

17th January, 1922

THE
LEGISLATIVE ASSEMBLY DEBATES
(Official Report)

SECOND SESSION

OF THE
LEGISLATIVE ASSEMBLY, 1922



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LEGISLATIVE ASSEMBLY,

Tuesday, 17th January, 1922.

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

UNSTARRED QUESTIONS AND ANSWERS.

WAITING ROOMS AT MAHESHKHUNT.

195. **Rai Bahadur Lachmi Prasad Sinha :** (a) With reference to my Question No. 488,* dated the 21st September, 1921, will the Government be pleased to furnish me with the necessary information if available by this time ?

(b) Will the Government be further pleased to state if any action has yet been taken in connection with the construction of a waiting room at Maheshkhunt, Bengal and North-Western Railway station, in consideration of the growing inconvenience to the public ?

Colonel W. D. Waghorn : (a) There is no first and second class waiting room at the Maheshkhunt station. It is recognised that they would be a convenience to the travelling public, but owing to shortage of funds it has not so far been found possible to provide them. The Agent has been asked to keep the matter in view.

A statement is being sent to the Honourable Member which gives the information relating to the number of first and second class tickets issued and collected at the stations between Katihar and Barauni Junctions during the period October, 1920, to September, 1921.

(b) The Honourable Member is referred to the reply given to part (a) above.

STRIKE ON EAST INDIAN RAILWAY.

196. **Rai Bahadur Lachmi Prasad Sinha :** (a) Is the Government aware of a general strike of the drivers and other employés of the East Indian Railway on the Looop and Chord Lines in December last ?

(b) Is the Government aware of a cessation of train services on those lines causing great inconvenience and hardship to the general public ?

* *Vide* Legislative Assembly Debates, Volume II, page 681.

(c) Has the Government instituted any inquiry into the nature and origin of the said strike ?

(d) And, if so, will the Government be pleased to lay on the table a full statement connected therewith ?

Colonel W. D. Waghorn : (a) The strike was reported. It was not a general strike, only the Indian Locomotive running and menial staff at certain stations ceased work.

(b) The Government is aware that the number of trains from the coal area had to be reduced and the night running between Sahebgunj and Bhagalpur was suspended for a time owing to the discovery at two places of attempts at Sabotage. The strikers have since resumed work at all stations and the normal working of trains including goods trains over the Grand Chord Line, has been introduced.

(c) and (d). The original cause of the trouble at Jhajha was due to a rumour that an Indian fireman, who, according to the information at the disposal of the Railway Board, met his death by striking his head against an overbridge while shovelling coal, had been murdered. The strike was prolonged by a dispute whether it should constitute a break in service and sympathetic strikes followed. The terms of settlement were that inquiry should be held into the alleged grievances by a Committee composed of Railway officers and representatives of employees. This inquiry is being held.

REDUCTION IN TRAIN SERVICES ON BENGAL AND NORTH-WESTERN RAILWAY.

197. **Rai Bahadur Lachmi Prasad Sinha :** (a) Is the Government aware of a reduction in the number of train services on the Bengal and North-Western Railway since December last ?

(b) If so, has the Government taken cognisance of the great inconvenience caused thereby to the general public ?

(c) Is it a fact that the said reduction in the number of train services has been mainly due to the shortage of coal store ?

(d) Do Government propose issuing instructions to the said Company with a view to the avoidance of such state of affairs in future ?

Colonel W. D. Waghorn : The answers to items (a), (b) and (c) are in the affirmative.

(d) Steps have been taken to improve the coal supplies to the Bengal and North-Western Railway and it is hoped that a situation similar to that which forms the subject of the question will not arise again.

SELECT COMMITTEE ON STANDING ORDERS.

Mr. President : I have to announce that as the result of the election held on the 16th January, 1922, the following Members have been

ected to serve on the Select Committee on the amendment of Standing Orders :

1. The Honourable Sir William Vincent.
2. Mr. G. G. Sim.
3. The Honourable Dr. T. B. Sapru.
4. Mr. P. P. Ginwala.
5. Rao Bahadur C. S. Subrahmanayam.
6. Mr. Pyari Lal Misra.
7. Maulvi Abul Kasem.

THE CIVIL MARRIAGE (AMENDMENT) BILL.

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

‘That the Bill further to amend Act III of 1872 be referred to a Select Committee consisting of :

The Honourable Dr. T. B. Sapru,
 The Honourable Sir William Vincent,
 Mr. P. E. Percival,
 Mr. J. P. Cotelingam,
 Mr. N. M. Joshi,
 Chaudhri Shahab-ud-Din, and the Mover.’

I wish, Sir, with your permission, to add the names of the following gentlemen, whose permission I have taken, to the list already published :

Rao Bahadur T. Rangachariar,
 Mr. J. N. Mukherjee,
 Rai Bahadur Pandit Jawahir Lal Bhargava,
 Rai Bahadur S. P. Bajpai,
 Babu Baidyanath Prashad Singh,
 Khan Bahadur Saiyid Muhammad Ismail,
 Mr. Wali Mahomed Hussanally,
 Sir Jamsetjee Jejeebhoy,
 Rai Girish Chandra Nag Bahadur,
 Mr. N. M. Samarth,
 Munshi Iswar Saran,
 Mr. M. K. Reddi, and
 Mr. P. P. Ginwala.

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : I rise to a point of order. May I know whether this motion to refer the Bill to a Select Committee commits the Assembly to the principle of the Bill, because on that depends my attitude upon the matter.

Mr. President : I will first put the motion as it appears on the paper before the House :

The question is :

‘That the Bill further to amend Act III of 1872 be referred to a Select Committee consisting of the Honourable Dr. T. B. Sapru, the Honourable Sir William Vincent, Mr. Percival, Mr. Cotelingam, Mr. Joshi, Chaudhri Shahab-ud-Din and the Mover.’

Rao Bahadur T. Rangachariar : I wish to know, Sir, whether by referring this Bill to the Select Committee the Assembly is committed to the principle of the Bill.

Mr. President : In the case of this motion, as in the case of the motion that the Bill be now considered, the Assembly must be held to be committed to the principle of the Bill. As the Honourable Member is aware, I have now drawn a distinction between these two motions and the motion to circulate for eliciting opinion. In the latter case the Assembly is not held to be committed to the principle, but in the two former cases it is clear that the intention of the Standing Orders is that the Assembly shall be committed, if and when a motion of this character is passed.

Rao Bahadur T. Rangachariar : That being the conclusion to which the Assembly will be committed in the event of this motion being carried, I beg to oppose this motion. Sir, I may confess to a feeling of instinctive dislike to this measure which is now before the House. In these matters, affecting the society of my countrymen, whether they be Hindus or Mussalmans or Parsis or the other communities whom this Bill seeks to affect, one cannot be too careful in proposing measures which are likely to affect those ancient civilizations. Sir, marriage with us, Hindus, is a sacrament; we look upon it as a sacred religious tie. It is an indissoluble tie. By taking a wife you take a partner in your religious ceremonies. Who does not remember the saying of Janaka to Rama when he gave Sita to Rama :

'Eam Seeta mama suta saha-dharma-chari taba.'

She becomes the *Saha-dharma-chari*, one who partakes in the religious ceremonies which are enjoined on the everyday life of the Hindu. It is not right that any attempt should be made to make marriage with the Hindus, Mussalmans or Parsis a mere mockery. Sir, to allow this Bill to pass into law would convert marriage into a mere figure of speech, into a mere mockery. It would be degrading that sacred institution, dragging it down from the high pedestal which it now occupies in our society, dragging it down to degraded depths. Sir, I fail to see how any person who professes to believe in the ancient religious faiths of this land, can come forward and say that you can have a marriage in the way in which this Bill proposes to make it. Sir, the history of this measure is too well-known. It was to give liberty to persons who did not believe in the various religious faiths enumerated in the Act of 1872, in order to contract a valid marriage that the Act of 1872 was passed. Sir, Dr. Gour, in a very learned, exhaustive and able address, which he has prepared and circulated to the Members, has let the cat out of the bag. If you turn to page 27 of this pamphlet which he has circulated to us,—in dealing with the objections taken to the measure, he points out that the first objection on every lip is that the Bill is opposed to the Hindu Dharma, and that in the first place the Bill is primarily intended for those who have renounced these Dharmas. Sir, if really this Bill is intended for the benefit of persons who have renounced the Hindu Dharma, what necessity is there for a measure of this sort? It is for them the existing Act was passed. He confuses the issues by saying that in an altogether different matter the Privy Council held that Brahmos did not cease to be Hindus simply because they became Brahmos. That is quite true. But they certainly ceased to belong to the Hindu religion. To belong to the Hindu community is one thing; to belong to the Hindu religion is altogether

a different thing. Marriage is part of the religion of every Hindu. Now, the object of this measure is to take away the very circumstances for which the Act of 1872 was passed, *i.e.*, it was passed merely for persons who did not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion, and to legalise certain marriages the validity of which was doubtful. Those religious faiths were excluded, because according to each of those religious faiths they had particular forms of marriage to which the religion attached great consequence, and that was why the legislature of those days took care to say :

‘ We shall not travel beyond the recognised forms of marriage ; we can only provide a form of marriage for those people who have not got any established form of marriage. ’

Sir, it has been said that if you do not provide liberty of action to individuals who seek to enjoy liberty it will not be acting rightly. Liberty is one thing ; licence is altogether a different thing. Sir, if you want to belong to a society, if you believe in a religion to which you are attached, surely liberty does not and cannot be converted into licence. You have to conform to the essential tenets which are laid down for your guidance. What is the objection ? The objection taken is that those who want to resort to this Act have to make a declaration before the Registrar that they do not profess any of the faiths mentioned therein, and they say ‘ we have to tell a lie, or rather tell that which is not true, in making that declaration. ’ Is that so ? Are you really telling an untruth ? Are you really telling a thing that is not true when you say that you do not believe in that religion, and that you do not belong to that religion ? What is religion ? What is the Hindu religion or the Muhammadan religion ? If you take the case of the Hindus for instance, what is it that the wife is taken for ? It is not merely for the association of man and woman ; she is taken for the purposes of being a partner in his every day religious life. She has to prepare the *Agni* or fire in the House. Sir, on the marriage day the *Agni* or fire is lit and it is carefully prepared and preserved and kept, and she represents that fire.

I quite sympathise with those who do not believe in it. I do not want to fetter their liberty of action. But, Sir, those of us who believe in it, cannot own them as persons belonging to the Hindu faith if they do not believe in these essentials. There are essentials and non-essentials, and this is essential, and therefore we consider this measure will greatly interfere with our religion. All that one has to do, according to the proposed measure, is to go and appear before a Registrar and sign a declaration to the effect : ‘ I take you as my wife, and you take me as your husband ’, and the marriage is over, and we are to take them into our house-holds ! Well, Sir, we have got a joint family system, we have got to worship a common God, where we have got to worship a family *Devasthan* or *Dharmasthan*, where we have got peculiar laws of inheritance, where my sons will be entitled to inherit to my brother or my remote cousins ; they not only inherit my property, but the property of my brother or some remote ancestor of mine. He becomes a member of the joint family ; he is entitled to take part in the family worship. Not only that, Sir, this woman who is so taken as wife is to associate with me in all the religious ceremonies and in the *śradhas* to be performed by me in honour of my ancestors. I certainly think it is ridiculous. It is simply trying to force the hands of society in the

[Rao Bahadur T. Rangachariar.]

