

7th February, 1922

THE
LEGISLATIVE ASSEMBLY DEBATES
(Official Report)

SECOND SESSION

OF THE
LEGISLATIVE ASSEMBLY, 1922



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LEGISLATIVE ASSEMBLY.

Tuesday, 7th February, 1922.

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

THE INDIAN LIMITATION (AMENDMENT) BILL.

The Honourable Sir William Vincent (Home Member): Sir, I beg to present the Report of the Select Committee on the Bill further to amend the Indian Limitation Act, 1908.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

The Honourable Sir William Vincent (Home Member): Sir, the Government agreed to give time to Lala Girdharilal Agarwala to introduce his Bill to-day, but I do not know if he is here? I am quite prepared to allow him to move his Bill if he is and I was told that he will attend to-day.

Mr. President: He can move it later on.

RESOLUTION *RE*: SUPPRESSION OF TRAFFIC IN WOMEN AND CHILDREN.

The Honourable Sir William Vincent (Home Member): Sir, I move that:

This Assembly recommends to the Governor General in Council that India do sign the International Convention for the Suppression of the Traffic in Women and Children accepted by the Assembly of the League of Nations at its second Session subject to the reservation that in applying Article 5 of the Convention, India will consider that 'sixteen completed years of age' is substituted for 'twenty-one completed years of age.'

If the Assembly will permit me, I should like to substitute for the words 'will consider' down to the end of the Resolution the following:

'may, at its discretion, substitute the words 'sixteen completed years of age' for the words 'twenty-one completed years of age'.'

To explain the effect of this Resolution I will have to take the Assembly very briefly through the main features of some important documents which I believe have been circulated to all Members. The first of these documents is the International Agreement for the suppression of what was then called the White Slave Traffic. It was signed in Paris on the 18th of May, 1904. The agreement may be summarised very shortly. Its main provisions were for the appointment of a co-ordinating authority to collect information regarding the procuring of women and girls for immoral purposes abroad; arrangements for the maintenance of a watch, particularly at ports and railway stations, for persons in charge of such girls; inquiries amongst prostitutes in order to facilitate their voluntary repatriation and finally the supervision of offices and agencies engaged in finding employment for women or girls abroad. This was followed by the International Convention of 1910 signed on May 4th. That also has been circulated to

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all Members of this Assembly. The important point in this document is that it binds the parties concerned to penal legislation for the punishment of persons who have committed the acts defined in Articles 1 and 2 of the Convention. As they are of first importance, I will read them. Article 1 says:

'Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.'

Article 2 runs:

'Whoever, in order to gratify the passions of another person, has, by fraud, or by means of violence, threats, abuse of authority or any other method of compulsion, procured, enticed or led away a woman or girl over age for immoral purposes shall also be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.'

The *Final Protocol* of this Convention indicates that the stipulations of these two articles are to be considered as a *minimum* and defines the meaning of the terms 'woman' and 'girl'. It is made clear that in using the term 'woman' the Conference refer to a female over twenty completed years of age, a female under that age being termed a 'girl'. The connection also provides that the offences contemplated in Articles 1 and 2 of the Convention should be included in the list of extraditable offences.

The question of the adherence of India to this Agreement and Convention was considered in 1914 and in 1919. In 1914, it was decided to accede to the agreement of 1904 only, and the Commissioners of Police in Madras, Calcutta and Rangoon, and an officer at Bombay were appointed as the authorities to undertake certain duties referred to in that agreement. The next stage that followed was after the meeting of the League of Nations. Honourable Members will remember that India was one of the original signatories to the Covenant of the League of Nations. Article 23 of the Covenant entrusts the League with the general supervision of the execution of agreements with regard to the traffic in women and children. The Assembly then requested the Council to invite the various countries to an International Conference which was to be held before the next Assembly. At that Conference India was represented by a retired member of the Indian Civil Service, Mr. S. M. Edwardes, who was for many years Commissioner of Police in Bombay, and had some experience of the subject under discussion. Members of this Assembly probably know, that many of the prostitutes are foreigners and some have to be expelled by the police from the country. Moreover, various police regulations have to be enforced in all our large cities in the public interest.

Mr. Edwardes pointed out that the proposal to make the age twenty years was not in accordance with the provisions of sections 372 and 373 of the Indian Penal Code and he said:

'As matters stand now, a proposal to enhance the limit from 16 to 20 years (a) would, in all probability, be found to be in advance of the general body of orthodox and conservative Indian opinion; (b) would be in conflict with established physical facts, it being well known that the climatic conditions of India result in maturity being reached at an earlier age than in Europe, and (c) might involve impolitic interference by the State with religious and social customs, which are observed and followed by certain tribes, castes and communities in various parts of the Indian Continent.'

This proposal was never specifically put to the vote, but I understand that it commended itself to many members of the Conference. The final conclusions of that Conference are embodied in the paper which is the last of those sent to Honourable Members. The principal features of that document are—the recommendation of the Conference, to all Members of the League who have not yet adhered to the agreement of 1904 and the Convention of 1910, of the importance of early adherence. I may say, that up till now, we are only parties to the agreement of 1904. They also recommended the extension of the age-limit for minors making it 21 instead of 20. These were accepted at the second Session of the Assembly of the League and all the conclusions are embodied in the draft International Convention for the suppression of traffic, not white slave traffic, but a general, a much more general proposition to which I desire to draw attention, traffic in women and children. The Resolution that I have moved proposes to give assent to the Convention, subject to the reservation that in applying Article 5, the Government of India may have to consider whether 16 years should be substituted for 21 years. The reasons for this are, I think, in part those given by Mr. Edwardes in his statement which I have just read out to you. It is rather interesting to know that both Japan and Siam supported the reservations which were made by the representative of the Government of India. The Government of France, with regard to the tropical portions of that State, also accepted those reservations, and we understand that the Colonial Office, in so far as the Crown Colonies in tropical parts are concerned, also approves of them. If the Assembly approves of the course which I have proposed to them, and which has, I think I may say, been accepted by the Council of State, then it will be possible for India to become an original signatory of the Convention which is what we hope will be the case. It will be seen, and I want to make this clear, that in any case the acceptance of this Resolution will involve the passing of legislation providing sanction in case of violation of the acts which are specified in Articles 1 and 2 of the Convention of 1910. Sections 366, 372 and 373 cover the ground to some extent, but not completely. So, if this motion is accepted, we shall have to bring in separate legislation for the amendment of the Penal Code.

