The Calcutta High Court shows 7 in favour of the Bill and 8 against it. The Punjab High Court favours the measure. The Bihar and Orissa High Court is divided in opinion. The Honourable Members will thus see that there is a very strong preponderance of opinion in favour of removing the said disqualification in the case of women otherwise eligible to practise at the Bar in British India. In the Statement of Objects and Reasons appended to my Bill, I have pointed out that in England women are now qualified to be called to the Bar, and if called, they are entitled to practise in the Law Courts in that country, and as under the rules framed by Honourable Judges of the various High Courts in India English and Irish Barristers and Members of the Scotch Faculty of Advocates are entitled to be enrolled as Advocates in the Courts of British India, it follows that their eligibility to practise in England would be treated by the Indian High Courts, if a case arose, as entitling them to practise in the Indian Courts. The small measure I have the honour to introduce arose in this way. The Allahabad High Court have recently enrolled a lady Law Graduate as a Vakil of that Court, but another Law Graduate of the Calcutta High Court having sought permission of the Patna High Court for her enrol-

ment as a Vakil of that Court, was refused that permission on the ground that the word "person" in the Legal Practitioners Act did not include a female. Honourable Members who belong to the profession of law will remember the clause inserted in the General Clauses Act which lays down that in all Acts of the Indian Legislature, words indicating the masculine gender shall be deemed to include also the feminine gender .....

The Honourable Sir William Vincent (Home Member): Unless there is anything repugnant in the context.

Dr. H. S. Gour: Unless there is anything in the context to the contrary. I may point out that there is nothing in the context to the contrary in the Legal Practitioners Act, and the opinion of the Learned Judges of the Patna High Court more follows the English Common Law. But as the Honourable Members are aware, we had no established Common Law in this country before the enactment of the Legal Practitioners Act. In any view I submit the time has now come when we, by our Act of Legislature, must ensure the same rights to women as are enjoyed by men. I therefore, Sir, ask for the necessary leave to introduce my small Bill.

The Honourable Sir William Vincent: Sir, I congratulate the Honourable Member on his continued role of champion of ladies in this Assembly. On the last occasion, I think the House will remember, he delegated that duty to me, but I am glad it is left in more capable hands. At the same time I would suggest to the House that it is well to proceed with deliberation and caution in these delicate matters. If Honourable Members will recall the debate on the 1st of February, they will remember that I said that the Government would take early steps to consult public opinion and Local Governments on the proposal of the Honourable Member. Sir, my life was impossible until I had given effect to my promise. I believe the Government of India have never before proceeded with such alacrity, and by the 17th of February, a letter was printed and issued, and Local Governments were consulted. But the replies were not available for consideration until just before this Session. In fact, I think the last reply was received only after the Session was opened. A copy of these replies have been given to Dr. Gour, but I do not think that copies have been circulated to any of the other Members (*Honourable Members*: "No, no.") nor indeed was there time to do so or any necessity for it. There are a number of opinions in favour of this Bill and there are a number of opinions against it and I think there are many which are doubtful. But I must pause. I have fallen into the same mistake as Dr. Gour and said that a number of opinions are in favour of this Bill. In fact, there are no opinions in favour of this Bill because this Bill was not published, but more correctly they are in favour of the principle which Dr. Gour has at heart. I think, on the whole, the balance of opinion is that there is no objection to the proposal. Local Governments generally suggest however that we should leave this largely to Indian non-official opinion and that Government should not formulate any proposals. The Government of Bengal quite clearly object to the proposal on the ground that it is far in advance of the general wishes of the community. One Indian Member there states that if we could ascertain public opinion, it would in fact be opposed to the proposal. The

[Sir William Vincent.]

reasons which he gives for that opinion are however not to my mind very convincing. Possibly they will appear more cogent to Members of the Assembly. The Government of Bombay say that there is no need for this legislation at present. The Government of Madras guard themselves by saying that they do not think the Madras Presidency has suffered up to now for want of lady legal practitioners. The Government of Assam suggests neutrality and the Government of Burma say that the matter might well be left to the discretion of each High Court. I think I have fairly described the opinions of Local Governments but I may add that generally they are of opinion that no harm will be done by accepting this proposal. On the whole they doubt whether Indian public opinion desires it. In these circumstances, and particularly because we have not had time—my colleagues at least have not had time—to examine the opinions to which I have referred, the Government of India will not commit themselves in any way to support the principle of this Bill. I want that to be very clearly understood. Our acceptance or our omission to oppose this first motion is not to be treated afterwards as in any measure having committed us to any attitude towards this Bill at a subsequent stage, and we are at perfect liberty to take any attitude that we might think necessary later.

But while I am speaking on the measure there are one or two points to which I should like to direct the attention of that great jurist who is the author of this Bill. In the first place, I think he would do well if he ascertained whether the Bill in fact does effect what he intends to do, namely, render ladies entitled to enrolment as Advocates of a High Court. Certainly it will not affect the whole of India. I suppose my Honourable Colleague had some reason for excluding, for instance, the Bombay Presidency where there is a special Legal Practitioners Act. He may have thought it would be sufficient if he had lady practitioners to compete with him in the Central Provinces. But these are after all matters of detail which scarcely arise at this moment. I merely mention them because, I take it, my Honourable friend, who has been so much pressed with other work, might like to re-examine his Bill to make quite sure that it effects what he really desires. Government this day will not oppose the first motion on this Bill and I think it will suit the convenience of Members if I place in the library copies of the opinions which we have received on the proposals we have made in consequence of the last Resolution in this Assembly.

1 P.M. **Mr. President** : The question is :

"That leave be given to introduce a Bill to amend the Legal Practitioners Act, 1879."

The motion was adopted.

Dr. H. S. Gour : Sir, I now introduce the Bill.

THE SUPREME COURT OF BRITISH INDIA BILL.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan) : Sir, I ask for leave :

"To introduce a Bill to establish a Supreme Court for British India."

The Honourable Dr. T. B. Sapru (Law Member) : Sir, I rise to a point of order. The point of order which I raise and on which I invite your decision is this. Has this Legislature constituted as it is by the Government of India Act passed by the Imperial Parliament power to entertain a Bill, the object of which is the establishment of a Court superior in jurisdiction to the High Courts ? That is the point that I raise before you, Sir, and if you will permit me, I shall very briefly indicate the arguments against the jurisdiction of this House for the entertainment of a Bill of this character. So far as this Legislature is concerned, its powers are definitely laid down by Parliament in section 65 of the Government of India Act. Now, there are just one or two clauses, to which I will invite the attention of this House. Section 65 says :

" The Indian Legislature has power to make laws—

(a) for all persons, for all courts, and for all places and things, within British India ;"

I omit the rest. I come to the second clause which runs as follows:

" (2) Provided that the Indian Legislature has not, unless expressly so authorised by Act of Parliament, power to make any law repealing or affecting—

(i) any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India (including the Army Act, the Air Force Act) and any Act amending the same ;"

Then, again, I will invite the attention of the House to clause 3 of this section, which says :

" The Indian Legislature has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any Court, other than a High Court to sentence to the punishment of death any of His Majesty's subjects born in Europe, or the children of such subjects, or abolishing any High Court."