name of liberty. Sir, I really think this is a dangerous measure. No doubt, the legislature has intervened wherever the customary laws are such that do not appeal to a feeling or sense of humanity such as for instance, in the case of widow re-marriage, the abolition of Sati and such other cases, where no doubt although these customs may have been based upon religious sentiment, they were not based upon really essential matters of religion. The legislature has chosen to intervene, and has intervened, but there is a limit to legislative interference in matters affecting the religion of the people, and this has been carefully recognised by the British legislature all along. Sir, one of the reasons why the British Government, although it is a foreign Government, made itself popular in this country, was because it carefully abstained from interfering with the religious habits, usages, customs and essential sentiments of the people. Therefore, I really see no need for this measure. Where is the evil, what is the great crying evil for which you are making provision by this measure? Has there been a demand? What is this neo-Hinduism which is now being started? If it is a new religion, by all means let it come into existence, let a custom grow up, and by custom you can recognise the validity of such marriages. Sir, for a handful of people who want to enjoy licence in the name of liberty, legislature should not intervene, it should not make inroads like this. It is said, Sir, this measure is purely optional. Now what is option? Marriage is optional as a matter of fact, although no doubt it is compulsory amongst us, but this sacrament is not imposed upon all people. Unless you wish to become a *Sanyasi* or lead the life of *Brahmacharya* all your life, this sacrament is imposed upon all people. It is a compulsory sacrament in the case of women and in the case of Sudras. Sir, this is not option at all with us. To go through a marriage is an essential thing, and if you attempt to interfere with the existing state of things you will be introducing a stranger into the joint family, you will be introducing complications in the laws of inheritance, and you will be disturbing the peace and harmony which now prevails in the Hindu families. Already, Sir, there are various other matters which tend to create the disruption of the joint family system, but they are all outside influences; so why make these influences work inside the family by giving the status of membership in the family to a person who does not become really a member of it, and it will be a very dangerous step indeed. Sir, with us the wife, after the religious ceremonies, obtains the *gotra* of the husband. Till her marriage she retains the *gotra* of the father, but after marriage she gets the *gotra* of the husband. Now, Sir, are we to believe that this woman so taken before a Registrar—he may be a Muhammadan Registrar for the matter of that, or he may be a Christian Registrar,—without any religious ceremonies at all obtains the *gotra* of her husband? Do you believe in *gotras* or not? If you do, then how do you make this transference? Is it by a mere word of mouth of the Registrar? The whole thing is ludicrous. Sir, I am really advocating the cause from the point of view of a Hindu who believes in his religion, and not from the point of view of a man who does not believe in his religion. There are people who no doubt do not believe in their religion. But, Sir, you are making this law which will introduce numerous complications in the joint Hindu families. Now-a-days youngsters lose their respect for their elders, even for their parents, and if you make marriage an option, then what will happen? An impressionable youth will take a fancy for a woman and go through this formality of marriage and the next day

he comes into the family and says 'Here is my wife, Papa.' Is my wife to treat that woman as her daughter-in-law? Are my sisters to treat her as a member of the household? Is she to enter my household and take part in the religious ceremonies? All these will follow, and that woman will come and take part in the *Shradhas* which I shall perform for the benefit of my ancestors, and she may obtain a decree for mandamus or injunction from courts enforcing her rights. Surely, Sir, I cannot give my vote to such a measure. I may be blind, but, Sir, in these matters one has to be blind. You cannot be too careful in these matters. I cannot afford to see our homes invaded by these foreign ideas. Let us keep them out. Let us not be tempted into these things, for these will be the thin end of the wedge. After all, I quite realise that if really there is a necessity for such a measure as this, I will be only too glad to join hands with my friends. But surely our forms of marriage have adapted themselves to the customs prevailing in the various provinces. Different communities have adopted different forms. In my province, the Marawa has got his own form of marriage, the Malayalees or the west coast people have got their own forms of marriage. Every community has got some form of marriage or other which always takes the part of a religious ceremony. Sir, to make marriage merely a matter of form, to go before a Registrar as if you register a document, is ridiculous, for we are taking a partner, a religious partner, for our every day ceremonies to be a member of our household. I do not think, Sir, it is necessary to labour the point. No doubt, it may be convenient for persons who believe in modern ideas and who do not believe in the religion to which they really belong, but it will not mean taking a *saka-dharma*, it is merely taking a woman for a man. For these reasons, Sir, I oppose this measure.

The Honourable Sir William Vincent (Home Member) : Sir, I will not detain this Assembly for more than a few moments as I only wish to explain what the attitude of the Government of India *vis-a-vis* this measure is. The Bill was very carefully considered both before and after the receipt of the opinions of the Local Governments on it, and the Government of India, fully realising the danger of weighing down either one side of the balance or the other by the official vote, have decided to follow the policy which I understand is approved by the last speaker and to be absolutely neutral in a matter which really affects the non-official Members of this Assembly more directly than it does the Members of the Government. The fact is that in a matter of this kind by which religious sentiment is largely affected, Government cannot be too careful of its attitude.

It should not use any influence it may have in this Assembly on one side or the other. There is already a large non-official majority in this Assembly, and there are many Members fully capable of expressing the views both of Hindus and Muhammadans. This attitude of Government is the more necessary, I think, in view of the considerable opposition which this Bill has received from certain sections of the community. I do not mean to say that the opinions received have been uniform and all of them hostile, because that would be an inaccurate representation of the facts. I have now seen three Bills of this character introduced into this Assembly and its predecessor and in my judgment—purely a personal opinion—the opposition to this Bill is distinctly less marked than it was in the case, say, of Mr. Basu's Bill or even in the case of Mr. Patel's Bill. At the same time, there is this feeling among the orthodox

[Sir William Vincent.]

Hindus against it so well represented by that radical in politics and conservative in social matters, the last speaker (Mr. Rangachariar). There is also a great feeling of opposition, as I understand, from certain orthodox Muhammadans on this point. But there are many here far more competent to speak on that subject than I am. Apart from these questions I must say, that if this Bill is referred to a Select Committee, I myself foresee considerable difficulties—I do not suggest that they are insuperable difficulties—in regard to questions of inheritance and other enactments already on the Statute Book, for instance the Indian Christian Marriage Act, the provisions of which I think the Honourable Mover will admit would certainly have to be examined in conjunction with the provisions of this Bill. It is not, however, for this reason, but on the general grounds to which I have referred that Government has decided, whatever be the personal views of individual Members of the Government, that the Members of the Executive Council should observe absolute neutrality in the discussion of this Bill.

Mr. W. M. Hussanally (Sind : Muhammadan Rural) : What about the official Members ?

The Honourable Sir William Vincent : If the Honourable Member had let me finish, I was just going to tell him that official Members, other than Members of the Executive Council, will have complete freedom to speak and vote as they like (Hear, hear). The Members of the Viceroy's Executive Council will however not take any part in this debate or in any division for the reasons which I have already given.

Mr. N. M. Joshi (Nominated : Labour Interests) : Sir, it was a matter of great disappointment and surprise to me that an Honourable Member of this House, who is generally so reasonable, should have confessed that in this matter he shuts his ears to any arguments but insists upon being blind and depends only upon faith. Sir, let us in a few remarks see what objections he made against this Bill. In the first place he talked a good deal about the Hindu religion, the tenets of the Hindu religion and the essentials of the Hindu religion. But he did not mention which are the essentials of Hindu religion, and what is absolutely necessary to make a man a Hindu. I have not yet heard from any one a definition of the essentials of the Hindu religion. Let any one do that. Personally, I believe any man who calls himself a Hindu is a Hindu, and must be considered a Hindu. Beyond this I do not see any practical limit to be placed upon the liberty of a man in his religious tenets. I know something about the Hindu religion. I have read something of the Vedas, the Puranas and the Smritis. But are they followed to-day in practice by any one? Are people following the tenets of the Vedas, the tenets of the Smritis and the Puranas as regards their profession? What was the profession of a Brahman? Is he still following his profession? He calls himself a Hindu and a Brahman all the same. Therefore, it is so very difficult to find out which are the essentials of Hindu religion. My Honourable friend referred also to the status of marriage in the eyes of Hindu religion. He said it was a sacrament, something holy. Sir, I consider marriage to be holy—very holy—the holiest of the holies. But I cannot see the difference between an oath taken before a Registrar and an oath taken before a priest. What is, after all, the Hindu form of marriage? What do they say there? As far as I know, they say the same thing, *viz.*, 'we take

each other as husband and wife and we shall be faithful to each other'. That is all. I do not see the difference between the oath taken before a Registrar and that taken before a priest. Sir, this is as regards the marriage itself.

Then he brought forward several arguments regarding the disturbance of the Hindu society. I should like the Honourable Members who are against this Bill to tell me in clear words how they can stop inroads of the other civilisations upon Hindu society, how they can stop marriages between Hindus and Christians, Hindus and Parsees, and Hindus and Muhammadans. Have they stopped these marriages? Hundreds of these marriages have taken place. Sir, if my Honourable friend will take a census of Hindus, Muhammadans and Parsees who have married Christians, I am quite sure their number can be counted by hundreds. (*Several Honourable Members*: 'No, no'.) Sir, it is a matter of fact, and we need not say here, 'No, no'. Let any one come forward with a census report and prove that I am wrong. (*An Honourable Member*: You do it.) I have made my statement. Those who contradict me, it is their business to show by census report that I am wrong. (*Mr. W. M. Hussanally*: You show by census report that you are right.) It is not my duty. I know myself several dozens of people who have married English girls, and there is no difficulty in showing that there are several hundreds of people in India who have married outside the Hindu religion. (*Rao Bahadur T. Rangachariar*: Are they happy?) Sir, my Honourable friend asks me: 'Are they happy?' I ask him in return: 'Are all the Hindus who have married in the orthodox style happy?' (*Rao Bahadur T. Rangachariar*: 'Yes'.) I say: 'No'. I contradict your statement. I have seen husbands suing their wives in courts. It is a fact which cannot be denied. I have seen wives also suing their husbands. Sir, these are facts. Can my Honourable friend who is a lawyer, say that there are no suits in the law courts in India by wives against their husbands and by husbands against their wives? (*Rao Bahadur T. Rangachariar*: 'No'.)

I am surprised to hear the Honourable Member say that there have been no suits. Sir, these suits are heard of several times in the law courts. We cannot say that all orthodox marriages are happy: and if anyone makes that statement, let him stand before the public with that statement. The chief question in my opinion is not whether the marriage is happy or is not happy. The chief question is this. If a young man wants to marry a girl whom he likes and loves, whether the society is going to allow him to marry that girl or not. As a matter of fact, if society does not approve his marriage, he marries the girl: and if he has any spirit, he ought to marry, in spite of all the legal difficulties. Sir, the marriage is *not* prevented in my opinion. The marriage does take place, but what happens according to the present law is that certain people who believe in the Hindu religion, and who want to call themselves Hindus, have to say on a particular day that they are not Hindus. That is all. These people move amongst Hindu society all the same without any difficulty. I have seen it. But on a particular day they have to say that they are not Hindus. That is the only difference: and what this Bill really seeks is to modify this. If a man wants to call himself a Hindu and still to marry outside the Hindu religion, let him be allowed to marry. There is nothing in the Bill beyond this. We do not as a matter of fact want encouragement by the law in these cases. As I have said, marriages are *not* pre-

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vented by the present law. We only seek an amendment of the law to enable the man to say that he is a Hindu. I therefore feel that the objections which have been raised against this Bill are merely the outcome of prejudice and blindness, as my Honourable friend admitted. He talked several things about liberty and license. He said, if a Hindu marries a Christian, it is license. I do not believe it is so. I do not think any people in the world will believe that if a Hindu young man and a Christian girl live together as husband and wife in faithful wedlock, they can be called by the world 'licentious'. It was certainly very bold and very hardy of my Honourable friend to have applied that word to a marriage of that kind. Then, Sir, he talked of several things,—being a lawyer, he talked of succession and other similar things. There are difficulties about succession, but they can be overcome, as the Honourable Home Member said; they are not insuperable, and they can be considered. He said, suppose a Hindu marries a Christian, then the Christian girl will come into the family and will insist upon being a member of that family and being called a daughter-in-law or a daughter. Is it really so? Can the girl compel the mother-in-law to call her a daughter-in-law or a daughter? She cannot. You can sue for partition, and I am quite sure you will secure a partition. Nobody can force other people to call them by particular names or to treat them as sons and daughters. It is a matter of love and affection, not of compulsion at all. Then as regards their being members of Hindu society and joining in ceremonies, Sir, I for one do not object to the Hindu society or any other society boycotting and ostracising all those people who do not follow the orthodox tenets of their religion. They are at liberty to do so. Those who believe in reform are not afraid of boycotts, are not afraid of ostracism. They are prepared for it. But what they seek is this,—do not place in their way legal difficulties; do not make it impossible for them honestly to marry in their own way. That is what they expect. That is what they want from the law, and this is what this present measure seeks. Sir, there is another thing. If some people think that it is very difficult to secure such marriages in India, it is not so. I have already mentioned that marriages between Hindus and non-Hindus do take place without Dr. Gour's Bill. Moreover, as the Honourable Mover of this Bill has said in his pamphlet, there are two States in this country where such marriages are legalized, Baroda and Indore. How can you prevent inroads on your society when there are two States in the country ready to legalize such marriages? A man can run to Baroda or Indore, stay there for a fortnight, and get the marriage legalized. (*A voice*: He need not stay there at all.) Therefore, the argument that inroads on society are to be prevented by opposing this Bill really holds no water. You cannot prevent inroads of other civilizations upon your society. What you can do is to oppress a few individuals. I agree with the Honourable Mover that this Bill is intended only for a few people. I agree with him entirely. I am quite sure, that society, as it is constituted to-day, will not go in for marriages of this kind in very large numbers, but is it wrong of the Legislature to do justice to a few people,—even to one man? That is the question I want to ask. Why should a few people be tyrannized, why should they be oppressed, if we can prevent their being oppressed? Sir, as regards the attitude of Government, I am also very much surprised. The Government in the country is there to protect the subjects, be they a few individuals or large numbers, from any kind of difficulties in their way, from any kind of oppression and

tyranny, whether from society or from any other organisation. If a few individuals holding reformed views on social matters want their liberty of action to be safeguarded, is it not the duty of Government to do it? Is it really right for them to say, we shall adopt a neutral attitude, we shall stand aloof? Is it really right for Government? Is Government going to function only in those matters in which their own interests are concerned? Let us have a clear definition of the policy of Government. I do not think this attitude of being neutral is *really* a neutral attitude. It clearly means that they want to oppose this reform. They do not want to give this opportunity to those individuals who want it. Otherwise I cannot see, I cannot understand a Government, that has to take its share in the legislation, saying that they cannot take part as Members of the Legislature. The Executive Government is a part of the Legislature. They ought to take sides on every occasion. If they say: 'we shall not speak on particular subjects', I think they fail in their duty. I will not mind their opposing this Bill. Let them oppose it if they have the conscience and the courage to oppose, but I cannot understand a Government which is an integral part of the constitution saying that they stand neutral.