I know that there is a considerable volume of opinion in this Assembly that thinks that the Government of India have been too timid or cautious in this matter and that they should at once proceed to extend the age-limit to 21. I can assure the Assembly, that in taking this line, the Government of India are in no sense actuated by any wish to minimise the importance of the measure; they are as alive as any one here to the necessity for taking the most stringent measures to protect girls up to a reasonable age against any inducements to immorality. But what I ask this Assembly to-day is not to bind itself finally to legislate on a subject of such importance penalising the offences mentioned in the articles in the case of girls over 16 without consulting public opinion. When the legislation comes before this Assembly, it will be quite open to any Member, if the Government of India have not accepted 21 as the proper age, to propose that 21 should be fixed as the age-limit. Up to now, however, we have not been able to consult public opinion on this matter at all. Therefore, I suggest that the Assembly would be acting wisely if it gave its adherence now and prescribed later the age, whether it be 16 or 21 or any other age, which it thinks fit. I may add that curious results will follow if the procuring of a girl to gratify the lust of another man is to be made punishable and the action of the man who enjoys that girl is not to be made punishable. Indeed, I have myself little doubt that legislation which penalises the

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procuring of girls under the age of 21 for unlawful sexual intercourse must lead to legislation penalising such intercourse itself. I ask the Members of this Assembly, as practical members of the world, to consider whether such a law would not be dangerous in the present circumstances, at any rate whether it would not be wise for the Members of this Assembly to ascertain what the opinion of India, particularly of the conservative classes of India, is on this proposal before they accept it. There are also practical difficulties which deserve consideration. I do not want to enter into any discussion of Hindu religious customs, a subject on which I am really not competent to speak, but I have heard of girls being procured for temples or for other purposes in some parts of India—I do not know, whether there is any truth in such statements, but they are current and, therefore, in a matter of this kind, I want this Assembly to act with reasonable caution and not precipitately, and the amended proposal I have made to the Assembly is made to meet the amendments that have been put forward. It will enable every Member of this Assembly, when the legislation comes up, after inquiries have been made, after public opinion has been ascertained and the practical difficulties are known, to say: 'No, we desire to fix the age at 21, and not 16.' But I ask the Assembly not to say lightly now, before any inquiry has been made, that the age should necessarily be extended to 21, until we know exactly what the difficulties are and what public opinion on this subject is. I hope, therefore, that the Resolution in the amended form in which I have put it forward in order to meet the various Members of this Assembly will commend itself to Members of this House.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, after the change in the Resolution which the Honourable the Home Member has proposed, the attitude of Government towards this question has been somewhat modified, but I am still unconvinced, after listening very carefully to the speech of the Honourable the Home Member, that there are any insuperable difficulties in accepting the Convention as it is without any reservation. The grounds which the Honourable the Home Member gave for making this reservation are various. In the first place, he pleaded that we must respect the general orthodox opinion on this matter.

The Honourable Sir William Vincent: I said 'consult'.

Mr. N. M. Joshi: Sir, I do not know whether there is any very large orthodox opinion in this country that will favour the traffic in women and girls in this country. At least, I cannot see any representative of that orthodox opinion in this Assembly. Then the second point which he brought to the notice of the Assembly was that in India girls attain maturity earlier. Sir, not being a doctor myself, I do not know how much truth there is in that statement.

The Honourable Sir William Vincent: I merely cited the evidence of a witness before the Conference. I did not put it forward as my own opinion.

Mr. N. M. Joshi: I do not say that the Government has accepted the view that in India girls attain maturity earlier than elsewhere. But this is one of the arguments used for being more cautious in this matter. Sir, although I do not believe that the girls in India attain maturity earlier than elsewhere, still I can understand the point of view urged by some people, but I cannot understand the connection between the age of maturity

and the traffic in women. The real point to consider in connection with the traffic of women is whether the girls or women become unfit objects of that trade at the age of 16. Personally, I believe that they may be better objects of that trade between the ages of 16 and 21. I, therefore, think that there is not much force in the argument that girls in India attain maturity a little earlier. Then, Sir, there was the argument that Japan and Siam are willing to accept this reservation. I do not want to say anything as regards Japan or Siam, but I do feel that we in India are not anxious to take advantage of that reservation. Then, Sir, the Honourable the Home Member brought forward another question, namely, that it may not be just to be harsh on those who trade in women, while we may leave free those who make use of those women. He wants perhaps to treat both these sections of people equally. I can very well understand his point of view and even agree with him, but what I say is this. To a wrongful act there are two parties. To-day we are considering how one of those parties may be prevented from doing that wrongful act. Is it, therefore, right for us to say, simply because we do not touch the other party, we should not also touch the one party whom we are asked to touch by this Resolution. To a theft there may be two parties. You catch one man, and is it a good argument to say that because you cannot catch the other man, you should let free the man whom you have caught. I, therefore, feel that, although we may be anxious to punish both the man who trades in women as well as those who make use of that trade, still there is nothing wrong in our taking action against at least the one party, namely, those who trade in women. Sir, there is an advantage in passing this Resolution without the reservation. The Honourable the Home Member said that, when the question of legislation comes forward, it is open to any Member of this Assembly to bring an amendment, but, with my experience of the working of this Legislative Assembly, I feel that there is not so much chance for the amendment of a private Member to be carried as there is a chance of any proposal which the Government itself puts forward for the consideration of this Assembly. If the proposal is put forward by the Government of India, there are greater chances of its being approved by the Assembly than if they are put forward by a private Member. If we pass my amendment, the hands of the Government will also be strengthened. They will know the opinion of this Assembly and, when they bring forward their Bill, they can boldly put forward the age of 21 instead of the age of 16. With these remarks, I commend my amendment for the support of this House, viz. :

' That the words from ' subject to the reservation ' occurring in lines 3 and 4 to the end of the Resolution be omitted.'

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan) : While I generally sympathise with the object of this Resolution, I wish to offer a few remarks for the consideration of the Honourable Mover of it. The object of this Convention of the League of Nations is to make the abduction of women an international offence, extraditable and punishable in all countries. That is a commendable object and Articles 1 and 2, printed at page 5 of the proceedings of the League of Nations, create two offences which, in the present state of the penal law, are not known in this country in the form in which they are stated in the Convention. Article 1 says :

' Whoever, in order to gratify the passion of another person, has procured, enticed or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punishable notwithstanding that the various acts constituting the offences may have been committed in different countries.'

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Article 2 says :

'Whoever, in order to gratify the passion of another person, has, by fraud, or by means of violence, force, abuse of authority or any other method of compulsion, procured, enticed or led away a woman or girl under age for immoral purposes shall also be punished notwithstanding that the various acts constituting the offence may have been committed in different countries.'

Honourable Members will see that the procuring of women, whether under or above the age of maturity, is made punishable by these two articles. Now, if we turn to the Indian Penal Code, we will find, as the Honourable Mover of this Resolution has pointed out, that the sections germane to the discussion are sections 372 and 373. (*A voice* : '362 also.' *Another Voice* : '363 also.') Now, the Honourable Members will find that section 362 says :

'Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.'

Section 363 says :

'Whoever kidnaps any person from British India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.'

Then section 372 says :

'Whoever sells, lets to hire, or otherwise disposes of any minor under the age of sixteen years with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'

Then section 373 says :

'Whoever buys, hires or otherwise obtains possession of any minor under the age of sixteen years with intent that such minor shall be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'

Honourable Members will thus see that articles 1 and 2 create offences somewhat different to the offences at present penalised by the Indian Penal Code.

The Honourable Sir William Vincent: Will the Honourable Member read section 366, which very nearly covers article 2 ?

Dr. H. S. Gour: The Honourable the Home Member draws my attention to article 366. It runs as follows :

'Whoever kidnaps (*that is to say, kidnaps in the sense it is defined in the Penal Code, sections 365 and 360 and so on*) or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.'

And section 366 runs :

'Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'

I admit that this section very roughly corresponds to the proposed articles of the League of Nations.

The Honourable Sir William Vincent: Article No. 1.

Dr. H. S. Gour: Article No. 2. Now my submission is that, if we are to adhere to articles 1 and 2 of the Convention which the Governor General in Council is called upon to ratify, we must beforehand consider the legislation, or the draft of the proposed legislation which this Assembly would accept, and thereafter ask the Governor General in Council to sign the Convention. That, I submit, will place this House in possession of the exact law which would be made applicable to the country and in pursuance of which we shall ask the Governor General in Council to sign the Convention of the League of Nations.