Now, it is not merely that I object to the Bill, because certain provisions of it affect an Act of Parliament, namely this Act, which gives power to pass a sentence of death on Europeans only to the High Courts established by law, nor also because it gives power to the Supreme Court which it seeks to create, to transfer cases, a power which is reserved by this very Act to the High Courts established under this Act and by the Royal Charter. I raise the more important constitutional issue as to whether it is possible for this Legislature to establish a Court which in its substance and in its constitution will be superior in jurisdiction to the High Courts, which are the highest Courts of original jurisdiction or of appeal in this country. Now, so far as the powers of the Indian Legislature are concerned, they have been the subject of judicial decision, and I will only refer to the leading case on the subject, which was decided by their Lordships of the Privy Council so far back as the year 1878. That is the well-known case of the Queen Empress *versus* Burah and I will venture with your permission, Sir, just to read a passage, where their Lordships of the Privy Council laid down the limits of legislative authority enjoyed by the Indian Legislature. At page 180 of the fourth volume of the Indian Law Reports, Calcutta Series, the law is laid down as follows :

" But their Lordships are of opinion that the doctrine of the majority of the Court is erroneous, and that it rests upon a mistaken view of the powers of the Indian Legislature, and indeed of the nature and principles of legislation. The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary

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powers of legislation, as large, and of the same nature, as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted."

Now, what is that happened in the case which went to their Lordships of the Privy Council? A certain district in Bengal, Garo Hills, formed the subject of legislation by the Imperial Legislature in the year 1869. By that Act it was provided that the Lieutenant-Governor of Bengal could place that district and certain other hill tracts outside the jurisdiction of the ordinary civil and criminal Courts. That the Lieutenant-Governor purported to do by a Notification. Then two persons were prosecuted for the offence of murder and the question which was raised in an appeal filed in the High Court was whether it was open to the Indian Legislature to affect the jurisdiction of the High Courts, that is to say, to affect the jurisdiction of the High Court by establishing a Court or Courts which would be independent of the jurisdiction of the High Court. There was some difference of opinion in Calcutta, but when the matter went up before their Lordships of the Privy Council, they held that the Indian Legislature was competent to do so. The same question arose only a few years ago in the Patna High Court in the well-known case of Parameshwar Ahir, where it was argued that it was not open to the Indian Legislature to establish a Court under the Defence of India Act which would not be subject to the appellate jurisdiction of the High Court. The Patna High Court held that it was competent to do so. Therefore it will be clear that the point which I am raising is not whether it is competent to this Legislature to establish a Court which will be independent of the jurisdiction of the High Courts that already exist. The point which I am raising is whether it is competent to this Legislature to establish a Court which will not only be independent of the High Court but which will really be superior to the High Court,—a Court of supervision over the High Courts. Now, I am afraid, Sir, it will not help Dr. Gour to refer to the enactments which are in force in the Dominions. There in the Dominions by special enactment of Imperial Parliament, provision has been made for the constitution of Supreme Courts and there can be no analogy between the Supreme Court which Dr. Gour wishes to establish by this Bill and the Supreme Courts which have been created in the Dominions by Acts of Parliament. In order to set at rest all doubts on this point, I will venture only to read one or two sections from the various Dominion Acts.

For instance, it is provided by section 71 of the Commonwealth of Australia Constitution Act that :

"The judicial power of the Crown shall be vested in the Federal Supreme Court, to be called the High Court of Australia, and in such other Federal Court as the Parliament creates and in such other court as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice and so many other Justices, not less than two, as the Parliament prescribes."

Similarly, in the Act governing South Africa, section 95 provides that :

"There shall be a Supreme Court of South Africa consisting of a Chief Justice of South Africa, the ordinary Judges of Appeal and other Judges of the several divisions of the Supreme Court of South Africa in the provinces."

There is a similar clause in the British North American Act of 1869, I believe. I will not read it, because the clause is practically the same as the clauses which I have read from the other two Acts. Besides these Acts there is one important one which should be borne in mind, and which will appeal to all my lawyer friends in this House. There was an Act passed by Parliament so far back as 1865, to remove doubts as to the validity of colonial laws. Section 5 of this Act provides that :

"Every Colonial Legislature shall have, and be deemed at all Times to have had, full Power within its Jurisdiction to establish Courts of Judicature and to abolish and reconstitute the same, and to alter the constitution thereof, to make Provision for the Administration of Justice therein, and every Representative Legislature shall, in respect of the Colony under its Jurisdiction, have, and be deemed at all Times to have had, full Power to make Laws respecting the Constitution, Powers, and Procedure of such Legislature ; provided that such Laws shall have been passed in such Manner and Form as may from Time to Time be required by any Act of Parliament, Letters Patent, Order in Council, or Colony Law for the Time being in force in the said Colony."

It would therefore be open to the Colonial Legislature to establish Supreme Courts. but unfortunately this Imperial Act does not apply to India at all, because section 1 of that Act provides that :

"The term 'Colony' shall in this Act include all of Her Majesty's possessions abroad, in which there shall exist a legislature, as hereinafter defined, except the Channel Islands, the Isle of Mann and such Territories as may for the Time being be vested in Her Majesty under or by virtue of any Act of Parliament for the Government of India."

So this Act does not apply to India.

Now, Sir, there is only one more point which I shall mention, and then resume my seat. All constitutional lawyers know that at one time it was considered the high prerogative of the Crown to establish Courts, but that doctrine has to some extent been modified, and it may be taken that in the Dominions which enjoy responsible government, the Crown assisted by Parliament could establish such Courts, and that has been done. I will cite a famous passage on the subject, from a decision in a case which went up to the Privy Council from South Africa. I refer to the case of the Bishop of Natal where the Privy Council said :

It is a settled constitutional principle or rule of law that "although the Crown may by its prerogative establish courts to proceed according to common law, it cannot create any new court to administer any other law"; and it is also laid down by Coke that :

"The erection of a new Court with new Jurisdiction cannot be without an Act of Parliament."

So that the point is this : if the Act governing the constitution of this House does not give the power to this House to establish a Court which will be superior in jurisdiction to the High Court, which has been established under the Government of India Act or by Charter Act, is it open to this House to assume that jurisdiction, without express provision in the Government of India Act ? I submit it is not, and I invite your decision on that point.

Dr. H. S. Gour : Sir, the question which the Honourable the Law Member has so fairly put on behalf of the Government has not been

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a novel question either to him or to me, for we have exchanged numerous notes on the very question which the Honourable the Law Member has now raised for your judgment. The point is indeed a very short one. My learned friend admits that it is within the competence of the Indian Legislature to create a Court to co-ordinate with the Indian High Courts and thus exclude from the jurisdiction of those Courts persons and places which were before such enactment within their sole competence. This is a point which must not be lost sight of. My learned friend has cited the well-known case of King *vs.* Burah, reported in 4 Calcutta, a passage to which I shall presently advert.

Now, the question therefore is that though it is competent to this House to enact a law excluding the jurisdiction of a High Court and creating an independent tribunal, which will affect the jurisdiction of the existing Court, this Court has not got the power of bringing into existence a Court which will be superior to the existing High Courts. That is the question, and for that question let me ask the Honourable Members to turn for one moment to the Government of India Act. My learned friend has rightly pointed out that the whole question depends upon the meaning of one word which occurs in the proviso to section 65 of the Parliamentary Act, namely, that the Indian Legislature "has not, unless expressly so authorised by Act of Parliament, power to make any law affecting any Act of Parliament, etc.", which means affecting the present constitution, the present powers of the High Courts. Now, my contention to the Honourable Member and to this House is that if the Legislature has the power to create a Court which supersedes the jurisdiction of the Indian High Courts, it affects the jurisdiction of the High Courts in the same manner as if it created a Court with a superior jurisdiction. The High Courts' powers are affected in both cases; in the one case by exclusion and in the other case by supersession. But the powers of the High Court are affected equally in each case. Therefore, if the Privy Council have laid down, and they have laid down in the case my Honourable friend cited, that it is within the competence of the Indian Legislature to set up an independent tribunal which will have power to hear appeals in its specified area, and though that Court will supersede the jurisdiction of the High Courts, still the High Courts cannot complain on the ground that their jurisdiction has been ousted by an Act of the Legislature creating an independent and exclusive Court. My submission, therefore, Sir, is that there is nothing in the proviso which prevents the Indian Legislature from creating a Court which affects the jurisdiction of the existing High Courts in the manner and to the extent prohibited by the proviso which my friend, the Honourable the Law Member, has just now read out to the House.