Lastly, Sir, I hope the Members of this Assembly will not follow the example of my Honourable friend from Madras and shut their ears to all arguments in this matter. Let them hear the debate and decide the matter on its own merits.

Mr. S. C. Shahani (Sind Jagirdars and Zamindars : Landholders) : Sir, I have listened with some care to the arguments that have been advanced by my Honourable friend, Mr. Joshi, in support of the measure of Dr. Gour. I have also listened carefully to what has been stated by my Honourable friend, Rao Bahadur Rangachariar. I am sorry, my friend, Mr. Joshi, has gone the length of speaking of Rao Bahadur Rangachariar as blindly adhering to his faith in his opposition to this measure. I would ask my Honourable friend, Mr. Joshi, to consider whether or not it behoves him, as also the Government and the other Members of the Assembly,—to consider whether it behoves any one who marries a girl from love—a girl not belonging to his community and not belonging to his religion—to inflict his presence and the presence of his wife upon the members of his family; if it is right on his part to lead his wife to his family residence—if it is right on his part to insist upon his or his children inheriting to the members of his family or to his *gotra*: for instance from an uncle who dies without issue—from a maternal or paternal uncle who dies without issue. Any measure that is devised should be comprehensive enough to take cognizance of these important collateral considerations. Dr. Gour has been very clever in putting forth this measure. Probably he has gone on the principle of asking for more than can be granted on the assumption that what you grant will be conceded in a reasonable measure. I have just learnt from the Honourable the President of the Assembly that the Assembly will stand committed to the principle of this Bill if it is referred to a Select Committee. On the considerations which I have just now suggested, I would respectfully request all the Members of the Assembly to reject the measure at once and to insist upon the deviser of this measure taking into consideration all the collateral results of a measure such as this. I have no objection to an Indian being allowed—and perhaps he should be allowed—to marry any girl that he fancies. It is not reasonable on the part of the Legislature to insist upon his coming forward to tell a lie and say that he is

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not a member of any particular faith and that therefore he should be allowed to take advantage of Act III of 1872. The existing law is undesirable and ought certainly to be changed ; some kind of liberty should be granted to people who want to marry girls of their own choice. We belong to a cosmopolitan society. We have been in contact with Muhammadans in the first instance and are in contact with Christians now ; and, if we are really to constitute one Empire, reasonable opportunities for marrying, for instance, members of other communities ought to be granted to us. I am therefore not in principle opposed to the measure at all. I like the measure. A measure such as this ought to find favour with the Assembly. I only wish that precautions—necessary precautions—should be taken. To say that it is blindness on the part of anybody to come forward and say that the Hindu family, strictly as such, should be organised according to the essentials of the Hindu religion : or to come forward and say that the Hindu religion has no essentials, is I think to show perverseness of judgment.

Mr. N. M. Joshi : Tell us what they are.

Mr. S. C. Shahani : Certainly I can mention one or two of the essentials of the Hindu religion. He is not a Hindu who does not believe in the transmigration of the human soul ; he is not a Hindu who does not believe in the law of *Karma*. Any one who comes forward to say that these are not some of the essentials of Hindu religion is altogether ignorant,—and this ignorance is crass ignorance—of the essentials of the Hindu faith. One cannot pose as a reformer without bending one's mind to the consideration of the essentials of the Hindu religion. I am a Hindu. If I do believe that I hold a particular relationship with my God and with kindred spirits in nature : if I do not confine myself merely to my physical existence : if I feel that I have had a previous existence and that my future existence will depend upon the present exercise of my will : that is merely the doctrine of free will as believed in by Hindus, and I think it is worthy of some special consideration. I believe that I have been given a free will and it is by virtue of that free will that I have created my present *Karma* ; my present arises out of my past : and the manner in which I exercise my free will at the present time will be responsible for my future. It is not a Hindu belief that it is by chance that a Hindu is born in a particular family : his belief is that one's situation in a family is the result of the relationships that he has held in the past : and a great deal of sanctity does attach to the Hindu ideal of family life. Rao Bahadur Rangachariar is perfectly right when he says that ancient civilizations should not be invaded or encroached upon. But individuals might reasonably be allowed to exercise their will as they feel inclined to do ; but if they do that, they should be cut off legally from the families to which they have belonged. Any individual so exercising his will should not be entitled to claim what would otherwise have been his share in the family property ; he cannot then rightly inherit to those members who do not recognise as good his exercise of will in this matter of marriage. Marriage is a very important tie, a relationship which ought not to be considered so lightly as it has been considered by my Honourable friend, Mr. Joshi. He seeks to pour ridicule on all those who take opposite views ; but I am afraid he only shows shortsightedness, which is in itself worthy of ridicule.

I had one other objection also to this measure that has been put forward, namely, that only those were selected in the first instance for the Select Committee who probably were expected to sympathise with Dr. Gour's view. He has come to be wiser now and has extended the number proposed for the Select Committee. If he will also withdraw the measure and provide for all the necessary safeguards in his Bill to which allusion has been made, I shall be the first to come forward and support his measure.

Mr. P. P. Ginwala (Burma: Non-European): Sir, when my Honourable friend from Madras (Mr. Rangachariar) asked you whether the House would be committing itself to the principles of the Bill, if it was referred to a Select Committee I understood him to imply that if he was not committing himself to anything at all, he would accept the motion moved by my Honourable friend, Dr. Gour. I do not know whether I am more surprised at the orthodoxy of my Honourable friend from Madras, or at the astuteness with which he has thrown this red herring across the track. As regards his committing himself to the principle of the Bill, what does his objection amount to, unless he means that the House hereafter will not have the power to reject the whole Bill? But this he can scarcely mean because we shall have at least two more occasions on which the Bill will come before the House. After the Select Committee finishes its report, the first occasion will arise when the motion is made that that report be taken into consideration. My Honourable friend can then get up and move its rejection or that it should not be taken into consideration. He can again move its rejection at a later stage—when the Bill after amendment has to be passed by the House. If his arguments are powerful enough he may even then succeed in getting the Bill thrown out.

That being the position, Sir, what is the meaning of this orthodoxy?

12 Noon. That orthodoxy is ready even to go to this extent that it is unwilling that a minority should have its claims examined in Select Committee; for that is what it really comes to. No doubt, Sir, the previous Bills were thrown out because they were defective, and I am sorry to see that the Honourable Mover of this Resolution has not, in exactly copying Mr. Basu's Bill, taken sufficient care to get over these same difficulties which were pointed out when that Bill was discussed in Council. Nor does the Bill as it stands take account of the objections that were then raised. But for these reasons are we justified in rejecting it altogether? Supposing the Select Committee was able to provide that all the susceptibilities of the most orthodox Hindus would be safeguarded, that no questions of succession would arise involving any religious rites or ceremonies, that no one would suffer by the provisions of the Bill and at the same time that this minority would be helped—would my Honourable friend still object? He must say that he would if he opposes this Bill at this stage. That, I submit, is carrying orthodoxy to I don't know what extent: it simply amounts to fanaticism of some sort which refuses to a minority the right to get its claims examined.

Now, Sir, coming to the merits, what are his objections? First of all, he takes the religious objection and says: supposing my son goes and marries somebody who is not a Hindu and he brings his wife home and says: 'Papa, this is my wife'. Well, if the papa knows his business, he will say: 'that is your wife, but this is my houst and out you go.' Then my Honourable friend says she will noe

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be able to perform the rites and ceremonies which are required by the Hindu religion. Well, Sir, what does it matter to my Honourable friend? If rites are not observed, if no religious observances are followed, the personal consequences attach to the offender and not to my Honourable friend at all. No doubt his son, by offending against the dictates of his religion, may not go to heaven but that is his business. My Honourable friend, surely, is not going to quarrel with his son because he chooses his own destination after this life, for that is what it really comes to.

Then, Sir, a political objection has been raised. No doubt the Government has so far abstained from taking any active part in questions of this kind, but I submit that by doing so the Government run the same risk as by joining hands with one party or the other. Let me put the question in this form. Supposing those critics of Government who are always bent upon mischief wanted to use this opportunity of creating mischief, is it not possible for them to do so? They will say: 'Look at the Government; here we have been trying our best to bring about unity between the different races of India, to bring about Hindu-Moslem unity; we have been trying to raise the depressed classes and to improve their conditions; but the Government, when we get a chance, a real chance, of fulfilling these objects, interfere from behind with our work of reform.' If people want to create mischief they can create mischief either way, so that I do not think the Government have done wisely by abstaining altogether from taking any part in the passage of this Bill.

There are one or two other points I should like to refer to. I would draw the attention of my Honourable friend from Madras to one particular aspect of the case. Has he examined the Indian Christian Marriage Act? For, if he has, I ask him: has he so much partiality for Christianity that he will allow his son to be legally married to a Christian under that Act, but he will prevent his son from marrying outside his own caste? That is the legal position at the present moment. According to that Act, if one of the parties is a Christian, they can be married under the Civil law before a Registrar. What will my Honourable friend do if a disobedient son were to marry under this Act? He is legally married, and he won't be able to do anything at all. And yet, if his son were to marry another Indian professing the same religion but belonging to another caste, he would raise his voice against the marriage?

Now, let us examine the alternatives. First, immorality; this may be immediately dismissed. Or the parties going to Baroda, Indore or Europe and getting themselves married there. Or, the commission of perjury by the parties declaring that they did not profess any of these religions or in the last resort chartering a ship and getting married outside the territorial limits of India according to English law. Sir, these are the various alternatives, and every one open to objection which a man may adopt to get over the obstacles that we seek to place in his way, or any that even the ingenuity of my Honourable and learned friend can suggest. Therefore, why not take this opportunity which has been offered to us after 10 years of going into the whole question, looking at it from every point of view and devising means by which the Honourable Member's prejudices can be safeguarded while the claims of the minority are looked into.

There is one other point, Sir, and I have done. My Honourable friends in this House and outside have been crying for a Self-governing India. I ask them, does a Self-governing India mean that the minorities, however small they may be, are not at liberty to follow any religion that they like and to marry when they like? Are they not to have any rights? If not, they must confess that they have been talking very loudly about a Self-governing India but that when it comes to a question of principle which puts them to the test, they prove to be utter failures.

Mr. W. M. Hussanally : Sir, I rise to oppose this motion on behalf of the Muhammadans of India. I know, Sir, that my friend, Dr. Gour, has put my name down for the Select Committee in the amended list of names which he suggested just now. In the first instance Dr. Gour did not suggest my name, probably because he knew very well my attitude towards the Bill.

Sir, so far as the Muhammadans of India are concerned, I believe not a single Muhammadan favours this Bill at all, because under the Koranic law they can marry only Muhammadans, Christians or Jews and no one else.

I know, Sir, that the Honourable Mover will tell me, as he has said in his pamphlet, that Mr. Ameer Ali is in favour of marriages outside the Koranic law. But I do not think that any Muhammadan would take Syed Ameer Ali as our law-giver. Our law is settled by the Koran and we can only marry in accordance with the tenets of the Koran and in no other way. Therefore the difficulties, so far as Dr. Gour and his friends are concerned chiefly, those English-returned gentlemen who wish to marry European or Christian wives—do not affect us, Muhammadans. But the consequences of this measure, if passed, will be very far-reaching so far as Muhammadan marriages are concerned. For instance, a disobedient son, as Mr. Ginwala calls him, may go one day and marry a prostitute and bring her into the family. Will that be in accordance with the tastes or inclinations of any parent? On the other hand, Sir, if an unfortunate girl, belonging to a respectable family, takes a fancy to a bearer or a *chamar* or a servant, will that be liked by any parent? I think that if this Bill is passed, it will encourage elopements because, as Indian society stands at present, neither Hindu nor Muhammadan education is far advanced, and young men and women cannot decide under the present circumstances of society and education what is to their good. I understand, Sir, that a law should be for the greatest good of the greatest number; and, may I ask, Sir, if that is aimed at by this measure which has been brought forward by my learned friend, Dr. Gour? He himself admits that this will apply only to a few individuals and perhaps an infinitesimal minority. So far as these gentlemen are concerned, if they wish to renounce the Muhammadan religion they are free to do so and they could then marry any person of their choice. But, Sir, is it right and proper that a Muhammadan should marry against the law of the Koran, and yet insist upon remaining within our fold and the law permit him to do so? That is an impossible situation that a man who calls himself a Mussalman should act directly against the laws of the Koran and yet insist upon remaining a Mussalman.

Mr. N. M. Samarth (Bombay : Nominated Un-Official) : What about Akbar?

Mr. W. M. Hussanally : I was just going to say a few words, Sir, with regard to Akbar. Akbar is said to have married Hindu ladies, but it has been questioned whether he was a Muhammadan. If he was, he was a Royal Prince and an Emperor, and we Mussalmans cannot take him as our law-giver. If he chose to do anything against the principles of the Koran, surely we cannot take him as a law-giver. Our law is settled by the Koran and there it is and we cannot go behind it.