My next submission is, that the Honourable the Mover of this Resolution fixes the age at 16 years. The Honourable Mr. Joshi would adhere to the age of 21. I submit, that in the country in which this article was drawn up, the age of majority is the completion of 21 years. In India, as we all know, the age of majority is reached on the completion of 18 years. (*A Voice: '16'.*) 18 not 16. (*Cries of 'No, no'.* *A Voice: 'For guardianship 16'.* *Another Voice: 'For guardianship 21'.*)

The age of majority is reached on the completion of 18 years. I think it would be a very fair compromise between the Mover of the Resolution and the Mover of the amendment, and I think it would be a more substantial compliance with the intention of the League of Nations, if we fixed 18 years rather than 16 or 21, and thus bring our law into conformity with the Indian Majority Act.

Lastly, Sir, I deal with a very delicate question. The Honourable the Mover of this Resolution has alluded to the question of *Devadasis*— a custom which is very prevalent in certain parts of this country. The Honourable the Mover of this Resolution is aware that some years back it was intended to legislate on this subject. The provinces concerned were consulted, but I do not know why the legislation was not further proceeded with. I may assure the Honourable the Mover of this Resolution that if we are to go along the line of social progress, some legislation upon the lines then contemplated will be necessary to put down this system of legalized immorality in the guise of religion. I submit, the time has come when this measure of necessary social reform should be the subject of legislation, and on that ground I heartily welcome the proposal, which I support, subject to the qualification which I have just now mentioned. I am perfectly certain, Sir, that, before this Resolution is given effect to, by the Governor General in Council, due weight will be given to the fact that the law with reference to *Devadasis* should be placed on a satisfactory footing. It is a scandal, a national scandal, that young girls are decoyed in large numbers and taken to places, sacred for religious purposes, and that there they are utilised and used for grossly immoral purposes.

I submit, that it is the primary duty of the State to purge the country of this perpetual source of contamination, and it is, I submit, the bounden duty of lawyers to support the Government in this measure of social reform. With these few words, Sir, I support the Resolution moved by the Honourable the Home Member, and request him to consider the question of age, the question about the settlement of law and the question of *Devadasis*, which came up before this Assembly, or rather before the late Imperial Council, as to which further legislation has not been proceeded with.

The Honourable Sir William Vincent: Sir, may I speak on Mr. Joshi's amendment and incidentally deal with the very important question raised by Dr. Gour. It is quite true that we had before the predecessor of this Assembly a Bill designed for the protection of minors who were being brought up for immoral purposes. I do not want to renew an ancient quarrel, but the difficulty over that Bill was that several orthodox members of the community thought that Government was out to proselytise these minors, though the facts were far otherwise; we only sought to reclaim them from a life of vice. I asked Mr. Srinivasa Sastri—I trust he will forgive me for referring to him—afterwards if he would move a Resolution in this Assembly or in the old Council which would enable me to re-open that question, because I was always anxious to deal with it—and he was going to do it; but unfortunately he was called away on more important Imperial work. If he had been in a position to move that Resolution, we should have taken up the question. But I would remind the Honourable Member that it is not such a simple matter as it looks. There still exists a great deal of opposition to legislation of this character, as the opinions received from Local Governments bear witness. Indeed I would go further than that and say that in no measure promoted by Government, in which they have advocated such a moral reform as the raising of the age of consent, has the Government failed to meet with pretty strenuous opposition from orthodox Hindus. But that was in the last Council and I am glad to receive an assurance that, if I now bring forward a Bill dealing with this question, I can count on the support of the Leader of the Democratic Party in this House.

Mr. N. M. Joshi: Self-constituted.

The Honourable Sir William Vincent: I trust that on that occasion he will be more successful in carrying the opinions of this Assembly against orthodox opinion than he was on the last occasion when he brought forward a measure himself.

Then, Sir, Mr. Joshi suggested that my proposal, my amended Resolution, was not really suitable, because I left it to some non-official to propose an amendment in any legislation we introduce. I want to point out that that is not the position. The Resolution leaves it open to the Government to introduce a Bill prescribing an increased age, either 16, 18 or 21 years, or any other age it likes. The Government has no bias in this matter; Government is anxious to protect these young girls from a life of shame. We are as anxious as any one else to protect them. But we do—and very rightly—seek to ascertain what the difficulties are and what the facts are before we make a rash promise to protect all women up to the age of 21. We are quite willing to do that. Dr. Gour then says: 'Do not sign this Convention until you have enacted the legislation.' On the other hand, we want India to become an original signatory, and that is the object of this Resolution. Once we pledge ourselves to introduce legislation, then we shall have to do it and we will do so at the earliest opportunity and a great work of reform of this character will not be delayed. Mr. Joshi, or some other speaker, suggested that I had said that the Government intended to adhere to the age of 16. Now, that is not our point of view, but perhaps I have not made it clear. We have a perfectly open mind on the question. We merely retain the right, the discretion, to limit the age to 16, if circumstances and the evidence of the country prove that to be necessary. If the feeling of the country is in favour of putting up the age, and if we are assured that that is a practical course, Government will have no objection to taking it. But, to suggest that Government is anxious to limit its protection to

girls up to 16 is, I think, not dealing justly with the proposition which the Government is putting forward in the Resolution in its modified form. Dr. Gour has suggested that 18 would be a more suitable age. Well, Sir, it is a matter for some regret that he did not put forward an amendment to that effect; then we would have had an opportunity of discussing it; but there is no amendment of that kind before the Government. I submit, however, that my proposal gives him what he wants, because it enables Government at a later date to substitute 18 for 16, or if it likes to make 21 the age of consent and I was very glad to receive an assurance that he was supporting my Resolution as amended and here, Sir, I want to get rid of another impression which, to my mind, has confused this discussion. It seems to be assumed that the terms of this Convention relate only to traffic in prostitutes. It did begin with that idea, or rather in connection with the white slave traffic. But that has been abandoned and the terms of this Convention are now very wide; they cover even a single act of intercourse. It is not merely a question of prostitution; that is, why I read out the article (article 1) and I will read it again:

'Whoever, in order to gratify the passions of another person, has procured, enticed or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished notwithstanding that the various acts constituting the offence may have been committed in different countries.'

I submit that, without any inquiry, this Assembly should not extend the age of consent in such cases to 21 or make it a penal offence for any person to take a girl below that age to another person, even if it is for immoral purposes. At any rate, I maintain that it would be well to consult the country on this point, before reaching such a decision. If Members are so sure that the country will take their view—I hope it will—why not wait and give them an opportunity of expressing their opinion. But, at the moment, the point I want to make clear is, that this Convention does not deal solely with the traffic in prostitutes. It goes very much further than that. It prohibits the procuring of any girl for a single act of intercourse and it is on this account particularly that this question of age becomes so important.

There are also disadvantages in accepting this amendment of Mr. Joshi's of a practical character. We have got this Resolution through the Council of State prescribing 16 as the age, and the question now is whether we are to keep 16 as the age or put it up to 21. But, if we get a Resolution of this Assembly varying completely the Resolution passed by the Council of State, we shall have great practical difficulty in dealing with the case on the part of Government. If you adopt my Resolution, as now put forward,

Mr. N. M. Joshi: It can go back to the Council of State.

The Honourable Sir William Vincent: If you will adopt my Resolution, as amended, it will enable the Government to join this Convention at once and it ought to be a matter of honour for India to take this course.