As regards his objection based on clause 3, namely, that the Indian Legislature has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any Court other than a High Court to sentence to the punishment of death any of His Majesty's subjects born in Europe or the children of such subjects, I have no doubt that Honourable Members will remember that

this is the re-enactment of a very old Statute, and the intention of this clause was that no Court inferior to the High Court will have the power to sentence a European British subject to death. It was never intended, nor, indeed, could it ever have been contemplated by this clause, that a Court superior to the High Court or a Court with co-ordinate jurisdiction, shall not have the powers of sentence mentioned in this clause. I, therefore submit that this clause offers no obstacle in the way of the construction which I place upon the Indian Statute.

Well, Sir, I am glad that the Honourable the Law Member has cited that well-known Privy Council case, because Their Lordships of the Privy Council have in unmistakeable terms defined the powers of the Indian Legislature. Remember, Sir, the words used by Their Lordships of the Privy Council :

"But when acting within these limits it is not in any sense an agent or delegate of the Imperial Parliament but has, and was intended to have, plenary powers of legislation as large and of the same nature as those of Parliament itself."

Well, Sir, I am more anxious for the privileges of this House than for my small Bill which can stand over (Hear, hear) and I would ask you, Sir, carefully to consider the position of the Indian Legislature in relation to the British Parliament. Let it not go forth, as it has often been stated outside this House, that we are a subordinate Legislature and that our power is subject to the control of the British Parliament. Let me point out, Sir, to you and to the House that we, within the limits of our power, are not the agents or delegates of the British Parliament, and that is the first principle for which I am struggling. (Hear, hear.)

My second point, Sir, is that, if the Indian High Courts have the power over persons and places under the Letters Patent, the Indian Legislature has the power to alter the Letters Patent, and, in accordance with the terms of the decision of Their Lordships of the Privy Council, the Indian Legislature has the power to supersede the ordinary jurisdiction of the High Court. I see no difference in principle between the constitution of a tribunal excluding the jurisdiction of the High Court and the constitution of a tribunal which hears cases in appeal or in revision from the decisions of the various High Courts. In either case it affects the jurisdiction of the High Court. The question is, therefore, not a question of principle but one of degree. (Hear, hear.) In a very recent case decided by the Calcutta High Court (48 Calcutta, page 974) the following observations occur. (*The Honourable Dr. T. B. Sapru* : "Is that the Rent Act case ?") Yes.

"As to the first ground on which the rule was issued it was contended for the petitioner that sections 19 and 20 of the Rent Act created a new court, and that the creation of a new court affected the prerogative of the Crown." (That is the argument in substance of the Honourable the Law Member.) "But whether a new court is created or not, it is expressly provided by section 84 of the Government of India Act, 1915, as amended in 1916, that a law made by a Local Legislature shall not be deemed invalid solely because it affects the prerogative of the Crown. That observation applies, whether the Rent Act in fact created a new court or whether, as it would appear to be the case, it conferred a new jurisdiction on a court already in existence."

Their Lordships of the Calcutta High Court have pointed out that the Indian Legislature has the power of creating a new Court even

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though it may affect the prerogative of the Crown, and that is provided under the Government of India Act itself. Clause (*a*) of section 84 of the consolidating Government of India Act says :

"A law made by any authority in British India shall not be deemed invalid solely on account of any one or more of the following reasons :

In the case of an Act of the Indian Legislature or a local Legislature because it affects the prerogative of the Crown."

Well, Sir, if we have the power to legislate even if it affects the prerogative of the Crown, surely we have the power to legislate even if it should affect the ordinary jurisdiction of the High Courts, and on that latter point we have the opinion of the highest tribunal in the land in our favour. I need scarcely point out that the leading case of the Privy Council has been followed and in part illustrated in a long series of cases of which I have given a reference to the Honourable the Law Member.

The Honourable Dr. T. B. Sapru : May I rise to a point of order. Most of those cases are absolutely irrelevant. They do not touch this point.

Dr. H. S. Gour : I hope, Sir, you will do me the favour of perusing those cases and give us your deliberate opinion after examining the *pros* and *cons* of the question raised by the Honourable the Law Member. In the meantime, I am perfectly willing to defer my motion.

Mr. President : Does the Honourable Member move to withdraw ?

Dr. H. S. Gour : I am perfectly prepared to give time to you, Sir, to consider the important constitutional question, and I am perfectly prepared to withdraw my motion for the present. I realise that after six months' exchange of views neither side has been able to convince the other and I cannot but expect, Sir, that, after hearing the case on behalf of the Honourable the Law Member and myself, you will readily consent to decide a question of grave constitutional law affecting the rights and privileges of the Indian Legislature.

The Honourable Dr. T. B. Sapru : Sir, when I raised that point and made my speech, I did not expect that I would be able to convince Dr. Gour, but I did certainly hope that I would be able to convince the House. Well, there is only one point that I would like to mention, Sir, so far as this Bill is concerned. It has been hanging on me and on my Department for 12 months, and I would beg the House to give their decision, and I would also beg you, Sir, to give your decision, on this matter now. Postponement of this matter will not help either Dr. Gour or this House or the Government.

I do not know, Sir, whether you will allow me just to elucidate some of the points made by Dr. Gour—only one or two points. Now the great argument of Dr. Gour is that which I anticipated in the course of my submission, namely, that if it is possible for this Legislature to establish in this country Courts independent of the jurisdiction of the High Court, why is it not possible for this Legislature to establish a Court superior in jurisdiction to the High Court. Now, if any impartial

Member of this House will examine the whole scheme of the Government of India Act, one thing that will appear to him so far as the constitution of our Judiciary is concerned, is that the highest Court *in* India which the Parliament intended to give to this country is the High Court. They never intended that there should be a Court higher than the High Court established in India. The Court higher than the High Court is the Privy Council which exists in England. Therefore it is safe to assume that if the Imperial Parliament intended to confer upon this Legislature the power to establish a Court higher than the Courts which they were themselves establishing by this Act, they would have made an express grant of power to this Legislature. In the case of the Colonies, as I pointed out, either they have established those Supreme Courts by the Acts of the Constitution which they themselves passed or have reserved that power to the Colonial Legislature under the Colonial Validities Act of 1865, or under the Acts conferring responsible government on them. That does not hold good of India.

Then, again, I am bound to point out that my Honourable friend, Dr. Gour, makes a confusion between jurisdiction and constitution. The Government of India Act has constituted the High Courts but the Government of India Act cannot be said to confer jurisdiction on the High Courts, and if my Honourable friend will only refer to section 106 of the Government of India Act, he will find that that section itself provides that the real jurisdiction of the High Courts is conferred by the Letters Patent. Now I will read to the House section 106. It says :

"The several high courts are courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them by Letters Patent, and, subject to the provisions of any such Letters Patent, all such jurisdictions, powers and authority as are vested in those courts respectively at the commencement of this Act."

Then it goes on to say :

"The Letters Patent establishing or vesting jurisdiction, powers or authority in a high court may be amended from time to time by His Majesty by further Letters Patent."

Then section 107 gives the High Court the power of superintendence over all Courts and those powers of superintendence are specified in the sub-clauses of section 107.

Therefore, because the Indian Legislature may establish Courts of co-ordinate jurisdiction or Courts independent of the jurisdiction of the High Court of India, it does not follow as a matter of logic or as a matter of legal necessity that that Legislature has got the power to establish a higher Court also in India—a Court which will exercise supervisory jurisdiction over the highest Courts established by the Government of India Act in India.