Then, Sir, my friend, Mr. Joshi, said that if a Hindu married outside his caste he should have the remedy of separation and the family should kick him out of their fold, thereby suggesting that a disruption in the family would be brought about by his particular act ; Mr. Joshi would thus have a disruption of families rather than keep these young men within bounds. If Baroda and other States have passed a law of this kind enabling anybody to marry anybody, then where is the difficulty ? I cannot see any difficulty. Dr. Gour's friends could easily run up to Baroda for a day, get married there and come back the next day into their homes bringing their wives with them. That will solve the difficulty by itself without having recourse to any fresh legislation. Sir, in a matter like this, the Honourable the Home Member tells us that the Government Nominated Official Members, excluding the Members of the Executive Council, are free to vote as they like. I think, Sir, that is not the right attitude which should be adopted by Government. They are nominated by Government, they are officials, and they ought to be neutral in a matter like this along with the Members of Government, because this is purely a case which affects the religion, social customs and manners of the Indians, with which they should have nothing to do.

Then, Sir, one more request that I would make in connection with this matter is, that this proposition be split up into two. First of all, whether this measure should be referred to a Select Committee at all ; and, if that is carried, then, the names of the Committee ought to be proposed. I do not know whether you are going to permit the Honourable Mover to add the names that he has now proposed to the list already sent in by him. If not, there is my amendment and another amendment of my friend, Khan Bahadur Muhammad Ismail, which has to be proposed instead. Therefore, the best course would be, first of all, to put the motion that the Bill be referred to a Select Committee ; and, if it is carried, then the names ought to be proposed.

Mr. Pyari Lal (Meerut Division : Non-Muhammadan Rural) : Unfortunately, Sir, I have also to oppose this Bill. Whatever my own personal opinions in the matter may be, I feel it my duty to voice forth the views of my constituency on this subject. All the different communities and classes of persons that I have come across look upon this measure with dismay. They consider that a measure like this will disintegrate the whole of our social organism as it exists to-day and that it will take away the peace of our homes in villages and towns. The fierce light of the West is beating already very strongly against our cherished institutions, but this might prove to be the proverbial last straw. The reasons advanced by Sir James Stephen in 1868 as regards a measure like this still hold good. The religious feelings and social instincts of the people have not come to that pitch yet when a measure like this could be well put through.

Marriage, as has been observed by Mr. Rangachariar, is a sacrament amongst Hindus, and it has been a potent factor in preserving our

individuality as a community hitherto, and Dr. Gour, and people of his way of thinking, should not cut at the root of this cherished institution. I know the Bill is an enabling one only, and not compulsory, but, knowing as I do the prejudices and the radical views of our young men to-day, it will be no less than a calamity if the younger generation are allowed to have their way and send their parents and elders to an early grave. All reforms must grow and not be manufactured as hot-house plants. First, let us have inter-marriages amongst the members of the same caste and its various divisions, and then it will be time enough to extend the reform to the whole community and to all other castes, and then, last of all, to all the religions of the world. You will require at least 50 years to educate the people to this pitch at the present rate of progress amongst us. Some gentlemen have alluded to the existence of such a law in Baroda and Indore. With all respect to those States, I submit that any social rules passed by a handful of people cannot be accepted by people in British India, for we know that the State Council in Indore consists of half a dozen State officials, and if they choose to pass a law for the whole of that State, I do not think it will hold good, particularly for British India, and I do not think it will be obeyed or respected, and, as has been suggested by the last speaker, I think the best thing for those young men, who are so very anxious to be free and take liberty with their institutions, will be to go and live and get married in Indore itself. I doubt very much whether they will be legally entitled to possess the same status here as in that State. Anyhow, on behalf of the Hindu community, I strongly oppose this Bill.

Munshi Iswar Saran (Cities of the United Provinces : Non-Muhammadan Urban) : Sir, had it not been for the abnormal political conditions in the country to-day, this motion of my Honourable friend, Dr. Gour, would have excited considerable interest in the country. I am in sympathy with Dr. Gour's motion, but not for his reasons. I am afraid Dr. Gour has made a tactical blunder in delivering a frontal attack on orthodox Hindus, and he need not be surprised if orthodox Hindus are up in arms against him.

Sir, it has been said by the last speaker that young men want this measure. I hope he will not consider me young, but I also want this measure to be passed. Might I tell him that not only I, but men much older than myself, are in favour of the motion that this anomaly should be removed and that this reform should be brought about as soon as possible. Sir, might I be permitted to say that I am an orthodox Hindu, and I do hold that the most precious possession of Hindus is their religion. I should be sorry, I should resist, with all the strength I possess, any inroads into Hindu religion. But, Sir, let me tell my friends, with all respect, that to always cry 'religion in danger', is a great mistake. To oppose all reform in the name of religion is really to retard the progress of our own community. What is Hinduism is a question which has been put. I must confess, Sir, at once that it is difficult to give a definition which will be acceptable to people of all shades of opinion in the Hindu community. The Hindu community comprises within its fold a *Sanyasi*, who rises above the considerations of Mine and Thine, and, at the same time, it comprises within its fold a man who worships a stone and who worships a tree. Both are called Hindus, both would fight if you said that they did not belong to this fold. One Honourable Member has tried to give a definition that Hinduism consists in the belief of the law of *Karma* and in the law of the

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transmigration of soul. I submit, Sir, that if he will kindly take into account the various sections of Hindus, not only in one part of the country, but all over, he will find that this definition will not hold good. Sir, it has been said, and it has been said with great force, especially by my Honourable friend from Madras, that these changes the Hindu society cannot accept. Might I tell him that the one reason why Hindu society and the Hindu community have withstood the inroads of ages is the reason that the Hindu society and community, from time to time, have been changing themselves in order to adapt themselves to their changed environments. If the environments change and if you remain unchanged, the result is nothing, but destruction and annihilation. Look at the history of the Hindu community itself. Can you say whether our institutions and customs have remained unaltered, unchanged, unmoved and immoveable from times of yore? Look at the book of the Hindu law which I have got in front of me. Custom after custom has come and gone, and it is, I say with great respect, a mistake to suppose that the custom of marriage which we find amongst us to-day is the custom which was with our ancestors, which is hidden from view and about which perhaps there is no recorded history. I say to my Honourable friends; let us not make this system so inelastic, so immoveable, that they might break under the strain of changed and changing conditions. Sir, take the actual facts as you find them. There has been a great deal of fling at England-returned people. Sir, happily for myself, my dream of going to England has not been realised, and I hope my friends will not accuse me of being an England-returned Hindu myself. May I cite to them the instance of Nepal, which cannot be said to be under the influence very much of English civilization? What do you find in Nepal? Even to-day a Brahmin can marry a Kshatriya, a Brahmin can marry a Sudra. What have our friends got to say to that? Go to Nepal to-day and you will find a Brahmin who has got a Kshatriya wife. What is that now? It is allowed, it is recognised. Was there any such institution before us, any such custom amongst us in times gone by? If we look carefully into the history of the Hindu community, we find that there were customs like these amongst us before.

Sir, about the changes that are coming into Hindu society, I shall ask my friends to remember the days when a man who went to England was outcasted, every door was banged against him, and he was looked upon as a veritable pariah. What is the condition to-day? People go to England, and when they come back, no objection is raised against them. In fact, you find Association after Association calling upon the community to encourage foreign travel. I am old enough to remember all the subtle, metaphysical, religious arguments that used to be advanced in those days against men who had been abroad, had taken forbidden food, and had lived in forbidden company, coming back and taking part in our religious ceremonies. What is the condition to-day? Men who go to England and come back become respected members of society. You find people going to Railway stations to offer them welcome. You find—and Members of the Government of India will bear testimony to this—appeals, pressing appeals, for scholarships to enable deserving Hindus to go to England. Their parents, their guardians and their relations, all press I suppose more particularly my Honourable friend, Sir Muhammad Shafi that scholarships should be given to their young hopefuls in order that they might qualify themselves for some of the higher examinations

in England. Whenever a reform, a much needed reform, a relief is asked for, there are some people amongst us, for whom I have great respect, and against whom I do not wish to say a word either in anger or in resentment, who are in the habit of shouting from the house tops 'Religion in danger'. Some time after, their opposition vanishes, and, from being opponents of that particular change, they come to be its warm friends and supporters. Sir, what is the condition to-day? We have been told, especially by elderly gentlemen, of the need for keeping our young men under control. As a father myself, I should like to have all my children under my thumb. But such is the sin of this *Kali Yuga* that youngsters receive education and then decline to be ordered about by their elders. If people are anxious to keep their paternal authority intact, let them go up to Sir Muhammad Shafi and ask him to use his influence with the Government of India to abolish all schools and colleges, so that these young people may remain under the perpetual domination of their parents. But, Sir, having seen this spirit of rebellion, having discovered this spirit of insubordination, such is our foolhardiness that we have started giving education to our girls. Had it not been a provincial subject, Sir Muhammad Shafi would have found it very difficult to satisfy our demands for more girls' schools and girls' colleges throughout the country. If this is going on, I ask you whether you believe that you will be able to dictate to your daughters: 'you shall not marry against my orders. Your choice will depend on my will.' Of course these girl graduates will not be false to their tradition, to their home influence and to the entire civilisation to which they belong. But let me say quite distinctly that we have to revise our notions about paternal authority, and the sooner we do it the better. What is the position then? Our young men are being educated, our young women are being educated. If you keep intact all these bars, the result is that if they want to marry, they will go out of the pale of Hindu society. I ask these Honourable Members: 'Is Hindu society to retain the policy of exclusion or is the policy of inclusion to be the watchword of Hindu society in times to come?' A man goes to England. Let him be outcasted. A Brahmin marries a Kshatriya. Let him be outcasted. Are we to continue our caste scruples or are we to make such modifications in our customs and manners as to suit the changed condition of things? Sir, we are told about marriage being a sacrament. I can assure my Honourable friend, Mr. Rangachariar, that I do not yield even to him in my great respect and admiration for the institution of marriage that we find prevailing amongst us. It will be a very unfortunate day indeed if we change that institution. But I ask him: 'Is it something outrageous that a man should wish to marry according to his own ideas and according to his own tastes? Let Hindu Society say: If you marry, you go out of your caste; you should not expect any social relations with others. But I ask you, in the name of fairness, not to call his children, children born of lawful wedlock, bastards in the eye of law. What you say is this: 'If you want to marry a European, become a Christian; if you want to marry a Muhammadan, become a Muhammadan; but if you remain a Hindu, then we shall deny you the wish of your heart.' My Honourable friend asks: 'How many people want it?' It is true, and I am free to confess it, that a great many people are not clamouring for this reform. But there is most certainly a minority, a minority which is increasing every day, and is it right that you, who are in the majority, should withhold from the minority the relief that I submit it is most clearly entitled to? I, therefore, submit, Sir,

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that in the name of Hindu religion itself it is necessary that some relief should be given to Hindus in the matter of religion. I agree with my Honourable friend, Professor Shahani, that this Bill will have to be very carefully looked into and many modifications will have to be introduced. But I do earnestly beg the Honourable Members present here not to throw out this Bill at this stage. Let them meet, let them consider, let them introduce as many modifications as they please, but let them not deprive themselves of the chance of considering a very important question at this stage.

Mr. S. C. Shahani: How are we to ensure modifications; being introduced?

Munshi Iswar Saran: I should have thought that it was open to the Select Committee, if I am not mistaken, to introduce such modifications in the provisions of the Bill as commended it to the Members of the Select Committee itself.

Sir, one word more, and I have done. As a Hindu, I cannot presume to speak either about Muhammadans or Christians, but I wish certainly to speak about the Hindus. Hindu society, I sincerely hope and trust, is not to be in future the kind of society that it was in the past. Look at the thousands and tens of thousands of Hindus who are going to various colonies. Look at the people who are going to foreign countries. Look at those Hindus, who are settling in other countries. I submit that if you take into consideration all these changed conditions, for the preservation of the Hindu society itself, it is necessary that you should introduce some change in the marriage laws as they exist to-day. I shall only once more appeal to my Honourable colleagues here not to throw out this Bill at this stage. Let them introduce as many modifications as they please. Let them make the Bill as modest as they wish it to be, but to throw the Bill out at this stage would be wrong, and they would be depriving this Assembly of the final chance of expressing its opinion on the Bill as it will emerge from the Select Committee.

Rai Bahadur Pandit J. L. Bhargava (Ambala Division: Non-Muhamadan): Sir, when I was asked this morning by Dr. Gour whether I was willing to have my name added to the Select Committee which he was going to propose, I expressed my opinion that I was opposed to the Bill. But, on his pointing out to me that his desire was that Members of all shades of opinion should constitute the Committee, so that the Bill might be discussed in all its aspects there, I gave my consent to serve on the Committee. But now, as your ruling is that the adoption of this motion would be tantamount to the acceptance of the principle of the Bill, I think I must express my opposition to the Bill, itself. I need not reiterate the grounds which have been given by Rao Bahadur T. Rangachariar, but it will be sufficient to say that he has given very cogent and sound reasons, that are convincing to anyone who cares to be convinced. It will be found that general Hindu public opinion is against this Bill, as the Hindu religion looks upon marriage not as a civil contract but as a sacrament, and an indissoluble tie between husband and wife. Mr. Joshi remarked that there were cases of suits between husband and wife for a judicial separation. I wish to point out that amongst Hindus no suit is entertainable for the dissolution of such a tie. Any encroachment or inroad on the institution of marriage in the way contemplated by the Bill is

bound, in spite of the wise and discreet attitude of Government, to create resentment and give rise to misgivings in the mind of a large section of the people, Hindu and Muhammadan, which, I should say, should be scrupulously avoided, as far as possible, in these days of political excitement. Besides, this Bill, if passed into law, is sure to create complications on questions of succession, and very difficult questions will arise which it will not be easy to solve. Taking all the circumstances into consideration, I would suggest that the Assembly would be acting wisely in not accepting this motion.