I maintain that, so far as article 2 of the Convention is concerned, it is largely covered by the Penal Code. Dr. Gour, after reading one or two other sections which did not apply, finally did read section 366. I think he has been so occupied with a Select Committee in another room that he had not got his papers ready in this case. There is very little difficulty over article 2, however. The only difficulty arises in the case of girls over 16 who go wrong and have sexual intercourse with their own consent. If this motion is given effect to, any man who allows a prostitute under 21 to be brought to him with his knowledge by another will come within the penal law. I am not discussing whether such a change in the law is right.

[Sir William Vincent.]

or not. I do not want you to think that for one moment, but I do say, that before you undertake to enact legislation of this character, you will be well advised if you ascertain what the wishes of the general public are, and it is for that reason and that reason only—not because we are not anxious to protect the purity of women in this country, not because Government will not give every support to Members of this Assembly in that direction—that I am anxious this Assembly should not enter into an agreement before it has had an opportunity of ascertaining public opinion. I, therefore, oppose the amendment of Mr. Joshi.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban):

Sir, I support Mr. Joshi's amendment. I am not convinced, Sir, of the seriousness of the practical difficulty that Sir William Vincent has mentioned. The only difficulty he has mentioned ought not to stand in our way. If, on every occasion that the Council of State takes another and a prior view, it is, on the ground of practical difficulty, to be accepted by the Assembly, even if there are good and valid reasons for not accepting the decision, I am afraid we shall come to a state of things which the Reforms did not contemplate. If there is room for reasonable difference of opinion, that difference will have to be expressed in this Assembly and the Government will be left to take such further action as may be necessary. Fully agreeing with all that Sir William and his new-found ally, the Leader of the Democratic Party (*A Voice*: 'So-called')—whatever that may mean—have said and, following their arguments and reasoning completely, I fail to understand how they could arrive at their conclusion. Sir, this is frankly an international measure and we are to take it or leave it as we may desire without necessarily suggesting any amendment, such as has been put forward. I admit, it shows a very fine spirit for the Government of India, in which the amendment has been put forward, for it properly seeks to be in touch with public opinion. But, as it happens, the occasion is mistaken. Social legislation and social evil legislation must not be mistaken for one another. May I remind the House that not long ago there was a strong movement in England for raising the age of consent? That failed within the last few months, and it had to be abandoned for extraordinary reasons, because the framers of that proposal were not prepared at the moment to bring in what was called the offences between women themselves. Did that interfere with the acceptance of this age-limit of 21 years by Great Britain so far as this particular Convention is concerned? Whatever the law on the subject for the time being in the country itself might be (and Dr. Gour is an authority on the Penal Code as well as all other Codes that India knows of—he has given us chapter and verse though the Home Member, who has given out charnel house secrets, does not accept him), is there any reason why, while accepting the principles of higher ideals of social purity involved in this international arrangement, we should say that we prefer that the age-limit in our case should be different because we mature quicker or our marriage laws are different? Sir, reference has been made to the *Devadasi* or bride of the Church and other more or less extraneous questions. If, in view of prevailing abuse in these cases, there is good reason for legislation, the Assembly will, in the light of advancing public opinion, proceed to do its duty without waiting for any international agreement. If there is real and strong orthodox objection, which will have to be listened to, no international agreement for higher and purer social ideal generally will prevent it. Reference has been made again to the question of maturity. I am fairly orthodox myself, but would say that, whatever the question of maturity of age and *sastric* injunction

may have to do with the question in case of matrimony, it can have no application to prostitution or, what Sir William Vincent called illicit single intercourse, for here the indiscreet and misguided young woman has to be protected against herself for her and society's good. These considerations point to one inevitable conclusion, and that is, if we accept the principles of this international agreement, which are those of gradual raising of the ideal, we ought not to be out for negotiation and picking and choosing, because of exceptional purely social usages in certain communities, but ought to give our whole-hearted support to what has been arrived at from the larger point of view, provided that no real practical difficulty arises if the measure does not defeat itself. I do not think, Sir, in a matter like this, questions of orthodoxy of communal matrimonial usage ought to be brought in, for it would be an insult to real orthodoxy. The most orthodox representatives of orthodox opinion will not claim that any such exemption or immunity is necessary in the matter of prostitution or anything allied to it.

Mr. Pyari Lal (Meerut Division: Non-Muhammadian Rural): Sir, in this matter I feel that we ought to welcome the draft Convention of the International Conference. The object is to prevent our women going out of the country for purposes of prostitution. They should not be enticed away from here to any other country as far as possible.

The Honourable Sir William Vincent: No, no, certain acts, whether committed within or without the country, are penalized.

Mr. Pyari Lal: But, as regards offences committed within the country, we have provisions to that effect in the Penal Code, which have just been read out, which lay down the age of majority for girls, and also there is section 366 in the case of women. But in the case of women being taken out of the country, I submit that women between the ages of 16 and 21 require protection of the State to no small degree. That is a period of life when women are much sought after, and it will be opening a very wide field indeed to persons to carry on this shameful trade, to come to this country and ply their trade. I submit, the question of minority does not enter into the consideration of this question at all, because the object of the Convention is to prevent the prostitution of girls and women alike whether they give their consent or do not. The object of the Convention is to extend protection equally to women who have passed the age of 16, up to the age of 21. I do think that the age question has been very wisely considered and that the same has been raised to 21. Therefore, I support Mr. Joshi's amendment.

Mr. J. Chaudhuri: (Chittagong and Rajshahi Divisions: Non-Muhammadian Rural): I quite agree with the Honourable the Home Member that, whatever we may do with regard to this Convention, we shall have to resort to fresh legislation. As a great confusion has been created by reference to the law on the subject, I should like to explain to the Assembly in as few words as possible what this Convention proposes to do and what the state of the law is at present in our country. I may tell you at the very outset that the interest that I take in law is more that of a citizen than that of a lawyer, and that I would not refer to any annotations or elaborate arguments which are likely to confuse people more than anything else.

The Convention simply wants to raise the age of girls, who are procured for illicit intercourse or prostitution, to the age of completed 21 years. The difference between age fixed at the Convention of 1910 and the age as agreed

[Mr. J. Chaudhuri.]

upon at the last Geneva Convention consists only in this, that in 1910 they fixed the age at 20. They have now recommended that the age should be completed 21 and not 20. Now the whole question before us is confined to article 1. As the Home Member has pointed out, article 2 is already covered by the existing provisions of the Indian Penal Code. I shall read to this House article 1:

'Whoever, in order to gratify the passions of another person, has procured, enticed or led away, even with her consent.....'

The whole crux of the thing consists in this, 'even with her consent.'

'a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.'

The two expressions which are material are 'even with her consent' and 'under age.' Now, I shall refer to the sections of the Indian Penal Code which require no comment: they are absolutely clear. The Penal Code provides punishment for kidnapping. With regard to kidnapping, section 359 of the Indian Penal Code says, it is of two kinds, kidnapping from British India, and kidnapping from lawful guardianship. We understand, this Convention is confined to kidnapping outside British India, because we take it that the Geneva Convention did not intend to interfere with our internal legislation. So what it means is that, if we accept the International Convention, the scope of this article will be confined to traffic in women between India and other parts of the world.

The Honourable Sir William Vincent: Not at all. Read the article.