There is only one more remark that I will make and then I will sit down. My Honourable friend, Dr. Gour, cited a case from Calcutta

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which went up to the Calcutta High Court under the Rent Act there. I have no quarrel with that decision. There are decisions to that effect to be found in almost all Courts under various Acts. It has however been unanimously laid down by various High Courts that any local Legislature in India has not the power to confer jurisdiction upon a High Court or take away jurisdiction from a High Court. So far as I recollect, the earliest decision on that point was given in Bombay by Sir Lawrence Jenkins in 27 Bombay ; but that is not the point here. It is not the local Legislature which is conferring any jurisdiction upon a High Court, or which is taking away any jurisdiction from a High Court which is already vested in it. The point is whether this Legislature has got any jurisdiction to establish a Court to which the High Courts must of necessity be subordinate.

Mr. President : I think we have had enough of legal argument now.....

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions : Non-Muhammadan Rural) : Sir, I want to draw attention to one or two sections of the Government of India Act.....

Mr. President : Order, order. I am sure that ' drawing attention ' in the Honourable Member's case will mean more legal argument.

The point put to me is whether a Bill to establish a Supreme Court in India is or is not within the competence of the Indian Legislature. In a matter of such importance I think the Imperial Parliament, if it had intended to confer that power, would have done so expressly. Whatever may be said regarding the validity of the arguments put by the Honourable Member from the Central Provinces, the inference I have just drawn from the Act is strengthened by the fact that in the most recent case in which a Supreme Court has been established in a Dominion, it has been established by an Act of the Imperial Parliament ; and therefore I think I must hold that if it had been the intention of the Imperial Parliament to confer such a power upon the Indian Legislature, it would have done so in similar terms to those of the South Africa Act.

I would suggest to the Honourable Member that this decision in no way closes the door to the discussion of the desirability of a Supreme Court for India by way of Resolution, a properly framed Resolution ; but it does exclude us from taking into consideration the Bill which he has asked leave to introduce.

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

The Assembly re-assembled after Lunch at Forty Minutes Past Two of the Clock. Mr. President was in the Chair.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan) : Sir, I beg to move :

"That the Bill further to amend the Code of Civil Procedure, 1908, be referred to a Select Committee consisting of Sir Sivaswamy Aiyer, Mr. K. Ahmed, Mr. N. M. Joshi and the Mover."

This Bill, Sir, is a very short Bill intended to provide against the imprisonment of women in execution of a decree for restitution of conjugal rights. As I have stated in the Statement of Objects and Reasons, one of the eminent Judges of the Calcutta High Court in a published judgment has pointed out that 'if you are to compel the women to cohabit at all, then the direct way of doing so by delivering her person to her husband is not more inhuman and infinitely more effectual than throwing her into prison.' In England the relief by way of imprisonment of women in execution of such a decree has been swept away by the Matrimonial Clauses Act of 1884. The Bill has been circulated to the various Local Governments, and I shall very briefly give the Honourable Members of this House a resumé of their opinions. The Madras Government sympathises with the object of the suggested amendment of section 51 of the Code of Civil Procedure. The Advocate General, Madras, is in favour of the Bill and the Vakil's Association approve of its principle. In Bengal the Incorporated Law Society approves of the Bill, the Moslem Federation supports the amendment, but the Vakils' Association is against it. In the United Provinces the Government is inclined to agree with those who are in favour of the Bill. The Additional Judicial Commissioner of Oudh is in favour of the Bill. The Second Additional Commissioner is also in favour of the Bill and a member of the Bar, Mr. Agarwalla, is also in favour of the suggestion for amending the law "in accordance with modern views." In Bihar and Orissa the Government are in favour of the Bill. So are the Governments of Ajmer-Merwara and Baluchistan. The other Governments are against it. Of the High Courts, the High Court of Madras shows 6 learned Judges in favour of the Bill and 4 against it. Bombay is against it. The Bengal High Court appears to be against it. And so are the learned Judges of the Punjab High Court. In Bihar and Orissa, the Chief Justice of the Patna High Court is in favour of it.

3 P.M.

Honourable Members will thus see that there is a volume of opinion in favour of the Bill and the only objection that there could be to such a measure is that, if you were to remove from the Code of Civil Procedure the remedy by way of imprisonment which is in the discretion of the Court, such a decree would be incapable of execution and would therefore be nugatory. As against this, I may point out that, if the wife has property of her own, if she is rich, it might be attached. If she is poor, she will forfeit her maintenance. But in any case, to compel a woman to cohabit with her husband whether she likes it or no—and in cases of this kind she certainly does not like it—is, I think, a remedy which has been condemned by the learned Judges of the High Court from one of whose judgments I have already cited to Members of this House, and I think it would not be in accordance with modern notions of public justice.

I therefore, Sir, commend this Resolution for the acceptance of this House.

Mr. President : In view of the absence of the Honourable Member from Madras (Sir Sivaswamy Aiyer), I have to ask the Honourable Mover whether he has his permission.

Dr. H. S. Gour : I had his permission, Sir, the last time the Bill was on the table. He has since gone away ; he may therefore be unable to come back before the Select Committee meets. I will, therefore, with the permission of the House, substitute the name of Mr. Samarth in place of Sir Sivaswamy Aiyer.

Mr. President : I put the question in the amended form :

"That the Bill further to amend the Code of Civil Procedure, 1908, be referred to a Select Committee consisting of Mr. Samarth, Mr. K. Ahmed, Mr. N. M. Joshi, and Dr. Gour."

The Honourable Sir William Vincent (Home Member) : Sir, I shall not detain the Assembly for any time in regard to this Bill. It has been considered carefully by the Government of India, both before and after the opinions of Local Governments were received. Copies of these opinions have been supplied to all Members. I should like to be corrected at once if I am wrong in that supposition. (*Cries of* "They have been circulated.") It is possible of course that Honourable Members, like Sir Deva Prasad Sarvadhikary with the Code of Criminal Procedure Bill, may have thrown their copies into the waste paper basket.

The Government recognise that this is a piece of social legislation that should mainly be decided by the votes of the non-official Members. I want however to say one or two words on the different opinions that have been received. On the one hand, the opponents to Dr. Gour's proposal say that the present law is sympathetically and fairly exercised, and that the discretionary power which is already vested in the Courts under the Code of Civil Procedure confer a sufficient protection against the possibility of harshness, severity or injustice. It is added that "A threat of any order of the kind of which Dr. Gour complains is often sufficient in itself to secure obedience to a decree." Of course, on the other side, the arguments so ably put by my Honourable friend, Dr. Gour, are reiterated. The principle is enunciated that there should be no possibility of awarding imprisonment either in the case of a man or woman to enforce a decree for the restitution of conjugal rights. Well, the non-official Members of this Assembly should be in a position—in a better position perhaps than we—to come to a decision whether such a provision is necessary or whether the repeal of it now proposed by Dr. Gour is advisable, and they will have an opportunity of considering the opinions derived from a number of authorities. The attitude of the Government on this question will be that, whatever may be the personal views of Members of the Governor General's Council, they will not vote on it.

Other official Members, of whom most seem to be absent at the moment, will have full opportunity of voting and speaking exactly as they like. Their discretion is completely unfettered. But I think it might assist them and possibly others, if I deal with one or two points raised by the Honourable Member.