Mr. J. N. Mukherjee (Calcutta Suburbs : Non-Muhammadan Urban): Sir, representing as I do a class of the Hindu community, I should like to place before this Assembly my views on the subject now before it : and I will say at once that I stand up with a view to oppose this Bill with all my heart. I have given Dr. Gour my reasons for my attitude, but I should like that the Assembly should also know something about them before coming to a conclusion on the point. Now, Sir, various things have been suggested in the course of the debate, and various propositions have been placed before this Assembly. Now, the first point that strikes me is, what should be the attitude of Government in a matter of this kind ? It has been conceded that the Bill does not come from the general mass of the Hindu or Muhammadan population,—that it has emanated, if not from an individual Member of the House, at most from a class which represents, as the Honourable Mover himself admits, a very very small minority, indeed, of the community. The House knows very well that there are various Acts of Parliament which forbid the Indian Legislature, among other matters, to enact laws which interfere with matters of succession, etc., according to the Hindu and Muhammadan religious systems. The effect of a Bill like the present, however, would be to interfere with various matters which, I may say, were kept out of the operation of the Indian Legislature, obviously, for good reasons. This Assembly, as the House knows, does not represent the great mass of the people. The House cannot forget that there are people, literate or illiterate, who in large numbers still choose to be governed by the Hindu faith, having their faith in the principles of their *Shastras* as also a vast number of Mussalmans who have a firm faith in the injunctions of the Koran. Now, these are not generally speaking the vocal sections of the community : and the first question that presented itself to me was, have we the right, constituted as we are, to come forward with a Bill of this kind, forcing the will of the small minority upon the vast majority ? Are we so vain as to think that we have outgrown all the forms of our religion which are observed by the great mass of the people ? Have we the right to impose our will upon them ? That is the question which we ought to consider. Then, Sir, reference has been made to the excited condition of the country at the present moment. The Assembly knows that there are lots of people who are simply waiting for an opportunity to pounce upon this Assembly, to pounce upon the reforms, and to take them to pieces. They say, you do not represent the people, you do not represent even the great men, the leaders who now pose as the leaders of non-co-operation ; they say, you do not represent the great mass of the people. Now, in the Assembly constituted as it is, if a Bill of the character now before it, be passed now, that in all likelihood will give another handle to persons of the intransigent and hostile kind, and they are sure to use it as an argument against the Government, against the legislature, and against the entire system of administration. Therefore, I submit, that inasmuch as the Government had the power to oppose this Bill by not allowing it to be introduced, especially in

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these troublous times, they should have used that power. Of course, we are grateful to Government for the attitude they have adopted, still I think it would have been better if this Bill had been kept out of the Assembly at the very outset of its career. Then, Sir, as to the question of the oppression of the minority, of course, people who have no settled convictions of their own as regards the essential principles of the Hindu faith will not find much difficulty in driving a coach and four through the Hindu system of social laws, or their religious sentiments and things of that kind. But those who have some conviction will certainly stop to think over the effect that a Bill of this kind will produce upon the community itself. If the matter of the Bill stood as a detached question, and if the Bill did not in its operation affect the constitution of the Hindu, Muhammadan and other communities things would be different. I have no right to speak, however, about the Muhammadan community, because I know very little about Muhammadan sentiment and about Muhammadan canonical laws. But I know it for a fact that there have been many meetings of the orthodox Hindu community all over the country protesting against the Bill. Copies of the proceedings of some of these meetings have been forwarded to me—I hold some of them in my hand as for instance those from Benares and from Calcutta. In Delhi itself there has been one or more meetings and the persons concerned have sent me copies of their Resolutions also, and all of them look upon this Bill with deep concern, and are frightened at its possible consequences. It is certainly not a question of the minority being prevented from proceeding along its old line of action if the Bill be not passed into law. Such a supposition would be an evident mistake, because the Civil Marriage Act (III of 1872), as it stands, gives complete liberty of action to those who wish to marry just as they like. There is therefore no question of oppression at all. It is a misconception to think that the minority have been prevented by the existing law from marrying according to their choice; the only thing they have been asked to do by the present Act is that they should cease to call themselves Hindus, and cease to come under the operation of the Hindu Law, as regards succession, divorce, and certain other matters before they can marry under the Act. In that direction only some necessary restrictions have been imposed upon them, for obvious reasons. Those reasons were stated when Act III of 1872 was passed; they have also been given out from time to time from the official benches in this House as well as from the side of the non-officials whenever this subject of inter-communal civil marriage was brought up for consideration before it. The reason is that social laws and customs are the growth of centuries, and they are a natural growth. In order that a custom or a social law of this kind may be changed, the movement for the change must come from within, and not from without. In other words, in affecting a change in the social laws of a community, the major portion of the community, governed by such laws must come forward and signify expressly or by implication, their assent to, and agreement with the new law which is proposed to be made. That is the point. By the present Bill, it is proposed to introduce principles which are entirely different from those upon which Hindu Law is based. Must we not therefore consider the feelings of the great mass of the people in the matter? Because for certain reasons of our own, we happen to entertain certain views—we may call them advanced views—have we a right to thrust our opinions by force on the mass of the people, and compel them to see things exactly as we see them? It must not be forgotten that if the law of the Bill be passed, it will be Hindu or Muhammadan Law, affecting all Hindus alike.

whether reformed or unreformed : all Muhammadans alike, whether reformed or unreformed. As to whether the Koran can be changed or not by statute law, I am told by my Honourable colleague on my right that it cannot be so changed. Such is the mental attitude of the great mass of the people towards their religious ordinances and the social customs with which they are intertwined. The question has been asked in this House, 'Well, will custom never be changed?' My reply is that that is not the point. All authorities on Hindu Law say, yes there must be change ; but the change must be slow so that it must have time to adjust itself to environments, so that there may be no sudden disruption or evolution in the growth of custom : the change must be evolutionary, and not revolutionary. That is what we must not forget. Therefore if the time ever comes when the great masses of the people are prepared to accept certain new rules in course of time, as part of their customary law, and offer their allegiance thereto, the change will certainly come about. There is no question that this is how all customary law has grown, and at times subsequently figured as written law. These are the processes, by which the entire civilized world, or for the matter of that, the uncivilized world also has got on. Therefore, Sir, my submission is that there is no question of oppression of the minority in the present case at all. There are, however, practical difficulties which arise in a case of this kind resulting from the conduct of the minority in its bearing upon the majority. But no question of a humanitarian character comes up for consideration at all. A man can marry anybody he likes under the Civil Marriage Act. All that he has got to say in such cases is that he is neither a Hindu, nor a Muhammadan, nor a Buddhist, nor a Sikh, nor a Jain : that is to say, that he does not own allegiance to the body of the communal laws by which those particular religious bodies are governed, so that he may not attract the operation of those laws to himself. That is all he has got to do, to be able to act freely in the matter of his marriage, and it is not very much, if his religious convictions do not stand in his way. The next question which crops up is, is marriage an institution which vitally affects the constitution of the Hindu family ?

The answer is that it is. I will confine myself to the Hindu community for the present. Is the institution of marriage of such vital importance to the family and the community so vitally associated with them, and interdependent with each other that it cannot be detached from the great body of the communal rules by which Hindu society is governed, and does it go to the very root of Hindu social life ?

My Honourable friend, Mr. Shahani, in defining Hinduism in answer to a challenge, has been kind enough to enunciate some of the distinguishing principles of the Hindu faith upon which Hindu communal life is based. He has referred to two such principles, *viz.*, the law of *Karma* and the transmigration of the soul. Of course, every community tries to do its best for itself, both from the moral as well as from the physical and other points of view. A Hindu wants to build up his society on the basis of his religious conceptions. It has what we may call a religious constitution ; he wants to leaven every strata of his community with his particular religious beliefs and sentiments. He believes in the transmigration of the soul and in the law of *Karma* : that is to say, he believes that through these processes of the law, the human soul gradually rises to a higher and higher status, and he tried to organize his community keeping in view these primary conceptions. Now, having regard to this fundamental

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conception of the Hindu mind, and primary idea of Hindu society being a culture helpful towards such an end, the whole point is whether a mere contractual marriage which has no reference to any allegiance to the common central conceptions of the Hindu religion itself, can be said to be of a non-essential and separate character. The Honourable Mover of this Bill is quite at liberty, so far as he himself and persons of his way of thinking are concerned, to do just as he likes, but why should he be anxious to inflict, by reason of his own personal views on the matter, and by legalizing conduct of a type incompatible with the central conceptions of Hindu social life, a change in the body of the law—Hindu Law? That is the question which people professing the orthodox faith do not understand. I need not say that it has been decided by the highest court, the Privy Council, that before a man can take advantage of Act III of 1872, the Civil Marriage Act, he must give up his allegiance to one or other of the religions which are mentioned in the Act: that is to say, he must deny that he is a Hindu, a Muhammadan, a Sikh, a Christian, a Jain or a Parsee: that is the list in the Act, so far as I can recollect. The House will now understand what will be the effect of this Bill upon the constitution of Hindu society itself. I do not think I need labour the point any further. It will be enough for my purposes if I refer to the questions that incidentally arise under Act III of 1872, in its relation to the Bill. The question of succession according to that Act, is governed by the Indian Succession Act. Succession under the Hindu Law, however, is governed by laws of its own making. Muhammadan Law of Succession is similarly governed by

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Muhammadan Law. Now what will be the position? If a man being a Hindu, a Muhammadan, a Parsee or a Christian marries under this Act, it cannot be said that the question of succession in such circumstances is a mere side-issue, which can be considered by a Select Committee and the necessary changes introduced in that behalf by that body in course of its deliberations. It is not so. The question of succession is a fundamental question. A change of such a character in the law means that the whole body of Hindu Law has to be changed. The Hindu Law of Succession, it is true at the same time, is somewhat different in different parts of India—it is regulated on the Bombay side, for instance, by the *Mayukha* School, in Bengal by the *Dayabhaga* School of law and so forth;—the whole of that will have to be changed. Now can any Member of this House think that the consideration of a question like this comes rightly within the scope of the functions of a Select Committee? Or is not such a question a fundamental question which has to be given the widest publicity, considered by the entire body of the public going to be affected by it and then and then only a decision on it should be arrived at? I leave it to the House to form its own conclusions on this point.

Similarly, we may take up the question of divorce. Dr. Gour's Bill does not touch that question at all. Hindu Law does not recognise divorce. Muhammadan Law has a divorce law of its own. Now is it the Indian Divorce Act which will operate in the case of Muhammadans if the Bill be passed? Surely Muhammadans will repudiate any such suggestion. That is also a very fundamental question, I should say. That is certainly not a question which ought to be considered by Committees and decided by them in a hole and corner fashion. The House will now be in a position to understand to some extent, at any rate, the gravity of the situation. It is not to

be faced lightly. Constituted as the Assembly is, does it take upon itself the responsibility of changing the law of the orthodox communities of the country without knowing what particular views the great masses of the people have on this point? Now, the House knows that when a Bill is circulated for opinion, only registered associations, prominent political bodies, and other similar associations are alone approached by Government. These are the vocal sections of the community. Other social units which are not organised in a similar manner or which are not important enough to attract the notice of Government as also religious bodies, etc., are never consulted at all. Their views, I suppose, do not reach this Assembly or the Government in the way they ought to. So that any attempt to come to a conclusion on the subject upon the opinion that is already to hand, will not, I submit, be a wise thing to do. And even the opinions which have been collected so far, are not all on one side. That opinion is certainly divided. It is said that the division is not so well marked as it was when Mr. Patel's Bill was introduced, or when Mr. Bhupendra Nath Basu's Bill was introduced, on the subject. There may be many reasons for that. One reason has been given by some Honourable Members of this House, namely, that the country is so agitated by political feeling at the present moment, that the public are not in a position properly to examine the effect of the Bill or inclined at the moment to ventilate their views upon a question like this. But even then the divergence as it is, in the opinions so far collected by Government, cannot be very lightly ignored. The point, therefore, at the present moment is not that all these questions as to succession, etc., are going to be considered afterwards in Select Committee, but whether we should waste so much time unnecessarily by asking a Select Committee to go into these questions incidentally. There are many Members here who hold that the Bill ought not to go to a Select Committee at all. We wanted to press this view at the very outset when the Bill was introduced, but the ruling of the Chair was that that was not the time when all these matters could be gone into, and that these might be gone into at a later stage of the Bill. Let us consider how this Assembly is constituted? We have in it representatives from various communities—Hindus, Muhammadaus, Parsees, Christians and so forth, who, by a majority of votes will decide the fate of the Bill, and not Hindus alone to decide the Hindu aspect of the question, Muhammadans alone for the Muhammadan side of the question and so forth. Now what is going to happen is that this Assembly without any move on the part of the great masses of the people—this Assembly, constituted of Members of different communities, of whom the Hindu forms only a small fraction—such an Assembly is going to effect changes in Hindu religion and communal laws, so far as the Hindu community is concerned, when the initiative in the matter has been taken by an individual member, not particularly obsessed by the Hindu conception of things in the manner in which we know it has been taken. It would be the height of absurdity for a body composed as the Legislative Assembly is, to decide on a quasi-religious question like the present from the different communal points of view. So that, if the House considers all these points carefully it will do well to stop the further progress of the Bill at the present stage, and not to allow it to go at all to the Select Committee. With these observations, Sir, I oppose the motion for reference of the present Bill to a Select Committee.