Mr. J. Chaudhuri: I am willing to concede that it might raise the protected age to 21 and I would not be sorry if it did. In this country, so far as legislation goes, if we adopt the same principle as that of the Convention, and raise the age from 16 to 21, the material difference between the law of kidnapping and the provision in article 1 will consist in this. If we refer to section 360, we will find that:

'Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person.....commits the offence of kidnapping.'

It would not be applicable in cases where the person taken out gives her consent or the guardian gives the consent. In cases of minors, male, the age is 14 and, females, it is 16 in section 261. But this section relates to taking out of lawful guardianship and does not refer to taking out of British India. It further says merely 'takes or entices' and is silent about 'consent.' Section 363, which specifies the punishment for kidnapping, says:

'Whoever kidnaps any person from British India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.'

Thus, we find, with reference to kidnapping out of British India, there is absolutely no age-limit mentioned, and that, if the party taken away consents, then the person taking him or her away cannot be punished under the provisions of the Indian Penal Code.

What the Convention proposes to do is that, even if the party is a consenting party, and has given her consent to be taken away and led into a life of shame, the person who decoys her for immoral purposes should be punished. Now, with regard to that, we don't find that there is any provision in the Indian Penal Code which will cover either the spirit or the letter of article 1.

Next, I shall refer to abduction, section 362. This may apply to article 2, which says :

'By fraud, violence, threats, abuse of authority, etc.'

So article 2 is covered by section 362 of the Indian Penal Code which says :

'Whoever, by force compels, or by any deceitful means induces any person to go from any place, is said to abduct that person.'

That is, the section says, in order to commit an offence, force must be used, or unlawful means must be used. As the Honourable Home Member pointed out, 366 also contemplates abducting women for immoral purposes, but this does not also give any limit of age; it only signifies that, if any woman is taken away, by force, fraud or by other unlawful means, the procurer will be punished. So only article 2 of the Convention may be said to be covered by it. But with regard to article 1, there is absolutely no provision in the Indian Penal Code. My learned friend, Dr. Gour, referred to 372, but that has absolutely nothing to do with this question. It says :

'Whoever sells, lets for hire, or otherwise disposes of a minor under the age of 16.'

It has no reference to the person procuring. Section 373 refers to :

'Selling a minor for purposes of prostitution',

That is, if the guardian does that, then he is punishable. So here the question is not that of a minor and her guardian, but of people who carry on this nefarious trade in young women. It is not the object of article 1 of the Convention to punish either the woman or the guardian under this article, but its object is to punish the man who carries on a traffic in such women. Section 373 has, however, a bearing on it :

'Whoever buys, hires or otherwise obtains possession of any minor under the age of 16 years with the intent that such minor shall be employed or used for the purpose of prostitution, or for any unlawful or immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punishable with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine.'

This is the only section relevant to article 1, but it has a limitation. 373 puts a limitation, and the limitation is this that the section is confined to traffic in girls up to the age of 16, further, even in the case of such minors, it refers to cases of 'buying,' 'hiring' or 'otherwise obtaining possession.' The last words imply transaction between the procurer and the guardian. It excludes by implication widows and orphans and other unprotected minor girls, if they be consenting parties to their being led into a life of infamy by designing men or women for purposes of personal gain. Even assuming, that section 373 is sufficient to protect friendless minor girls, may I ask: 'Why should women between the ages of 16 and 21 be left unprotected?' Now that the unscrupulous people engaged in this despicable trade will find it difficult to hunt for victims in Europe, these human harpies will transfer their activities to the East and try to take away say, either Japanese, Chinese or Indian women. When I say Indian, I mean Muhammadan, Hindus, Christians, Jews, Anglo-Indians as also pure Europeans of the poorer class. If the prohibition in 373 remains where it is, then India will be the hunting ground for this nefarious trade. So I say that we should enter our protest in this matter and we should accept the age of 21 fixed by the Convention and for this reason. It has been put to us that the Indian woman reaches maturity at an earlier age; but there is no question of physical maturity involved here: it is mental maturity with which we are concerned. I say that an Indian woman wants

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greater protection than an European woman. European women have all some education; there is a system of universal education all over Europe. European girls go about in public, and they can take more care of themselves than Indian women. So, when European women are being protected up to the age of 21, I say that that applies with greater force to this country, where the women, owing to their seclusion and their absence of education, are liable to be more easily misled by these designing persons more than their European sisters. So I say that to accept the reservation will be to deny protection which is being given to European girls of the same age. I, therefore, urge that we should adopt the Convention as it is, for the further reason that those who ply this despicable trade try to secure victims of maturer age rather than minors below 16. Although I gave notice of an amendment independently of my friend, Mr. Joshi's, I would not press it if the Honourable the Home Member would give us—as in fact he has given us—an assurance that when legislation is undertaken with regard to this matter, the whole question will be gone into by the Legislature and it will be competent for us to decide whether we should accept the age of 21 or 16 or any intermediate age. Disparity of age in different countries may land us into the complications of international law. I do not, however, wish to press my amendment to a division, but I hope the Honourable the Home Member will give us an assurance that what I have said will receive due consideration from him and that we shall be given every opportunity of going into the question more fully when legislation is undertaken.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, I wish to offer a few observations in reply to the Honourable the Home Member and with rather the object of conveying to him an assurance that he will not be in any way offending orthodox susceptibilities in accepting the amendment of Mr. Joshi.

Now the greatest argument that the Government are using is that they, the Government, are not in any way opposed to the age-limit being put higher, but that they feel it desirable to follow the opinion of the country. *Prima facie* that argument is quite valid, but I would put to them this consideration: What public opinion are they going to consult—the opinion of officials or of other people? Now, I think, so far as official opinion is concerned, that would also convey to the Government or to this Assembly what they think the opinion of the public will be; and so far as the opinion of the public is concerned, the apprehension seems to be entertained by the Honourable the Home Member that orthodox opinion will range itself against the amendment and in favour of the Resolution.

Now, in the first place, I think I am quite safe in saying that I am laying down a very reasonable proposition when I say that, if orthodox opinion becomes so unreasonable as to want the lower age-limit, we can very easily disregard it, although I am very much of opinion that orthodox opinion will not be in favour of the lower age-limit. I remember distinctly the agitation that was raised at the time of the raising of the age of consent, to which the Honourable Sir William Vincent has referred. But he ought to remember that the conditions then and the object of the opposition were quite different to what can be expected in the present case. There it was intended to raise the age in the Penal Code which made intercourse punishable. That particular raising of age affected legitimate intercourse of husband and wife, and that is why orthodox opinion strongly objected to it and the *Bangabasi* of Calcutta was prosecuted because it expressed its opposition in very violent language. But, here, it is illicit procuring of other