He has said, in fact he has made great play with the argument that he intends by this Bill to place the law in India on the same basis I think as the law of England. This argument is apparently permissible to the Honourable Member, though he levelled a series of attacks on me the other day when I proposed to do the same thing. I hope he will not meet the same fate in that respect as I did. But the truth is that a decree in England for the Restitution of conjugal rights is, I believe, nearly always, if not always, obtained for one purpose and one purpose only, and that is to get proof of desertion, or legal cruelty, to justify a decree for judicial separation or in certain additional circumstances a decree for dissolution of marriage, and this is what is provided for in section 5 of the Matrimonial Clauses Act, to which my Honourable friend has referred. In the case of most persons to whom the present Bill will apply, there will be no similar benefit. In India, at present, under Rule 32 of Order 21, the Restitution of conjugal rights may be enforced by the imprisonment of the Judgment Debtor. The Bill proposes to delete this reference to conjugal rights from that order and to substitute a new rule for existing Rule 33 which relates solely to decrees of this character. The first sub-rule of that Rule is not reproduced and if the provision of the new Rule 33 are examined, it will be seen that, while if the decree-holder is the wife, a method for the execution of the decree is prescribed, there is no such method at all provided for the execution of a decree in a case in which the husband is the decree-holder. Now, the point that I want to make to this Assembly is this—I make it purely for the consideration of the non-official Members. I myself am not going to vote or take any further part in this discussion—but I want to make it clear that, if our Courts are to give these decrees for the restitution of conjugal rights, then there ought to be some kind of sanction behind them, if they are to be of any effect. Otherwise, it would be better—the Assembly might consider whether it would not be better to do away with such decrees altogether. The conditions here do not correspond with those in England and indeed it would be, I believe, useless in this country in many cases—it would be useless to provide that the decree should have the subsidiary effects and results that I have mentioned as applicable in Great Britain.

I have spoken to this question of sanction for the enforcement of a decree because it is to my mind a matter of great importance. It has attracted the attention of others, including the Incorporated Law Society, Bengal, and I am sure that those Members of this Assembly—they must be a large majority—who have read these opinions with that care that they deserve will have seen that that Society does propose a certain remedy—a certain method of enforcing these decrees which may be useful. For the rest, and the merits of the case, it is purely a matter for the non-official Members of this Assembly to judge whether this law has in its application been unfairly used,—whether it serves a useless or a useful purpose and whether they desire to maintain it. In any case, they will, I trust, have some regard to the point that I have raised, namely, the desirability of some sanction—some real sanction behind a decree of restitution of conjugal rights, if that form of decree is to be preserved. And the Honourable Member does not in this Bill seek to do away with it.

Mr. T. Rangachariar (Madras City : Non-Muhammadan Urban) : Sir, after the very careful and able way in which the Honourable the Home Member presented the various aspects of the question, I have very little

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to add. We have to remember, in the first place, that, before a decree for restitution of conjugal rights is made, the Courts always examine and very carefully examine the defences which are raised by the man or the woman, as the case may be, why such a decree should not be passed and, if really any reasonable ground is made out, why the two should not live together, the decree is most often refused. That is the first safeguard we have before a decree is passed. In the second place, there are only two methods of enforcing decrees. One is by arrest or imprisonment and the second is by attachment of the property, if any, of the judgment debtor, and bringing it to sale. Now, in the case of the woman—the married woman—in most cases, they have very little property which you can attach. Therefore, the only method by which a woman can be punished for contempt of the order of the Court is by imprisonment. My Honourable friend the Mover of this Bill has in his Statement of Objects and Reasons stated one thing and the Bill which he has brought before the House accomplishes two things. His object is to remove it from the power of the Court to order imprisonment of the judgment debtor. That is what he says in his Statement of Objects and Reasons. But, as a matter of fact, even if the woman should be a person possessed of property, he deprives the decree-holder of the right to attach the property by omitting the whole clause as he suggests in his Bill. Probably, it is an oversight. He himself has not got that object in view. Probably that may be rectified in the Select Committee stage.

As I have stated already, the other remedy of attaching the property is absolutely futile in the case of the woman. Now, there is no use comparing this country with other countries, since our marriage laws are rather different and we can have really no divorce. Once a marriage it is always a marriage and there is really no recognised divorce. Husband and wife are united together for life.

It is very seldom that cases come at all before the Courts. It is the one happy feature of the Hindu family life and I believe also of the Muhammadan family life in this country that very seldom have we marriage cases coming into Court, and if they do come at all, it is because of the machinations of either a would-be lover or of parents or guardians who wish to trade upon these poor girls. It is only in such cases the question would arise at all whether the Court should order imprisonment of the judgment debtor. The matter was very carefully considered when the Code of Civil Procedure was revised in 1908 by a very large committee of lawyers assembled from all parts of the country. It is then they enacted the rule leaving it to the discretion of the Court whether it should order imprisonment or not in the case of disobedience of a decree of the Court, so that, as I stated already, before the decree is passed the circumstances are carefully examined ; and even after the decree is passed, when the decree-holder seeks to execute the decree, the Court again examines the question thoroughly whether it is a case of such thorough contempt that it deserves this mode of enforcing the decree, namely, ordering the imprisonment of the judgment debtor. It is only if the Court is satisfied that it is a case of contumacious disobedience of the decree of the Court that it will order imprisonment at all, and as the Honourable the Home Member

has pointed out, hardly a single case has been cited before this Assembly to-day as to why this law, which was enacted only in 1908 after very careful examination, requires revision at all. If, for instance, my Honourable friend had quoted statistics and figures to show that the Courts very liberally use this discretion against the woman, I can understand the reason for coming forward with this measure. Probably that may not be enough. He should have carried the case further and said, " Look at these Courts. They have wrongly used the discretion vested in them. Therefore it is time that the Legislature should intervene." If Honourable Members will carefully peruse the opinions which have been placed before us, they will see that almost every Indian Judge of the High Court and also of the various subordinate Courts and District Courts say from their experience that to take away this power from the Court will be merely playing into the hands of persons who want to trade with girls who are the legitimate wives of other people. Therefore it cannot be correctly said that the volume of opinion is at all for a change. My submission is that a change was made only in 1908 and that no case for revision has been made out, and if you take away this power, the judgment debtor will be able to laugh at the decree of the Court, will be able to snap his finger at the decree of a Court and say, " Very well, you have got a decree. It is a mere paper. (*An Honourable Member*, ' Scrap of paper.') It is a mere scrap of paper." Are you going to allow a solemn decree of Court to be laughed at like that ? Should not the Court have some method of enforcing its own orders ? I can understand the mover of the Bill coming forward saying, " Very well, let there be no restitution of conjugal rights." My Honourable friend tells us, " How can you compel a man or a woman to live together ? " Unfortunately that is the law of marriage. That results from the marriage tie. If my Honourable friend had said, " Abolish this right of suit ", I can understand it. " Let there be no right of suit for getting a decree for restitution of conjugal rights "—that is the logical remedy for the argument which is put forth by my Honourable friend. But instead of that he says, " Let the parties go to the expense of getting a decree in the first Court, probably get it affirmed in the appellate Court, and probably get it affirmed again in the second appellate Court, and after taking all this trouble of getting a decree, when three Courts have examined all the circumstances attendant upon it and have granted a decree let them treat it as a waste paper even if the judgment debtor commits contempt of Court ; let the Court have no power." That is the object of my learned friend's Bill. If Honourable Members realise the position, I ask them to give their vote against the Bill. I do not think any useful purpose is served by sending this Bill to the Select Committee, because, no case has been made out for changing a law which was only recently changed in 1908 by a very comprehensive and learned committee.