Rai D. C. Barua Bahadur (Assam Valley : Non-Muhammadan) :
:Sir, I am glad—and I am very thankful to the Mover—that this Bill was

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introduced in the last Delhi Session. For the matter of that, I had occasion to consult some sections of my constituency as to what opinion or what vote I should record in connection with this Bill. I found that most of them were opposed to the Bill. We have come to this Assembly, Sir, to record not our own individual views but the views of our constituencies. So I beg to submit that when I vote for my constituency, I must, I am in duty bound and compelled to, vote against the introduction of this Bill. Personally speaking, I am also opposed to it, because as far as I can see, the debate has been confined to the Hindu point of view, although there was one gentleman from the Muhammadan community who opposed the Bill. He is the only person so far who represents his community from whom we have found that his community is opposed to it. The various other speakers who have so far spoken have confined themselves mainly to questions of Hindu Law. Now here, in this matter, we have not come to record our views or to make alterations in the law with regard to Hindus alone, nor have we come to vote for Hindus alone. We have come here to vote for all-India, and although I am a Hindu or returned by a Hindu or non-Muhammadan constituency, it is my duty to vote for the whole people of India, and to look to the greatest good of the greatest number. Considering the Bill, therefore, from that point of view also, I find that we should not make any amendment in the law or any alteration in the law which would only affect the Hindus. Now, even supposing that it should be confined to Hindus alone, we find that marriage is after all a sacrament, and if the nature of the law is changed, then the Hindu religion, and Hindu society, will be transformed. It is not something in the nature of an evolution in Hindu society, but rather a revolution which is proposed in Hindu society, for which none of us are here.

At the same time, Sir, I beg to submit that if this change in society is brought about, the society will be lauded in chaos and anarchy; there will be enticements and elopements, from time to time, amongst the young people of both sexes and that will lead to rioting and sometimes even to murder. We can ill-afford to spare for such a contingency. The country is already full of turmoils, and, if we introduce this reform, it will be adding another instalment to the elements of destruction. I notice that some Members advocated that in Hindu society Brahmins are allowed to marry Kshatriyas or Vaisyas or even Sudras. Of course these are not new things for Hindu society; they are relics of an ancient civilisation, even now practised without much detriment to society. But a Sudra is not allowed to marry a Brahmin lady; so, if a Sudra goes to marry or take away or entice away a Brahmin girl to-morrow, there will be regular disturbance, rioting and even murders, and there will be a disturbance in society. From that point of view, I think, the Executive Government of India should not turn a deaf ear to the proposed reform in this law; because they are interested at least in the observance and continuance of peace and order. At least this is not a proper time when this reform should be introduced, because only a minority, an educated minority, is interested in it. The country is not prepared for the reform; the bulk of the population is not for it; rather there will be disturbances, as I have already submitted, of a criminal nature, and there will be feuds between different tribes and different villages and different sections of the community; and so considering all these things, it is not desirable that this reform should be

introduced at this time. On this consideration and on other considerations also, I beg to oppose this motion.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I take as much pride in calling myself a Hindu as either of my Honourable friends, Mr. Rangachariar or Mr. Jogendra Nath Mukherjee, and I may say also that I am as keen on preserving the purity of Brahminical blood which runs in my veins and which would run in the veins of my children as any Member of this House; but I say this much, that we here profess to be very democratic in our politics and we are much more so outside, but when it comes to a question of individual liberty we are all very autocratic. I shall show in a few words that Hindu society has nothing to apprehend from a Bill of this kind or legislation on these lines. It is meant for the protection of a minority and it does not, and will not, trench upon the Hindu religion or Hindu social custom in any way. There is a good deal of misapprehension in the minds of even my lawyer friends in this respect. What the Bill proposes is only that Hindu dissenters should be allowed to marry as they like. There is no question of inheritance or succession involved; and I am sorry that my friends, Mr. Rangachariar and Mr. J. N. Mukherjee, who are much abler lawyers than myself, have gone absolutely wrong in bringing in questions of succession in connection with the Bill. They are aware that the Act called the *Lex Loci Act*, an Act of 1850, which is, in other words, called the Freedom of Religions Act, grants a guarantee that no person shall be deprived of his right or property by reason of any change of faith or religion. That would settle the question of succession of dissenters from the Hindu religion, and I need only remind them of the recent Privy Council decision in Khunni Lal's case. The Privy Council, only a few years ago, decided that a renegade from Hindu society, in this case a Muhammadan, had a claim on the property of a Hindu ancestor. The Privy Council decided that as a reversioner, although he had become a Muhammadan and although his descendants were Muhammadans, he was entitled to succeed according to the *Mitakshara Law*. That is the law to-day. A Hindu may adopt the Christian religion or the Muhammadan religion and after his conversion, not only he but his children are entitled to inherit property in accordance with the *Dayabhaga Law* or to succeed if he belongs to the *Mitakshara School*. This decision is based on the interpretation of the provisions of the Freedom of Religions Act which first came into existence in the year 1832 and which was re-enacted in the year 1850. It has settled that question for good and it is too late in the day to quibble over it now. As there has been a lot of random talk in connection with this Bill, I mention these facts to correct my friends' misapprehensions.

Now I must also say that the position taken up by my Hindu friends is contrary to the spirit and culture of the Hindu nation and Hindu religion. One of the most valued and prized principles of Hinduism is absolute toleration, and we find that the spirit in which my Hindu friends are opposing this Bill which seeks to secure individual liberty to certain persons is absolute intolerance. If we go back to the history of our *Shastras*, we find that both *Manu* and *Yajnavalkya* allowed such marriages, and it is because these marriages were permissible that all the different castes in India have grown up. Now the reason why the practice is discontinued in this country is this. With the advent of the British in this country, the Judges were timid in administering the law as was to be found in the *Shastras* of which they knew

[Mr. J. Chaudhuri.]

nothing. They took to interpreting it according to the advice of some Brahmin Pundits, and the doctrine that custom overrules the law has thus come into existence and that is why the Judges have been always reluctant now-a-days to interpret the law according to the *Shastras*. Now what is the law? It is this. There is no bar with regard to inter-marriages between the sub-castes of the same caste. Only there is a bar with regard to inter-marriages between the Brahmin and the other *Dwijas*, that is, the twice-born, such as the Kshatriyas, the Vaishyas and the Sudras. The present law is that the Brahmins of all sects may marry amongst themselves. So may the Kshatriyas and Vaishyas. Barring the *Dwijas* or twice-born castes, all are classed as Sudras, and all sub-castes of Sudras may inter-marry among themselves. The High Courts in India have so held and the Judicial Committee of the Privy Council has decided accordingly. Now the necessity for this legislation arises in this way. If a Hindu wants to go outside his community and marry and still call himself a Hindu, there is no reason why the Hindus should object to it. They have every right to ostracise him, and deny him the privilege of social intercourse. If a man goes outside the Brahmin community and marries a non-Brahmin, a Brahmin is quite at liberty to ostracise him socially; but why should he trench upon his individual liberty to marry a woman of a different caste if he chooses?

Now it has been said that Government should be absolutely neutral with regard to this matter, or rather that they ought to interfere in the matter and in no way lend their support to this Bill. But I maintain that it is the duty of Government to protect the minorities. It will be quite consistent with their policy of religious toleration. What is happening now is, that influential communities are coercing individuals or smaller communities and preventing them from exercising their obvious right of individual liberty. If a man wishes to go outside his own community and marry, the members of the community to which he belonged are at liberty to ostracise him from his own community, but why should the State come in and coerce him? When you have sent him out of your own society, he is an outsider, and so there is no reason why, when a man marries a woman of a different community solemnly, the State should visit him with the greatest civil punishment, namely, that the woman whom he has solemnly taken as his wife before God and man should not be declared as his lawful wife, and, what is worse, that the children born of such parents should not be recognised as legitimate. I think it would be the worst form of intolerance on the part of Government not to protect the honour, the status, the rights and liberties of such men, women and children.

Now, Sir, I shall say only one word with regard to custom. Custom is a very vague term. How can a custom grow up unless the State or the law courts or the community at a large are prepared to help individuals in exercising their own individual liberty in such matters? If this is made legal, then custom will grow up, and we have such instances in Bengal. What has happened in recent times? I am not referring to ancient times. Our friends are surely aware of the very important class of dissenters known as Vaishnavas? Chaitanya, who was the founder of the Vaishnava cult, was himself a Brahmin. These Vaishnavas have their own system of marriage. Within the last 300 years that custom has grown up, and they have always been recognised as Hindus.

It is, therefore, a matter of great surprise, and no less regret, to me that such a spirit of intolerance should prevail amongst a section of our community who profess advanced political views. I would appeal to them to withdraw their unreasoned opposition. I maintain that it is the duty of the Legislature, reformed as it is now styled, to allow dissenters every liberty of action according to their own principles which are in no way inconsistent with public morals. If this sort of legislation is blocked, the result will be to bar all legitimate reform in the society. I therefore support the principle of the Bill, and I consider it but fair that this Assembly of educated and cultured representatives of the country who are anxious to advance the political progress should also show some toleration

Mr. W. M. Hussanally: I am not tolerant.

Mr. J. Chaudhuri: To those who differ from their views. My friend Mr. Hussanally says that he is not tolerant. If he is not tolerant, I do not take any account of his views. With regard to such Muhammadan opposition, I would say only one word, and that is, that we have in tolerant Mr. Hussanally on the one side, but we have the Right Honourable Mr. Ameer Ali on the other who is admittedly opposed to his views. Besides that we have the outstanding fact that not only did Akbar marry a Hindu Princess but that, three of his greatest descendants, the Mogul Emperors of India, namely, Jehangir, Shah Jehan, and Aurangzeb, all of them had Hindu mothers and Hindu blood in their veins. So it is too late in the day to say that the union between Hindus and Muhammadans is unlawful or prohibited by the Koran. With these remarks, I support the motion that this Bill be referred to a Select Committee.

Mr. President: I think that there are some more speeches to be made and there is the Mover's right of reply. It will therefore be best to take the adjournment now for one hour.

Mr. R. A. Spence (Bombay : European): May I ask for a point of information, Sir? Will the adjournment of the House take place to-day at the ordinary time, *viz.*, 4 O'clock, or in view of the length of time that this particular Bill has taken, will an opportunity be given for the discussion of the other Bills after 4 O'clock? I ask you for this information, Sir, because we should know when to order our conveyances. If we are to get through the business, we shall probably have to sit after 4 O'clock. If we are to adjourn at 4 O'clock, we shall probably not get beyond the second Bill on this programme.

Mr. President: So far as my information goes, this is the only substantial controversial item in the List of Business. I am not sure whether, when we come to the motion standing in the name of the Honourable Member from Bengal (Maulvi Abul Kasem), we shall not hear from him that he proposes to take a course which will raise no controversy, and, therefore, I imagine that we shall be able to rise at 4 O'clock, if not before it.

Mr. Abul Kasem (Dacca Division : Muhammadan Rural): Sir, I will have to ask for permission to postpone the consideration of the motion standing in my name.

Mr. President: Just as I thought.

MESSAGE FROM THE COUNCIL OF STATE.

Mr. President: A Message has been received from the Council of State which the Secretary will now read.

Secretary of the Assembly: Sir, I have received the following Message from the Secretary of the Council of State:

'Sir, I am directed to inform you that the draft Address of Welcome to His Royal Highness the Prince of Wales, as drafted by the Committee appointed by Resolution of both Chambers in September last was approved and adopted by the Council of State at its meeting of the 17th of January.'

Mr. President: This House now stands adjourned till Twenty Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Twenty Minutes to Three of the Clock. Mr. President was in the Chair.

THE CIVIL MARRIAGE (AMENDMENT) BILL.