girls for the purpose of gratifying passion that will be penalized. Now, I think that even those people who objected to the raising of the age of consent would certainly not object to this provision. But, as I said, if they do object, then it is much better to disregard that objection than to regard it. There is another consideration, which, I think, I had better point out to the Home Member, for accepting Mr. Joshi's amendment, and that is this. He is very anxious that the matter should not be subjected to any delay in order that India should take the lead in being one of the leading signatories. Quite so. But, then, there is another point of honour involved, which also he should bear in mind, and that is this : that, if we in any way lower the age-limit, we lower ourselves in the estimation of other nations, who will have reason to think that we are not quite capable of rising to the height to which other nations are capable of rising. (Hear, hear.) I think, that is a very great consideration which, consistently with the principle which the Honourable the Home Member has in view of keeping up the honour of this country and bring it into line with the other nations, should be borne in mind, that is a consideration, I say, which deserves much greater weight than the Honourable the Home Member has probably given to it. And, although I admit that the Honourable the Home Member is quite right in saying that the Government are in no way actuated by any consideration of minimising the importance of the evil or that if they were left to themselves, they would be a party to the reduction of age, I say, and I say with all confidence and earnestness, that the apprehensions which the Government entertains on this subject are entirely groundless. Therefore, I would earnestly appeal to the House to support Mr. Joshi's amendment.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor : Non-Muhammadan Rural) : Sir, I oppose the amendment which my Honourable friend, Mr. Joshi, has put before the House. To-day he is for restricting the liberty of the individual, yesterday he was for enlarging the liberty of the individual; liberty to do directly a wrong thing one day, and liberty to do indirectly a thing which is wrong to the individual as well as to the community to which he belongs. Therefore, it is after all liberty to do wrong in either case. But, apart from that, what is this discussion? Does this discussion lead to the alteration of the law as it stands to-day? Does the conclusion of this House lead to the amendment of any of the sections of the Penal Code? The Penal Code will stand firm, whatever the decision of this House may be; but if the decision of this House on this point is going to alter the penal law at once, it is another matter. After all, it is more or less an academic discussion. Now, as a practising lawyer of many years' standing, I think the discussion of the sections of the Penal Code is a matter which can only be carried on if your audience is in possession each of a copy of the Act. I heard the very learned argument of my friend, Mr. Chaudhuri, but I did not follow any portion of it, for the very simple reason that I had not a copy of the Act before me and I could not, therefore, follow any of his arguments. The Home Member said :

'We will take it at 16 because it is the recognised age at which we for all practical purposes consider a person to be or likely to be mature, to have attained the age of discretion.'

That is one of the expressions used in matters of adoption and other matters in Hindu Law, *viz.*, the age of discretion—that is 16; and 16, apart from the Statute, is the received age of majority in this country. Kings in the ancient days have been installed at the age of 16. No doubt the Indian Majority Act has made it 18. Well, if you want to alter the law, if

[Rao Bahadur C. S. Subrahmanayam.]

You want to make penal what is not now penal, there is the broad and straight course of moving for the alteration of the law. I do not think there can be any difficulty in a private Member introducing a Bill to amend the law. We see so many Bills from private Members put before this Assembly, and therefore it cannot be said as my friend, Mr. Joshi, said, that it is very difficult for a private Member to introduce a Bill.

Mr. N. M. Joshi: I said to carry a Bill.

Rao Bahadur C. S. Subrahmanayam: Carry? If you carry public opinion with you, you can carry a Bill; it is the same with Government. Government can carry a Bill in this Assembly if it is backed up by a majority. If you are talking of the pre-reform period, you may be justified in saying that the Government could carry any Bill it chose to; but now, even Government cannot carry a Bill through the Assembly if it does not get the support of the majority of the Assembly. Therefore, if we cannot carry the whole Assembly or the public opinion outside it, no doubt we cannot carry a Bill in this Assembly. There was another argument, that Members here individually and collectively should support morality and enhance the reputation of this Assembly for morality or social reform or other kinds of reform. I do not think so at all. Unless this Assembly carried with it—the ignorant, it may be—public opinion outside, it would be no use. What is it after all? I heard my friend, Mr. Vishindas, speaking about orthodox opinion and I also understood him to say that he stood for it. To look at him, I think no orthodox Hindu would own him as a representative. As for the orthodox opinion that you talk of here, I do not suppose most of us will be recognised by the orthodox Hindus or the orthodox Mussalmans as their accredited spokesmen in matters of this sort. Therefore, the point simply is, why should we commit ourselves to a position which is far in advance of public opinion, far in advance of the penal law of the country? That is the simple position. Why, by a side issue as it were, should we commit this Assembly, thin as it is now—probably most of the Members thought that this was not a matter of very great importance or a matter in which any serious results would be reached now on this occasion—why should we commit the Assembly to such a far-reaching step? After all, the offer that was made by the Home Member was that this matter would be considered later; he also gave us a tip, that if any Members so want to effect reforms in the penal law, in a couple of days a Resolution could be sent up to that effect.

Mr. N. M. Joshi: This is a Resolution.

Rao Bahadur C. S. Subrahmanayam: This is not a direct definite Resolution calling for a decision by a straightforward issue

Mr. N. M. Joshi: It is.

Rao Bahadur C. S. Subrahmanayam: That is a matter of opinion, whether it is a definite straightforward issue or not. Another point, that it involved the question of *Devadasis*, was raised. Now, the question of *Devadasis* is all right to talk of from the high moral point of view. But if you look at the vested interests, that is, the *inams*, the incomes and various other things which are connected with the question and the opposition it will raise, Government as a Government should no doubt be unwilling to put its hand to it. It is open to us, private Members, to introduce Bills or Resolutions to meet the evil which we say underlies the system of *Devadasis*. It is one thing to say that certain customs

or certain practices are immoral. It is another thing to find out the means to eradicate those customs or practices. It is no doubt easy to speak and pass Resolutions to the effect that a certain practice or custom is wrong, but if we seriously think of putting an end to it and suggest the necessary remedies, then we should be faced with real difficulties, because then only we should be doing a service to the country and not by merely passing platitudinous Resolutions with high-sounding words about social reform and so forth.

The Honourable Sir Malcolm Hailey (Finance Member): Sir, I merely wish to correct what seems to me a slight misapprehension into which some Members have fallen in the course of this discussion and further very briefly to indicate the view which, were I not a Member of Government, I think I should have adopted in this House as a result of this discussion. Now, Sir, it is not correct to assume that the only object of this Convention is to deal with the export or import of women for immoral purposes. I should be very unwilling if any Member of this House were to give his vote under the impression that this Convention in itself would primarily affect what was called the traffic in women into or out of India.

Mr. J. Chaudhuri: You call it the White Slave Traffic? Is it not so now?

The Honourable Sir Malcolm Hailey: We used to call it the White Slave Traffic. As my Honourable colleague, Sir William Vincent, said, this Convention goes very far beyond that, and I feel that it is unfortunate that Mr. Pyari Lal, in discussing the question, fell into the error of supposing that we were dealing only with a question of that type. I think it is also unfortunate that Mr. Chaudhuri, if I may say so, in discussing the question said that, if we granted no protection to girls between the ages of 16 and 21, we would be rendering Indian women of that age liable to enticement from abroad. Sir, as far as we know, there never has been any traffic in Indian women from India. It is certainly not a problem that we have ever had to consider, and I see no reason whatever why we should have to consider that problem in the future. In any case, this Convention is really of a different nature. Honourable Members here will remember the Resolutions that we put forward last Session in respect of the Geneva Convention; that is to say, we undertook, after ratifying that Convention, to introduce certain legislation in our own Assemblies in order to give effect to that ratification. The Convention, therefore, in itself affected the course of our internal social legislation. That is precisely the result which would follow from our ratifying the present Convention. Let me leave alone entirely, if I may, article II, because, as has already been pointed out to us, many of these offences, that is to say, enticing women by fraud, violence, abuse of authority, threat and the like, are already dealt with in the Penal Code, and I merely want to put this point of view to the House, that, if we accept this Convention, then we shall practically be bound to legislate in the sense of article I. That is to say, we shall be introducing a new form of legislation which will apply to all offences in this country of the nature described in article I—not merely to the regular procurement of women (even with their consent) for immoral purposes, but to the procurement of a single woman in an isolated case for this purpose. Now before Government commits itself to such legislation, it is, I think, only reasonable that we should take into consideration the question of age. I perfectly admit the arguments used by some Honourable Members here that Indian women are entitled to as full a protection as European women. There can be no gainsaying that, but, if I may say