Mr. Muhammad Yamin Khan (Meerut Division : Muhammadan Rural) : Sir, after the two very important speeches by the Honourable Sir William Vincent and Mr. Rangachariar, there is very little left for me to say. But I want to draw the attention of this Honourable House to one more point which has not been hitherto touched. We all know that if a woman in this country does not desire to go to her husband and to live there, there is somebody else behind her who is urging her. If a husband treats his wife badly, of course the Court is never unwilling to

[Mr. Muhammad Yamin Khan.]

pass a decree, as Mr. Rangachariar has pointed out. But we find that lots of cases which come before the Court are due to the parents of the wife trying in some way to put pressure on the husband to separate from his wife, and that is why the parents always insist on not sending the wife to the house of the husband. The husband is forced under these circumstances to come before the Court to seek a remedy. If a decree is passed, as the woman possesses no property, my friend, Dr. Gour's proposal, that her property may be attached, will be absolutely useless, because the Hindu daughter never possesses any property, and the Muhammadan daughter, so long as her parents are living, has got no right to property and does not possess any. So they have no property which can be attached. There is another side of the question, Sir. Sometimes we find that it is not the parents but it is somebody else who create trouble. It is a love affair. In that case, Sir, the wife does not desire to go back to her husband. We find a lot of cases under section 498 of the Indian Penal Code which are cases of enticing away a married woman or detaining a married woman for illicit purposes. If that happens to be the case, the husband goes to seek a remedy in the Court. What will be the effect in these cases ? The woman will be living with her paramour and there will be no remedy left for the husband to seek. If the husband wants to attach any property, she says, ' All right, take away the property which I possess which really belongs to you '. She has got no property. Certain High Courts have ruled that it is not detention under Section 498 if the woman is living with anybody of her own free will. If a woman is living of her own free will with a paramour and she herself refuses to go back to her husband, the man cannot be punished for detaining the woman, under Section 498. If my friend Dr. Gour's suggestion is also supported by this Honourable House, it means that the husband has got no remedy either against the paramour, or against the woman. I need not dwell on this subject at length, but I want to draw the attention of this Honourable House to the fact that it is not safe and there is no comparison between this country and England. Looking at the matter from the social point of view and the social customs prevailing in this country, it is always necessary that there should be some power to make the woman feel that she will be compelled to come back to her husband, and that otherwise she will have to undergo some punishment, for fear of which she must come back ; and this must not be objected to.

Mr. J. N. Mukherjee (Calcutta Suburbs : Non-Muhammadan Urban) : Sir, I am in the same category as my Honourable friend, Mr. Muhammad Yamin Khan. After the exposition of the Bill by the Honourable the Home Member and by my Honourable friend, Mr. Rangachariar, very little remains to be said on the subject. I could have understood it, Sir, if the question raised before the House by the Honourable mover had been whether " marriage is a failure." But if marriage is not a failure and if the House has not to face a question like that, I submit, Sir, any tendency on the part of this House to set at naught the tie of marriage, and to reduce it to a nullity, would not be desirable from any point of view. I stand, Sir, to emphasise the views of some friends on my side of the House. I do not speak for

myself. I speak for some of my friends also who are on this side. Then, Sir, passing on to the framework of the Bill it is amply indicative of having been very hastily conceived and executed. As it has been pointed out by the Honourable the Home Member, the Bill does not say anything about the case when the decree-holder is the husband and not the wife. When a Bill is presented, Sir, one expects that both sides of the question should be dealt with by it, and apart from the questions which have been raised, this defect in the Bill itself is so serious that the House cannot accept it as something presentable, and deserving the consideration of the House. It is imperfect to a degree, and for that reason also it should not be allowed to be passed on to a Select Committee. The imprisonment which is provided for is discretionary, as it has been pointed out very clearly, and if the imprisonment which is only by way of sanction, is withdrawn, practically there will be no value in the decree itself. As it is, Sir, Honourable Members will see that when a right of suit has been given, as has been very clearly explained by my Honourable friend, Mr. Rangachariar, as also a right to a decree, the decree will be rendered practically inoperative by the procedure suggested. I therefore hope Honourable Members will unanimously throw out this Bill.

Chaudhri Shahab-ud-Din (East Central Punjab : Muhammadan): The only sanction which the Honourable Mover of this amending Bill has provided in the draft Bill is recovery of a certain amount of money to be fixed by a Court from the contumacious husband. Suppose a husband obtains a decree against his wife for conjugal rights and the wife refuses to go, the only remedy in the hands of the Court is to sentence the wife to imprisonment for six months. The remedy proposed in the Bill is that instead of sending her to imprisonment, a certain amount may be fixed. (*Voices* : 'No, no.') I stand corrected. The property of the woman may be attached. Among Mussalmans generally, she has no property, except perhaps her jewellery ; and that property being movable property, will not be accessible to the officers of a Court of Law. There should be, as has been pointed out by the Honourable the Home Member, some sanction behind the decree and if that sanction is taken way, the decree becomes valueless and illusory. I associate myself entirely with the remarks of Rao Bahadur Rangachariar that either we should do away with the right of suit and the consequent passing of a decree in such cases or make some provision for an efficacious sanction. The feeling in my province, and especially among the community to which I belong, is that in cases under section 498 provision must be made not only for punishing the enticer of a woman, but also the woman as an abettor. Well, that is the feeling in the North-West Frontier Province among the Mussalmans and that is the feeling among the Mussalmans in the Punjab. When the wife allows herself to be misled, enticed away or led away by her paramour, I think she is an abettor. Under these circumstances, to give that liberty to a woman by which she will be in a position to defy even the decree of a Court of Law will, in my opinion, have very serious consequences and affect the morality of the country. Therefore I am strongly opposed to the amended Bill which my Honourable friend, Dr. Gour, desires to entrust to a Select Committee.

Munshi Mahadeo Prasad (Benares and Gorakhpur Divisions : Non-Muhammadan Rural): I move that the question be now put.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor : Non-Muhammadan Rural): Sir, the question raised by this Bill is the usual question which my Honourable friend Dr. Gour's Bills raise, *viz.*, the question of man *versus* woman. Well, it so happens that in a matter like this, the traditional feeling, the ordinary instinctive feeling goes against his motion. Now, as to the details of this Bill, I will not say a word. The Select Committee will look into the details, but on the broad principles of the Bill I must say there is a good deal of justice in the attempt which my friend, Dr. Gour, has made.

Now, it is said—some of my Honourable friends said—as to the sacredness of the marriage tie. It appears to me that this sacredness is all on one side and not on the other side. As the law at present stands in India, Hindus and Muhammadans can marry more than one wife. Probably there may be a limit for Muhammadans, but for the Hindus there is no limit. If a Hindu has the money, he can marry any number of wives, and, as a matter of fact, zemindars, wealthy men, Ruling Princes marry a large number of wives. Any old man of 60 or 70 can marry a girl of 8 or 9, and that girl is asked to go and live with this grandfather of a husband, and then the Court is to be solemnly asked to tie that girl hand and foot and send her home to that husband. My Honourable friend, Mr. Rangachariar, pillar of orthodoxy in this House, and the protagonist of all orthodox and antedeluvian opinions, says it will lead to immorality. Immorality on which side ? The immorality of the man is not a matter which we men assembled here have to take into account. It is the immorality of the woman that we are sitting here to condemn, to punish and to pillory. Then there is another matter which was raised. Can there be a happy couple if the woman is forced to go and live with her husband against her will ? Apart from the sacredness of the marriage, there is the sensitive and delicate aspect to take into account, and what good will it do, socially or hygenically, to send a girl to jail because she does not want to go and live with a man ? (*A Voice* : 'Pass a decree.') A decree is the assertion of a right, but when you go further and want to send that person to jail, I ask you to take into account the analogy of money decrees. Is not the trend of law in all civilized Courts not to send a man to jail for not being able to pay a debt ? Therefore, in this matter to send a woman to jail because she does not want to live with her husband, to whom she most often and practically in all cases, is tied, without her will or her consent being properly exercised, must appear to anyone as a cruel law. And if now, when we want all kinds of independence, all kinds of liberation from old trammels, if an attempt is made to oppose the measure, I think it unfair and impolitic.

No doubt the feeling has been expressed that the law relating to marriage offences ought to be made more stringent ; that the woman who goes wrong should be sent to jail. Some 60 or 70 years ago that question was considered by Lord Macaulay's committee, who thought it

was going too far. If this feeling of morality is predominant, we ought to say that every man who goes wrong should be sent to jail. No objection has been raised to the second clause as to the payment of subsistence allowance to the woman. This Bill has two parts. The first part is objected to, and if we throw out this Bill, the second part, which has not been opposed, will also be thrown out. It will be better for this Assembly to allow it to go to a Select Committee, and after it comes back, we can express our opinions and make whatever amendments we like.