Khan Bahadur Zahiruddin Ahmed (Dacca Division: Muhammadan Rural): Sir, I support the motion that the Bill should go before a Select Committee, and, by doing so, I believe I surprise a number of my friends. But I take my stand on history. India was not the home of Islam. The Mussalman invaders, Afghans, Turkomans, Arabs and Mughals came to this land and did not bring their wives with them. They found their wives here among the Hindus. The present-day Mussalmans mostly are children of fathers and mothers born of such wedlocks. If these marriages were not proper, as one of my friends has said, then what is the position of the Mussalmans in India at the present day? Are they all born of illegitimate fathers and mothers? Certainly not. As such marriages have taken place before, they may take place as well now. Hence I support the Bill wholeheartedly, as to do otherwise means to question the legitimacy of a large number of Mussalmans. Not only during the time of the three chief Mughal Emperors, Akbar, Jehangir and Shah Jahan, did such marriages take place, but such marriages used to take place long before those times among the Mussalman population. It was only during the times of those Emperors that the Moslem Royalty as well began to have Hindu wives. Emperor Aurangzeb stopped such marriages, and may I ask what happened to the Mughal Empire after his time?

Hindus and Mussalmans talk of Hindu-Moslem unity, but, when a concrete proposal comes forward, both frown and separate and look daggers at one another, which proves that the Hindu-Moslem unity is a lip arrangement and not in fact, as I have always contended. I say this is the only way in which the Hindus and Mussalmans can be made one people, if they like to be one people, and in my opinion we are highly indebted to the Honourable Dr. Gour for bringing forward such a Bill.

Rai G. C. Nag Bahadur (Surma Valley *cum* Shillong: Non-Muhamadan): Sir, I had little desire to take part in to-day's debate on this Bill. But having regard to the strong opinion expressed against it by some of the Honourable Members in this House, I feel that I shall be failing in my duty if I do not place before the House one aspect of the question which does not seem to have been touched by anyone yet. There are 876 tea-

gardens in Assam alone employing a labour population of nearly 6 lakhs. Add to it their dependents, and the population becomes a huge one. Now, who are these people? The coolies are recruited from various parts of India. In a coolie-line are to be found Madrasis, Santals, Ooriyas, Mundas, Oraons, Assamese, Chamars from Behar, the United Provinces and the Central Provinces, low-caste Bengalees, and hill men—a motley crew in different stages of physical and moral development. Almost all are completely out of touch with their original homes. They have no place to go to. The ray of religion does not penetrate the coolie lines. Education is unknown. Instinct governs their conduct of life, chastened by the rules and regulations of the tea gardens. But they all profess to be Hindus and would strongly resent being called by any other name. They form marital connections with one another without any thought whether such connections are sanctioned by the usages or customs of the castes to which they belong. An Ooriya, for instance, may take an Oraon, a Munda a Madrassi, and a Bengalee a hill woman, and so on. It is not always the coolies who arrange these matches, but oftener than not, they are arranged for them by their employer, the *Sahab*. If there is a girl of marriageable age of striking appearance, the manager of the garden has by her the means of attracting a coolie from outside to come and settle down with that girl as wife, no matter to whatever castes the parties might belong. Issues are born of such connections, and the fusion of races goes on apace. Now, should there not be some law to legalise such connections as real marriage connections, so that the parties may, by declaring themselves before a marriage registrar, have some tangible proof of their marriage? At present if the wife is abducted away, the husband finds difficulty in punishing the abductor under the criminal law as he cannot prove the marriage according to any recognized caste rule. They cannot avail themselves of the present Act III because, under it, they will have to declare that they are not Hindus, which they would refuse to do. Where is the law now which can govern such alliances and legalise the issues? The *Dayabhaga* and the *Mitakshara* laws are in the melting pot on a tea garden. Those who are apt to raise the cry 'religion is in danger', must answer the question. Hinduism is said to be a religion of toleration, but it is tolerant only in a way. It does not trouble itself with people following other religions. But in it there is no place for people like the Assam tea-garden coolies. Unfortunately the coolies, although they form such a considerable part of the population of India, have no one truly and faithfully to represent their case in this House. But I do hope that Honourable Members, while voting one way or the other, will bear in mind that there should be on the Statute Book some law, to govern people such as these and people who do not find it possible, on grounds of conscience or otherwise, to follow the caste rules of the Hindus. When a society like the Hindu society wants to be progressive, the practices of the people cannot remain stationary, and freedom, while allowed in all other matters cannot in reason be denied in the case of such a vitally important event in a person's life as marriage. It is consistent neither with public policy nor with social morality that persons marrying from conscientious motives outside the strict rules of orthodoxy should be denied the right of placing their family relations on the firm foundation of law. There are crying needs for social reform in India. Tradition is all very well, but tradition should not be raised to the rank of a Deity. We should always remember Tennyson's lines ending with:

'Lest one good custom should corrupt the world'.

[Rai G. C. Nag Bahadur.]

One word more. My friend, Mr. Barua from Assam, has said that the majority of his constituency are opposed to the Bill. But I may say that this is somewhat incorrect. The '*Assam Times*', which is the exponent of a large body of conscientious opinion in the province, is whole-heartedly in favour of this Bill.

With these words, Sir, I support this Bill.

Sir Jamsetjee Jejeebhoy (Bombay City : Non-Muhammadan Urban) : Sir, I rise to oppose the Bill, as you have said, Sir, that we would be committed to the principle of the Bill if we agreed to serve on the Committee, and I would ask the Honourable Mover to remove my name from his list. My reasons for opposing his Bill are that the Parsis regard marriage as a sacrament, and that we are governed by the Parsi Marriage Act, and also, as a consequence of that, we have got a Divorce Act of our own based more or less on the English Law, and also a Parsi Succession Act. I would put before the House a concrete case of a Parsi widower having married a Parsi wife and then taking, under the provisions of the suggested amended Act, another lady from another community and having children.

May I ask anyone to enlighten me how, in the event of his death and not leaving a will behind him, are his children entitled to his property? Under the Parsi Succession Act, I should not think they are entitled, because the children of his second marriage would not be considered to be Parsi according to the judgment of the High Court.

Well, Sir, these are the practical difficulties in the way, and if the Bill is passed, I do not know how many Acts will have to be passed as a consequence of that, and the whole question is teeming with difficulties. With these few words, I strongly oppose this Bill.

Mr. Muhammad Yamin Khan (Meerut Division : Muhammadan Rural) : Sir, I am in full sympathy with the Bill moved by my friend, the Honourable Dr. Gour. However, there have been two or three things referred to by some of the Honourable Members of this House which require very serious consideration. The first point, which was raised by a Muhammadan gentleman, was that Muhammadans are not allowed to intermarry with other communities. I cannot see the correctness of that statement. Muhammadan men are allowed to marry a Christian or a Jewish wife, and this has been upheld by many doctors of Muhammadan Law, and this practice was upheld because they think that these are the only other revealed religions. Islam allows any man to marry a woman who belongs to a revealed religion. This is a question of fact. Some people believe that only Christianity and Judaism are the other revealed religions, but of course this was based on the great association which Muhammadans in the early period of their history had with these two religions. When the Muhammadans migrated to India, to China and other places, they stuck to these theories which had been based on their social relations with the Jews and the Christians in Arabia and Syria. But some people doubt whether this is correct. The view which is held at present by every man who has studied other religions, and which is generally the view of all educated people. I am glad to say, that the Hindus have also got a revealed religion, as well as the other communities to which I have referred. Muhammadans also believe that the Parsis have a revealed religion, because some Muhammadan doctors think that what the Persian prophet Zoroaster taught was also revealed religion. So that, as I have pointed out, this is only a question of

fact, and if anyone believes that such and such a lady belongs to a revealed religion, he can marry that lady and the marriage will be a legal marriage, whatever prejudices might prevail in the minds of certain people who may hold different views. If a man really and sincerely believes, I do not see why he should not be allowed to marry a lady who comes, in his opinion, into the category of communities who have a revealed religion.

Then, Sir, there was another point made by some people for instance by Mr. Mukherjee, to the effect that the Koran prohibits all such marriages. I do not see what authority he has for that assertion and to which passage of the Koran he refers. There is only one passage on which this sanction to marriage is based, and that is the passage allowing every Muhammadan to marry a lady who belongs to a revealed religion. That is the only provision. The second part of that passage prohibits a Muhammadan lady to intermarry with anyone who is not a Muhammadan. Probably my friend, Mr. Mukherjee, has taken the last portion of the above passage, which only prohibits a Muhammadan lady from marrying a person who is not a believer in Islam. While I do not wish to enter into the principles which led at that time to the framing of this law, it is certain that there must have been some reason on which it was based, and that reason was probably the fact that in the early days of Islam it might have been feared by the true Muhammadans that if a Muhammadan lady married a person who was not a Muhammadan, she might be persecuted by her husband. This idea might possibly have led to the adoption of this principle. I do not feel myself competent to go deeper into that question, but anyhow, so far as the portion of the passage goes which permits a Muhammadan man to marry according to his conscience a lady who belongs to the Christian or Jewish religion, that marriage must be regarded as valid.

Then, Sir, there is a question of history which is rather a serious one. Are we to declare here in this House that the actions of the Emperor Akbar, of Jehangir and of Shah Jehan were illegal? They received a *fatwa* from the Doctors of Law of that age which specifically validated their marriages with Hindu ladies; and, as a matter of fact, those marriages were considered valid by the whole community at that time in India. That fact is obvious from the fact that Jehangir was hailed as the true son of the Emperor Akbar, and after him, Shah Jehan and Aurungzeb were regarded as legitimate Emperors. After these historical examples I do not see how this Assembly can say that those actions of the Emperors were illegal

(A voice: They were not religious actions.)

Whatever they were, at any rate they were considered to be legitimate children and they were upheld by the religion of the Muhammadans at that time. Now, Sir, we all believe that the Emperor Akbar was one of the first nation builders, and he foresaw in the beginning that unless the social ties which separated the different communities in India were done away with, the development of the nation could not proceed, and that is why perhaps he set the example himself.

I think that this point of view is very sound, that in order to make progress along that line, such marriages should be allowed to be legal marriages. But that is only the political aspect and I do not wish to enter into that while the religious aspect has been so much talked about in this Assembly. I only wish to deal with the matter from

3 P.M.

[Mr. Muhammad Yamin Khan.]

the social and from the religious point of view of different communities. There might be a certain bar among the Hindu gentlemen when they intermarry with people of other castes; but at the present time, we find that lots of Hindu gentlemen are visiting Europe and, of course, some of them are dissatisfied with their own manner of living or one takes a fancy to, or gets united to, a European girl—why should he be disallowed from marrying her, if he can only be happy with that particular woman? There is no reason why he should be debarred simply, on account of this, that he belongs to a Hindu caste. At the same time he does not want to change his religion. The Act of 1872 gives him free licence to marry, if he declares that he belongs to no religion, but, if he really believes and sincerely believes in his religion of Hinduism, why should he not remain at the same time a Hindu and marry the woman whom he loves. Then he is allowed to marry in England. The law in England does not prohibit this. If he gets his marriage registered in England, a Hindu gentleman's marriage in such circumstances is quite valid and legal in England, but, as soon as he comes back to India, that marriage and the issues are considered as illegitimate. This is a great hardship on that girl. Either the man must give up his religion, and say, that he belongs to no religion at all, or he must give up his wife. He is between two difficulties and must choose the lesser of two evils, which are both equally disagreeable to him, if he really loves the girl and truly believes in his religion.

Then, Sir, the only thing that the Hindu Law says is that if children are born to a Hindu with a woman who is not of his caste, the children belong to the inferior caste, taking the caste of their mother in this case. They do not become illegitimate children, but those children take up the caste of their mother and remain legitimate. The question of inheritance, which has been referred to so much, is not so difficult. We can have different legislation. There can be a safeguard from the point of view of Hindus, if they do not—that is if cognates do not want their property to go to a reversioner who is born of a woman who does not belong to the same caste. But why disallow this marriage? This marriage may remain valid and the children may inherit all the property of their father, though they might be debarred from receiving property from their cognates. This could be easily done in Select Committee.

Then, Sir, in India there are other castes among the Hindus—for instance, the Sudra classes, like the Jats. A Jat may take a woman of any caste, and, as soon as she puts her hair up, she becomes a Jat woman (it does not matter what caste she belongs to), and all the children are considered to be Jats. We have a great number of Jats living in the Punjab and in the United Provinces. Well, their marriage is quite valid if it is contracted with a woman who does not belong to her husband's caste or to any religion. But, as soon as she puts her hair up, she becomes a Jat woman. So I think, Sir, there are other Sudra classes, in great numbers, who do not think that the caste system need be so rigid, and this enabling measure represents the views of those people. There might be a few other gentlemen who do not believe in this, but an enabling measure gives the option to a man who wants to stick to his religion and yet marry a woman who does not belong to his caste. It does in no way force a man to adopt this principle if he does not believe in it. There are some people in this country who on account of their education and of their

social circumstances believe that such a distinction should not exist, and I do not see why this Assembly should refuse a measure enabling their marriage only. There is no such thing as anybody's religion being interfered with. This is another thing altogether. I have myself sent in an amendment in my name a long time ago, and I suppose it is because amendments are not to be considered at this stage of the Bill that it has not found a place on the agenda to-day, and my amendment could be easily dealt with in Select Committee. With these few remarks I think that this Bill should be referred to the Select Committee and that my amendment which is standing should be dealt with in the Select Committee.