[Sir Malcolm Hailey.]

so, some of the arguments that have been used in this respect would lead one to the conclusion that all offences of this nature should be rendered penal without any regard to age at all. Now, Sir, is that a practical point of view? From my point of view, the question whether orthodox opinion will be offended does not, for the present moment, arise. It is merely a question of the amount of prudence that a Government should exercise in putting social legislation of this nature on the Statute Book. It must be remembered that we have to deal with questions affecting very large classes of ignorant people, large numbers of low caste people, and some who can properly be described as aboriginal. Now, would it be safe for us, without further inquiry, to fix the age at 21, and apply this throughout India, remembering that it will be our duty to try and make it effective among these varied elements of the population? That is the sole reason why we have desired to take up an attitude of prudence in this respect. It is perfectly open to us afterwards, when we come to put legislation in the sense of article I on the Statute Book, to insert the age which the general sense of the country may decide to be a reasonable one. All we say is this; we desire to ratify this Convention, but before we have consulted public opinion, do not let us tie our hands and bind ourselves in advance to put before the Legislature a Bill which would have the effect of rendering all offences of this nature penal between the ages of 16 and 21. We merely wish to take a very proper precaution of consulting public opinion on a matter of social legislation of this kind. Our previous experience has been, and it is not confined to Government only, that, when legislation in regard to sexual matters is put forward, we at once find that there are large numbers of people of a very conservative frame of mind who are opposed to anything like a rapid advance; they can point out to us the many practical dangers that arise in dealing with the more ignorant and backward part of the population, and claim that it is very dangerous to place additional powers of what is called persecution in the hands of the Police. It is for that reason that we have always been very cautious in matters of social legislation, and I do not think that the House will remember a single case in which Government has put forward legislation of this kind without a very wide resort, in the first instance, to public opinion. Now, Sir, that is the reason which my Honourable friend has given here for precaution in this respect, and I think the House will be well advised to wait until the country at large has given its opinion on this question before it seeks to tie the hands of Government, forcing it to put forward a Bill making the offences described in article 1 penal when applied to the ages between 16 and 21.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Sir, I beg to support the amendment of my Honourable friend, Mr. Joshi. If Honourable Members will look at page 5 of the papers, they will find that the title is: 'The International Convention for the Suppression of the White Slave Traffic' and the Preamble says:

'The Sovereigns, Heads of States, and Governments of the Powers hereinafter designated;

Being equally desirous of taking the most effective steps for the suppression of the traffic known as the 'White Slave Traffic', have resolved to conclude a Convention with this object and, a draft thereof having been drawn up at a first Conference which met at Paris from the 15th to the 25th July, 1902, they have appointed their Plenipotentiaries, who met at a second Conference at Paris from the 18th April to the 4th of May, 1910, and agreed upon the following provisions':

Then follow the provisions.

Therefore, the provisions are limited by the Preamble which I have read out, and it is no use importing into the controversy any considerations of orthodox opinion or social reform or anything of the kind. The whole question is: 'Are you going, as a nation, in honour bound, to reduce the age which other nations have taken to be the age under which special protection is needed for girls, namely, 21?' I say, as a self-respecting citizen, that I would certainly not be a party to any lower age than that which has been accepted by other nations. There is another difficulty. Take article 1 of the Convention. It has been read several times, but I wish to draw attention to some other words in the article:

'Whoever, in order to gratify the passions of another person has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished.....'

Now I wish to draw attention to these words:

'notwithstanding that the various acts constituting the offence may have been committed in different countries'.

Suppose you have 16 years here and you have 21 years, say, in Belgium or Switzerland or any other country. How will it work? 21 years will be the age-limit there, whereas you will have 16 as the age-limit here. Is it workable in practice? Surely, this Assembly will take into consideration this circumstance, which is conclusive on the point, and will not be a party to accepting any lower age than 21. I, therefore, support the amendment.

The Honourable Mian Sir Muhammad Shafi (Education Member): Sir, I wish only to point out to the House one fact which I would ask Honourable Members to bear in mind when voting on Mr. Joshi's amendment. The words in articles 1 and 2 of the Convention are 'under age' and 'over age' and not 'under twenty-one' or 'over twenty-one years of age.' We know that in Europe, the age of majority is 21 while in India, the age of majority, under the Indian Majority Act, is 18. It is 21 only if the minor is under the Court of Wards or if a guardian of the minor has been appointed under the Guardian and Wards Act. The ordinary age of majority in India is 18. The second difficulty which the Honourable Mr. Samarth mentioned to the House and which he asked the House to bear in mind, therefore, arises from the law of the land as obtaining in this country, the age of majority here being 18, and the age of majority in Europe being 21, so that

Mr. N. M. Samarth: May I interpose, Sir? Under the Penal Code, there is no such offence as this which is extraditable. It is for the first time being made extraditable here, and therefore the age limit must be the same for both the countries.

The Honourable Mian Sir Muhammad Shafi: Under the Penal Code, 16 has been fixed as the age for an obvious reason. I am sure my Honourable friend is aware of the fact that, according to the rulings of High Courts in India, a girl of the age of 14 has presumably arrived at the age of puberty until the contrary is shown. Because of climatic reasons in India, girls become adults much sooner than they do in Europe, and that fact cannot be ignored when dealing with a question like this.

Mr. President: The original question was :

'That this Assembly recommends to the Governor General in Council that India do sign the International Convention for the Suppression of the Traffic in Women and Children accepted by the Assembly of the League of Nations at its second Session subject to the reservation that in applying article 5 of the Convention, India may at its discretion substitute the words 'sixteen completed years of age' for the words 'twenty-one completed years of age'.'

Since which an amendment has been moved :

'To omit all words after, and including, the word 'subject'.'

The question I have to put is that that amendment be made.

The Assembly then divided as follows :

AYES—24.

Abul Kasem, Maulvi.
Agarwala, Lala G. L.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Gajjan Singh, Sardar Bahadur.
Gulab Singh, Sardar.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Kabiraji, Mr. J. K. N.

Mudaliar, Mr. S.
Muhammad Hussain, Mr. T.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Schamnad, Mr. Mahmood.
Sohan Lal, Bakshi.
Vishindas, Mr. H.

NOES—32.

Abdal Rahim Khan, Mr.
Ahmed Baksh Khan, Mr.
Asjad-ul-lah, Maulvi Miyan.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Bryant, Mr. J. F.
Carter, Sir Frank.
Chatterjee, Mr. A. C.
Clarke, Mr. G. R.
Crookshank, Sir Sydney.
Dentith, Mr. A. W.
Faridoonji, Mr. R.
Fell, Sir Godfrey.
Gour, Dr. H. S.
Habibullah, Mr. Muhammad.
Bailey, the Honourable Sir Malcolm.