Mr. Abul Kasem (Dacca Division : Muhammadan Rural) : The Honourable Member, who has just spoken, has said that the proper course for us would be to allow this Bill to go to Select Committee and then to express our opinions and move what amendments we like : but unfortunately, Sir, you have laid down a ruling that when we send a Bill to Select Committee we accept the principle of the Bill, and before we can allow a Bill to go to Select Committee we must accept the principle of the Bill.

As pointed out by the Honourable the Home Member, when there is a decree there should be sanction behind it. It is said that property should be attached. I may tell this House that the cases where the wife refuses to live with her husband occur in 90 per cent. of instances in connection with people who have no property, I mean among the very lowest classes.

Mention has been made about the custom among Muhammadans. I might inform the House that, according to Muhammadan law, the wife and husband both have the right of divorce. The process is not so elaborate as in European countries, therefore if a man or a woman do not wish to live with her or his partner, he or she can get a separation or divorce. But to allow them to continue married and at the same time to refuse to live with each other is an offence in my mind which should not be allowed to exist.

Mr. Subrahmanayam has said that we are going to continue immoralities because Hindus and Muhammadans are allowed to marry more wives than one ; but this Bill does not prevent that. You have to change the marriage laws of the two communities if you want to bring about morality of social life. Does he mean to say that it will change our morality if we married any number of wives and live apart from them and let each party go its own way ? Therefore, Sir, I submit that it will be wrong on our part to send this Bill to Select Committee. If it had been a long measure, it would mean many amendments and improvements which might be brought about, but the main principle is whether sentences of imprisonment should or should not be passed when a decree for the restitution of conjugal rights is disobeyed. I submit we should not accept that principle.

Munshi Iswar Saran (Cities of the United Provinces : Non-Muhammadan Urban) : Sir, it is distressing how beneficent proposals of social reform are turned down here by those who are ultra-Nationalists in politics. (*A Voice* : ' Not democrats.') Whether " Democrats " or " Nationals," I do not mind. What I do mind is that every effort made in this Chamber for the amelioration of our social condition is obstructed in the name of religion. (Hear, hear.) Sir, it is not true religion, it is

[Munshi Iswar Saran.]

obscurantism. Talking of Hindu marriage, I say this without the least fear of contradition that there is no one who holds the Hindu ideal of marriage in greater reverence than I do. But, Sir, I do not permit my idealism to blind me to actual facts. Where is the sanction in the *Sastras* that if a woman does not wish to live with her husband, you should send her to jail in order to make her yield, give in, and submit to the tyranny of her husband.

Mr. Mukherjee, for whom I have great regard and esteem, says, "You are making the marriage tie a nullity." I say you are making the marriage tie a blessing and not a nullity; you are making the marriage tie a source of blessing to both and not a source of tyranny to both. To talk of immorality and all the rest of it is perfectly irrelevant. We know that in respectable families there are no suits for restitution of conjugal rights. In the majority of such suits there are, it is said, others behind the scenes. I hope I am not betraying a confidence, but when Mr. Yamin Khan said that in such cases there were always "some men who were instigating the wife not to live with her husband," my Honourable friend, Mr. Way, said, "Why not send the instigators to jail instead of the wife." I submit, Sir, that that was a witty remark, but there was considerable force in it. The whole point is this. Are you going to send wives to jail because they do not wish, for various reasons, to live with their husbands. Well, the truth has been told by my Honourable friend Mr. Subrahmanayam. If an old man of 60—I will take the fact from him because he is familiar with Madras (Laughter)—marries a girl of 10 (*A Voice* : '9'), well 9, I ask this Assembly in all seriousness, are you going to send that wife to jail because she refuses to live, as Mr. Subrahmanayam has said, with her grandfatherly husband? (*A Voice* : "No Court will give a decree in such a case.") Quite right, no Court will easily pass such a decree, but as is well-known, the discretion of one Court differs from the discretion of another. There may be the same pillars of the so-called orthodoxy, unfortunately they are represented in this House (Laughter)—and they may say, "Oh! look at this sinful woman. She is not paying any regard to the ideals of ancient Hinduism or Muhammadanism. She must go to jail." What then is the remedy? I do concede, and I hope my Honourable friend, Dr. Gour, will concede, that Courts exercise their discretion properly, but I wish to make it impossible for any erratic Judge to perpetrate a cruelty like this. I have it on very good authority that from the Civil Procedure Code in Ceylon this provision has been taken away, and I have it on the same authority that a good many Tamil Brahmins live there. I dare not speak about Muhammadanism but I ask what about Hinduism in Ceylon? Is it living or is it dead like a door nail? (*Voices* : "No, it is flourishing.") It is flourishing, and I do feel, Sir, that, after these crude notions are done away with, Hinduism will flourish still, and it will be better and purer than what it is to-day. (*Mr. N. M. Samarth* : "And loftier.") Very well, loftier too.

Sir, before I sit down, I shall say that there are admittedly defects in the Bill, as it stands at present; but these defects can be rectified in the Select Committee. What we have got to do is this. We have to

concentrate our attention on this central point. Are we prepared to allow this relic of mediæval times, I was going to say barbarous times, to disfigure our Statute Book ? Those of us, who are such ardent Nationalists, who claim everything for India, should not use the same arguments as are so often used by the occupants of the Government Benches. My Honourable friend, Mr. Rangachariar, says, with an innocence which I sometimes admire, " Oh ! India is not England ; conditions are different." So say they, when you talk of politics. I sometimes shudder, Sir, to think of what will happen when these pillars of the so-called orthodoxy in the days of Swaraj occupy those Benches. Every proposal of beneficent reform will be turned down. (Laughter.) These speeches, let me say quite seriously, are reported ; they are not confined within the four walls of this Chamber ; and our critics, and might I say hostile critics, smile at us and say, " These Nationalists, scratch them and what do you find ? (*A Voice* : " Barbarians.") No, obscurantists, re-actionaries, men who are ready to perpetuate the existing state of affairs, and, in order to perpetrate their present tyranny, they invoke the name of religion." (*A Voice* : " Shame.") I say, Sir, there is no question of religion involved in the present issue. You have only got to purify the Statute as you have got it. I advisedly use the word " purification " because you find that this provision runs counter to all our notions that a woman should be imprisoned in order that she should come and live with her husband. I ask my friends who speak in the name of Hinduism, where is that ideal of marriage ? Does it not vanish into thin air when you can only get your wife by sending her to jail ? What is the value of the offering that you make conjointly with her to the gods, what is the value of the *puja* or worship which you perform with her when your wife is with you only because she wishes to avoid going to jail ? Will you say to a wife " By putting your physical body in jail we are going to have command over your soul and your conscience " ? That, I say, is an act of barbarism, and I hope this Assembly will by its vote to-day make it perfectly clear that, if it wants reforms in politics, it is equally anxious for reforms in social matters.

Several Honourable Members moved that the question be now put.

Dr. H. S. Gour : Sir, I do not propose to detain the House for many minutes.

My friend Mr. Rangachariar, who has been rightly described as a pillar of orthodoxy, has led the opposition in the guise of a candid friend, and I am inclined to ask this House to save me from such candid friends. (Laughter.) He tells us that our more logical course would be to abolish a decree for restitution of conjugal rights. (*Mr. Rangachariar* : Hear, hear.) He ejaculates " Hear, hear," but I am perfectly certain that, if I brought forward such a Bill, he would be the very first person to oppose it, and oppose it on the self-same grounds upon which he has opposed my more modest motion. My friend, Mr. Yamin Khan, has conjured up a scene the like of which does not exist except in his own imagination. He tells us with that fallacious generalisation which he permits himself to indulge in that in all cases women refuse to go to their husbands because, forsooth, they are aided and abetted by their lovers ; but with the same breath he has told us that there is such a thing as section 497 and

[Dr. H. S. Gour.]

section 498 of the Indian Penal Code, and that the arm of the law is long enough and strong enough to punish such sweethearts to whom my friend on the other side refers.