Hullah, Mr. J.
Ibrahim Ali Khan, Lieutenant Nawab M.
Innes, the Honourable Mr. C. A.
Keith, Mr. W. J.
Lindsay, Mr. Darcy.
McCarthy, Mr. F.
Mitter, Mr. K. N.
Mukherjee, Mr. J. N.
Percival, Mr. P. E.
Renouf, Mr. W. C.
Sim, Mr. G. G.
Subrahmanayam, Mr. C. S.
Vincent, the Honourable Sir William.
Waghorn, Colonel W. D.
Way, Mr. T. A. H.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. President: The question is that the following Resolution be accepted :

'That this Assembly recommends to the Governor General in Council that India do sign the International Convention for the Suppression of the Traffic in Women and Children accepted by the Assembly of the League of Nations at its second Session subject to the reservation that in applying article 5 of the Convention, India may at its discretion substitute the words 'sixteen completed years of age' for the words 'twenty-one completed years of age'.'

The motion was adopted.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural):
Sir, I beg to move for leave to introduce a Bill further to amend the

Code of Civil Procedure, 1908. Order III, Rule 4, in the First Schedule to the Code of Civil Procedure, 1908, as it stands at present, provides as follows:

(1) The appointment of a pleader to make or do any appearance, application or act for any person shall be in writing, and shall be signed by such person or by his recognised agent or by some other person duly authorised by power-of-attorney to act in this behalf.

(2) Every such appointment, when accepted by a pleader, shall be filed in Court, and shall be considered to be in force until determined with the leave of the Court, by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies or until all proceedings in the suit are ended so far as regards the client.

(3) No advocate of any High Court established under the Indian High Courts Act, 1861, or of any Chief Court, and no advocate of any other High Court who is a barrister shall be required to present any document empowering him to act.'

The amendment which I propose to make is :

'That for this sub-rule (3), the following shall be substituted :

'No legal practitioner entitled to practise in any High Court or Chief Court shall be required to present any document empowering him to act.'

The only object of this amendment is that the privilege of appearing without a *vakalatnamah*, which is at present enjoyed by barristers and certain advocates, may be extended to all practitioners who are entitled to practise before the High Courts and Chief Courts, namely, the vakils, or High Court pleaders or by whatever name they are called. I know that the other question which I may call the bigger question of equalising the position of vakils and barristers is at present being considered. That question is a very large one, and, if I may say so, it is sure to take two or three years. There are many considerations which will have to be thoroughly investigated before an Indian Bar is created. Possibly it may be necessary to bring forward a lengthy Bill, and it is also possible that we may have to recommend to the British Parliament an alteration of the Letters Patent, because one of the matters to be considered is that the post of Chief Justice should be thrown open to the High Court vakils, so that the question is a very big question. But the amendment which I propose is a very small matter and may very well be taken up at present. It is hard to see why, when barristers who come from England and other countries are enrolled as advocates, and are not required to produce any document empowering them to act, vakils of the High Court, although they might have practised for 30 years, should still have to suffer under that disability. It sometimes happens that the clients, when they travel from their homes, do not bring a *vakalatnamah* with them signed by the person who is the real litigant in the case. Sometimes, if a suit is brought in the name of the father, the son goes to Court and so forth. This difficulty is meant to be obviated by this amendment, and I hope that Honourable Members will see that the removal of this little inequality will not in any way take away from the position which is at present enjoyed by barristers and is not meant to degrade their position at all. The only object is to afford a facility to the legal practitioners who are at present called vakils or High Court pleaders. I am thankful to the Governor General for having given me permission to move for leave to introduce this Bill, under section 67 (ii) of the Government of India Act. With these few words, I beg to move for leave to introduce this Bill.

The motion was adopted.

Lala Girdharlal Agarwala: Sir, I now introduce the Bill.

DISCUSSIONS IN SELECT COMMITTEE.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): With reference to what transpired yesterday, may I bring a point to your notice?

1 P.M.

Yesterday, you will observe, reference was made to a discussion in Select Committee and I rose to a point of order and pointed out that the Honourable Sir Malcolm Hailey once declared in this House that discussions in Select Committee could not be mentioned in this House. To this you replied that Select Committees are legislative bodies and the Honourable Sir Malcolm Hailey only referred to the Standing Finance Committee. I have since verified the reference, which you will find on page 1707 of Volume I of the Legislative Assembly Debates. The Honourable Mr. Hailey, as he then was, said:

'Sir, may I first make to the House one general remark with reference to what fell from some Honourable Members. Sir Sivaswamy Aiyer told us what were the views represented to the Select Committee by Dr. Gour, and Dr. Gour told us what were the opinions that were expressed by Sir Godfrey Fell before the Select Committee. Might I suggest, Sir, the advisability of following a Convention we used to observe in the Council which preceded this House, namely, that matters which occurred in the Select Committee were not referred to outside it.'

Now, Sir, this is a very important question upon which I should like to have a ruling from the Chair. We have very often to discuss matters in lengthy detail in the Select Committee and opinion is sharply divided, but, after a preliminary discussion, we sometimes come to a conclusion which we record in our final report and that final report is then submitted to the House and is under discussion. I further think that all proceedings of Select Committees are held *in camera*, unless in exceptional cases the Chairman of the Committee otherwise directs, and I think it would be in the interests of this House and of the Select Committee, if the Convention mentioned by the Honourable Sir Malcolm Hailey were adhered to and references to the discussions and debates in the Select Committees were not allowed to be further discussed and mentioned in the full House. I ask for your ruling on this point.

The Honourable Sir William Vincent (Home Member): May I say a word in regard to this, Sir? The practice in the old Council was certainly that proposed now by Dr. Gour and, if I may say so, there are very good reasons for accepting it. We want discussion in the Select Committee to be perfectly frank and free. We want to have arguments put forward by the Members in a much more rough and ready way than would perhaps be suitable for this Chamber, although the ordinary courtesies of discussion are always maintained. If, however, the proceedings of every Select Committee are to be open to publication, you will never get that free, frank discussion that is so essential for a complete examination of a subject. Then, there is another objection. As Honourable Members are aware, no record is kept of the proceedings of the Select Committees and varying accounts may be given of what took place. Different people will have different recollections of the statements and arguments and there will be constant controversy on that subject. For these reasons, if I may say so, I strongly support the proposal of my Honourable friend, Dr. Gour.

Mr. H. M. Samarth (Bombay: Nominated Non-Official): So far as the incident of yesterday was concerned, I understood that the Honourable Member of Government in charge of the Bill said that such and such a point raised by such and such a Member was taken in the Select Committee and that the Select Committee had decided that point. It was upon that, that

the question was raised and, while I fully agree with the views which have been expressed by Dr. Gour and the Honourable the Home Member as to the desirability of not disclosing a discussion that has taken place in a Select Committee, I question the propriety of questioning the particular statement of fact which was made by the Honourable Member in charge of the Emigration Bill and there, I think, your ruling, Sir, if I may say so, with great respect, did not transgress the limits which have been now suggested.

The Honourable Sir William Vincent: I was only dealing with the general question raised by Dr. Gour.

Dr. H. S. Gour: I never alluded to the incident, but I alluded to the ruling of the Chair which was couched in more general terms.

Mr. President: The constitutional position of Select Committees, as one of the organs of legislation in this Assembly, is one on which I am not prepared to give a definite pronouncement at this moment, but the statement made by Dr. Gour and supported by the Honourable the Home Member undoubtedly lays down the convenient and proper procedure. When the Honourable Member raised the question before me yesterday, my recollection took me back to a different incident in which reference was made to opinions expressed in the Standing Finance Committee and I then ruled in relation to that Committee that it was impossible for us to refer to passages that had occurred in the Standing Finance Committee, because there was no record of proceedings. At the same time, in general terms, the position stated by the Home Member and Dr. Gour is perfectly correct.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 8th February, 1922.