Then we have been told, Sir, that there cannot be a decree unless some sanction is attached to it. I have already informed the House that this decree would not be without sanction, and the mere fact that you abolish the inhuman, the cruel sentence of imprisonment, would not deprive the decree holder from his other legal remedies. Are not the Members of this House aware that the troubles of the decree holder in many cases begin after he has obtained the decree? What becomes of an insolvent judgment debtor. What sanction indeed is there against him? Yet a merciful legislature has provided the Insolvency Act which is intended to keep these people out of jail. I say, Sir, that the mere fact that in certain cases there may be hardship is no reason whatever for perpetrating a wrong which, I submit, the Statute Book of India contains and which, as my Honourable friend, Munshi Iswar Saran, has pointed out, the neighbouring country of Ceylon, populated as it is by Tamils, Hindus and Muhammadans, has put right. I, in my opening speech, Sir, suggested that we should assimilate our law to the law in England, and the Honourable the Home Member took advantage of my statement by saying that I was a very severe critic the other day of the self-same argument used by him in another connection. But I am certain the Honourable the Home Member must know that he was using the argument for the purpose of fettering the people of India and I am using the argument for the purpose of liberating them.

Sir, the question is so simple, the justice of it is so obvious, that I need not detain this House longer. If there are any defects in my Bill, as Mr. Rangachariar has pointed out, these are matters of detail which can be gone into in the Select Committee. If my Bill were perfect, I would ask this House to pass it here and now; but my motion is to commit it to the Select Committee, recognising as I do that there are points for consideration which the Select Committee must go into; and after it emerges from the Select Committee it will be open to this House to discuss it. But on the main principle let me assure you, Sir, that there shall be no going back upon what I have said, namely, that everyone in this House must vote on the main principle, that it is a cruel wrong to the women of India, and that the punishment of imprisonment which finds no place in the Statute Book of civilized countries should not find a place here.

One more word, Sir, and I have done. Some of my friends say that if we recognise this principle, then women will become more contumacious, they will defy their husbands and they will go to their lovers. Well, Sir, I believe in the sacredness of human rights and I say that it is the right of every man to enjoy the freedom of his conscience, and if a woman feels that she will not be happy with a man, no law should compel her to go and offer her person to him. (Hear, hear.) Sir, Honourable Members will realise what this compulsion means. Some lawyers will say that the Legislature has on its Statute Book a provision which encourages the abetment of rape. If the woman is unwilling to go to the husband, the

Court says, "Either go to him and offer your person, or go to jail; those are the two alternatives before you, and there is no third one." And the poorer the woman, I submit, the more miserable is her lot. Well, I ask you, help in the cause of the women of India and I feel confident that this Bill will go to the Select Committee, I trust, by your unanimous consent.

4 P.M. The Assembly then divided as follows :

AYES—39.

Abdulla, Mr. S. M.	Misra, Mr. B. N.
Agarwala, Lala Girdharilal.	Misra, Mr. P. L.
Allen, Mr. B. C.	Mudaliar, Mr. S.
Asad Ali, Mir.	Nag, Mr. G. C.
Bagde, Mr. K. G.	Nand Lal, Dr.
Bajpai, Mr. S. P.	Neogy, Mr. K. C.
Bradley-Birt, Mr. F. B.	Percival, Mr. P. E.
Chaudhuri, Mr. J.	Reddi, Mr. M. K.
Cotelingam, Mr. J. P.	Samarth, Mr. N. M.
Ginwala, Mr. P. P.	Sarfaraz Hussain Khan, Mr.
Gour, Dr. H. S.	Shahani, Mr. S. C.
Gulab Singh, Sardar.	Singh, Mr. S. N.
Hudson, Mr. W. F.	Sinha, Babu L. P.
Iswar Saran, Munshi.	Slocock, Mr. F. S. A.
Jamnadas Dwarkadas, Mr.	Sohan Lal, Bakshi.
Joshi, Mr. N. M.	Subrahmanayam, Mr. C. S.
Latthe, Mr. A. B.	Ujagar Singh, Baba Bedi.
Lindsay, Mr. Darcy.	Venkatapatiraju, Mr. B.
Mahadeo Prasad, Munshi.	Way, Mr. T. A. H
Zahiruddin Ahmed, Mr.	

NOES—23.

Abdul Majid, Shaikh.	Lakshmi Narayan Lal, Mr.
Abdul Qadir, Maulvi.	Mitter, Mr. K. N.
Abdul Rahman, Munshi.	Muhammad Hussain, Mr. T.
Abul Kasem, Maulvi.	Muhammad Ismail, Mr. S.
Agnihotri, Mr. K. B. L.	Mukherjee, Mr. J. N.
Akram Hussain, Prince A. M. M.	Mukherjee, Mr. T. P.
Barodawala, Mr. S. K.	Rangachariar, Mr. T.
Barua, Mr. D. C.	Shahab-ud-din, Chaudhri.
Bhargava, Pundit J. L.	Singh, Babu B. P.
Bridge, Mr. G.	Sinha, Babu Ambika Prasad.
Ikramullah Khan, Raja M. M.	Srinivasa Rao, Mr. P. V.
Yamin Khan, Mr. M.	

The motion was adopted.

THE HINDU COPARCENER'S LIABILITY BILL.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan): Sir, I beg to move :

"That the Bill to define the liability of a Hindu Coparcener be referred to a Select Committee consisting of Mr. T. V. Seshagiri Ayyar, Mr. Samarth, Munshi Iswar Saran, Mr. J. Chaudhuri and the Mover."

Sir, this Bill is a small non-contentious measure intended to settle a conflict of views between the Madras and Patna High Courts on the one hand, and the Allahabad High Court on the other. In the Statement of Objects and Reasons I have pointed out that their Lordships of the Privy Council in a recent case have defined the term "antecedent debt" in a sense which has not been the sense in which it was understood prior to that decision. Advantage has also been taken of the present Bill to set out

a few supplementary sections on the same subject. As the Honourable the Home Member has given notice of an amendment that the Bill be circulated for eliciting public opinions thereon and I am agreeable to it, I shall not waste the time of the House at the present moment, but rest content by formally moving my own motion.

The Honourable Sir William Vincent (Home Member) : Sir, I move as an amendment to the motion just made :

"That the Bill to define the liability of a Hindu Coparcener be circulated for the purpose of eliciting opinion thereon by the 15th January 1923."

I do not think I shall have to address the House for any time on this question. Those members who were here on the 25th March last will remember that Mr. Mahadev Prasad wished to make a motion in this House that the Bill should be circulated. The Honourable Member in charge of the Bill was not present, but you, Sir, ruled that it was impossible to move the motion in his absence. I then offered to circulate the Bill by executive order, but objection to that course was raised by some Members of this House—if I remember aright by my friend, Mr. Subrahmanayam—and in view of that opposition I thought it would be improper for me to take this course executively. As a matter of fact the Bill, as I understand it, attempts to codify a portion of Hindu Law governing members of a particular school. It does affect religious rights and usages to some extent and I think we know that these questions often give rise to controversy. There is no doubt, I think, that in the circumstances before the House accepts the principles underlying this Bill—and the acceptance of the former motion will be tantamount to an acceptance of the principles of the Bill—they will be glad to have public opinion on the Bill proposed by Dr. Gour.

Mr. President : Amendment moved :

"That the Bill to define the liability of a Hindu Coparcener be circulated for the purpose of eliciting opinion thereon by the 15th January 1923."

The question is that that amendment be made.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Friday, the 22nd September, 1922.