Sir P. S. Sivaswamy Aiyer (Tanjore *cum* Trichinopoly : Non-Muhamadan Rural) : Sir, as might be expected on a subject of such vital importance to society as the institution of marriage, very divergent views have found expression in the course of this debate. We have been told, on the one hand, that the system of Hindu society is in danger. On the other hand, this allegation has been denied. We have been asked by Mr. Joshi to define what Hinduism is. I hope the Assembly will not embark upon any such adventure of defining what Hinduism is. I do not propose to deal with the question from the point of view of the requirements of Hindu religion, or from any other highly interesting, but erudite, point of view. I should rather like to deal with it from the point of view of a lawyer and recognise the plain facts of the situation.

If you ask whether the mass of public opinion in the country, whether the opinion of the people at large is behind this measure, I do not think it will be possible for us to say that the Bill is so supported. But that does not conclude the matter. This is a case of conflict of rights : On the one hand, the right of the individual to his liberty ; on the other hand, the right of society to protect itself as a living organism against any attacks endangering its existence. We have to make a compromise and provide for the due exercise of both these rights. It is somewhat unfortunate that Dr. Gour's Bill has not tried to meet the reasonable apprehensions entertained by people who are afraid that this measure may imperil the stability of Hindu society. We have been warned by Mr. Chaudhuri that we should not introduce questions of inheritance and that inheritance has nothing to do with this subject. I am afraid I cannot follow him there. The subject is undoubtedly bound up with questions of inheritance and we cannot help considering those questions. Now, with the desire of Dr. Gour to protect individual liberty and the right of the individual to marry the person of his choice, I think we must be in agreement and sympathy. But in recognising the right of the individual to contract one of the most sacred and solemn of human relationships according to his own free will and pleasure, we must also take care that in the exercise of that right, the interests of the society to which he belongs are in no way affected, and that, if there is any danger of such interests being affected, due safeguards are provided. Now, let me point out briefly the various ways in which the rights of the members of society may be affected. If a Hindu, for instance, marries a Christian or Muhamadan woman, he will have his rights of succession ; he will have his rights of residence in the joint family property, and he will be in a position to exercise all the rights which he formerly possessed. It may be said that the Caste Disabilities Act of 1850 has already made an inroad upon the Hindu Law and that the rights of inheritance which a man possesses cannot be possibly

[Sir P. S. Sivaswamy Aiyer.]

affected by his exclusion from caste or by his renunciation of his religion. That is true. But what exactly is the limit to which that Act has gone has been the subject of controversy. It has been a moot point whether that Act does or does not affect the rights of succession to collaterals. It has been a moot point whether that Act affects the rights of inheritance of the offspring of the person who renounces his caste or religion. There are various questions which are still unsettled. Now, you can easily conceive that if a Hindu marries a person belonging to an entirely different religion and if you also admit that the social habits and usages of members professing the various creeds in this country are very radically different, it will be a great hardship to the family to which this person belongs if he insists, for instance, upon residing in the joint family house. If there is an orthodox father or orthodox brother, and the Hindu who has married a Mussalman or Christian woman insists upon living in the joint family house with his Muhammadan or Christian wife, you can imagine it will be a source of great annoyance and great persecution to the other members of the family. You must provide against cases of that sort by a provision that the person who contracts a marriage of this sort shall not be able to insist upon his right of residence in the joint family house. Again, how do we stand with regard to the question of succession to collaterals? The Hindu system of succession is bound up closely with the Hindu religion and it proceeds upon the assumption that the inheritance goes to persons who are Hindus in the ordinary sense of the word. If a person lives in a manner which is utterly repugnant to the sentiments and the usages of the Hindu community and if he openly acts in contravention of Hindu usages, in defiance of Hindu sentiment, it will be regarded as justly imperilling the safety of the social fabric if he is allowed to claim rights of succession to collaterals. That again is a point in regard to which some safeguard ought to be provided. While a person who contracts this marriage should not incur any forfeiture of property at all and should not incur any forfeiture of any vested rights, he should not be in a position to claim rights of succession to collateral members of the family. It may be said that if he should be disqualified from claiming collateral succession those collaterals also should be disqualified from claiming succession to him or his heirs. Of course it goes without saying that any provision of that sort ought to be perfectly reciprocal. These are matters for which I think safeguards should have been provided. Then, again, there are other difficult questions arising with regard to the laws of inheritance which would be applicable to the offspring of this person. Suppose a Hindu marries a Muhammadan or a Christian. What is to be the status of the offspring? Is the offspring to be governed by the Hindu Law or by the Indian Succession Act or by the Muhammadan Law? Those are points upon which it would be difficult to come to any immediate decision, but upon which some provision ought to be made for the purpose of meeting the various difficulties which are bound to arise in course of practice. The law by which the offspring would be governed should also be laid down in any measure of this kind. If Dr. Gour had tried to meet the reasonable apprehensions of people with regard to the effects of this measure and had tried to introduce some safeguards for the purpose of protecting the interests of society, I think his Bill would have met with much less opposition than it has actually received. I think it was his duty to have anticipated these

cases and introduced some provisions in his Bill instead of merely amending just one or two sections of this special Act of 1872 and skipping so lightly over the subject. If he had provided for these various difficulties, I am sure he would have met with more support than he has received. Personally I should find myself unable to support the Bill in its present form, but, if Dr. Gour will give an undertaking that safeguards of this kind will be provided in the Select Committee, I for one would not object to the Bill going to the Committee.

Now, there is one other point which I ought perhaps to have mentioned. It has been stated by some of the preceding speakers that society is at liberty to act in any way it pleases, by ostracising persons who act contrary to its received usages. Now, you must make it clear that by any law of this kind, you are not interfering with the right of society to organise itself and to protect itself in any manner it likes with the usual weapons and resources in its armoury. For instance, every society has got a right to exclude members from its communion if they behave in a manner disapproved of by the members of the society at large. Now, you must make it clear that you do not propose to touch the right of society to defend itself in the customary manner. If you safeguard the rights of society to protect itself, if you safeguard the rights of the other members of the family, if you guard against any collateral succession, and if you also provide for the system of law which is to govern the offspring, if you introduce all these provisions, I, for one, do not see that Hindu society is in any danger of disruption. But, if you do not introduce these safeguards, undoubtedly society is in danger of disruption, and I think people are entitled to object that this innocent-looking Bill, which professes to amend two or three sections, does really strike a blow at Hindu society. Dr. Gour in his memorandum has said that there have been several blows struck for individual liberty and this is only one more in the cause of human liberty. Now, I am in entire sympathy with the cause of human liberty and with the right of the individual to freedom in regard to marriage, as in other respects. But it does not follow from that, that we are bound to go much further than the Caste Disabilities Act itself has done or that we are bound to ignore the annoyance and the hardship that may be caused to other members of the family or to the relations of the person contracting this marriage, or to society. If the individual requires protection at the hands of the Legislature, society is as much entitled, if not more, to protection against the attempts of individuals to break up its fabric. I would, therefore, appeal to Dr. Gour either to withdraw this Bill, which, I am afraid, must be characterised as a crude measure, and re-introduce it with all the necessary safeguards or to give a distinct undertaking to the Assembly that in the Select Committee, all these matters will be introduced and dealt with in a spirit of fairness and justice. So far as I can judge from the composition of this Committee, it seems to consist entirely of those who are pledged to support this measure. I do not see any representatives of a different shade of opinion on it. If Dr. Gour is prepared to give an undertaking of that sort, the composition of the Select Committee would have to be altered.

Dr. H. S. Gour: May I ask the Honourable Member who spoke last (Sir Sivaswamy Aiyer), if I am prepared to give that undertaking, is he equally prepared to give an undertaking that this motion of mine shall not be opposed to-day?

Mr. N. M. Joshi : He will not oppose you.

Dr. H. S. Gour : I take it, Sir, that the Honourable Member was speaking for himself and was not voicing the feelings of any of the Members in the opposition. In view of the fact that this raises an extremely important question, I ask you, Sir, to adjourn the debate to a future date, when it will give the supporters and opponents of the Bill time to consider over the suggestion made and to come to some undersanding, if possible. Otherwise, the debate will take its normal course and will be continued.

Mr. President : The question is that this debate be now adjourned.

The Assembly divided as follows :

AYES—30.

Abdul Majid, Shaikh.
Abdul Quadir, Maulvi.
Abdul Rahim Khan, Mr.
Abul Kasem, Maulvi.
Akram Hussain, Prince A. M. M.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dentith, Mr. A. W.
Faridoonji, Mr. R.
Gidney, Lieutenant-Colonel H. A. J.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Hajeebhoy, Mr. Mahomed.
Iswar Saran, Munshi.

Joshi, Mr. N. M.
Kabiraji, Mr. J. K. N.
Keith, Mr. W. J.
McCarthy, Mr. F.
Misra, Mr. P. L.
Mudaliar, Mr. S.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Nag, Mr. G. C.
Percival, Mr. P. E.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Sinha, Babu L. P.
Yamin Khan, Mr. M.
Zahiruddin Ahmed, Mr.

NOES—28.

Agarwala, Lala G. L.
Bajpai, Mr. S. P.
Barua, Mr. D. C.
Bhargava, Pandit J. L.
Das, Pandit R. K.
Gajjan Singh, Sardar Bahadur.
Habibullah, Mr. Muhammad.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Ibrahim Ali Khan, Lieutenant Nawab M.
Jatkar, Mr. B. H. R.
Jejeebhoy, Sir Jamsetjee.
Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.

Mitter, Mr. K. N.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Rangachariar, Mr. T.
Sarfaraz Hussain Khan, Mr.
Shahani, Mr. S. C.
Singh, Babu B. P.
Singh, Raja K. P.
Singh, Rana U. B.
Sircar, Mr. N. C.
Subrahmanayam, Mr. C. S.
Way, Mr. T. A. H.

The motion was adopted.

THE MUSSALMAN WAQFS REGISTRATION BILL.

Mr. Abul Kasem (Dacca Division : Muhammadan Rural) : Sir, I ask for permission that the motion* standing in my name may be postponed to a future date. I understand that the Government of India have circulated the Bill to the Local Governments for opinion and that all the replies have not

* That the Bill to provide for the registration of Waqf Estates and the proper rendering of accounts by the Mutwallis of such Estates in British India, be referred to a Select Committee consisting of the Honourable Dr. T. B. Saptu, the Honourable Sir William Vincent, Mr. Percival, Mr. Sharp, Munshi Iswar Saran, Mr. W. M. Hussanally, Khan Bahadar Saiyid Muhammad Ismail, Haji Wajih-ud-din, Mr. Syed Nabi Hadi, Rao Bahadur T. Rangachariar, Mr. Muhammad Yamin Khan and the Mover.

yet been received. Therefore it is not desirable to refer it, or to ask for reference to a Select Committee before the receipt of these replies. I therefore hope the House will give me permission to postpone my motion for consideration until some future date.

The Honourable Sir William Vincent (Home Member) : Sir, the position is that three Local Governments only have replied giving their views on this Bill and the replies from other Local Governments are still awaited. The question, as I explained on a previous occasion, is one with which the Governor and Ministers deal, and in these circumstances, the Government would also be glad if the House would accede to the request of the Honourable Member.

Mr. President : The motion was :

That the Bill to provide for the registration of Waqf Estates and the proper rendering of accounts by the Mutwallis of such Estates in British India, be referred to a Select Committee consisting of the Honourable Dr. T. B. Saprú, the Honourable Sir William Vincent, Mr. Percival, Mr. Sharp, Munshi Iswar Saran, Mr. W. M. Hussanally, Khan Bahadur Saiyid Muhammad Ismail, Haji Wajih-ud-din, Mr. Syed Nabi Hadi, Rao Bahadur T. Rangachariar, Mr. Muhammad Yamin Khan and the Mover.'

Since which it has been moved that the consideration of this motion be postponed.

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : Sir, I beg for leave to introduce :

'A Bill further to amend a certain section of the Code of Criminal Procedure, 1908.'

The section which I wish to have amended is section 491 dealing with the nature of a *Habeas Corpus* enabling the three High Courts in the Presidency Towns of Fort William, Madras and Bombay, whenever they think fit to direct that a person illegally or improperly detained within the original jurisdiction of these Courts may be set at liberty.

The object of this amendment is twofold. I wish to give power to all the High Courts and not only those in the Presidency towns. I wish to give power to the High Courts, including Allahabad, Patna, Lahore and others. That is one object. The other object is to enable the Court to deal with such cases not only in the case of persons illegally detained within the original jurisdiction of the Court but also persons who are illegally detained within the appellate jurisdiction of the Court. This will be bringing the provisions of section 491 into conformity with section 456, which gives the right to a European British subject. So far as these are concerned, section 456 corresponding to section 81 of the Code of 1872, the High Court has got power to call up all cases of European British subjects who are illegally detained wherever it may be, and all High Courts, not only the three Presidency town Courts, have also got the power. Therefore, it is bringing section 491 into line with section 456, thereby removing the racial distinction that may exist. It will also enable the Courts to deal with all cases because that sort of case not only arises in Presidency towns but also within the appellate jurisdiction, and it is the only way in which the judiciary can control the executive. The very existence of such a power is considered an effective safeguard against abuse

[Rao Bahadur T. Rangachariar.]

and misuse of the administrative powers, and that being so, it is necessary to provide against it, and that is the reason why I wish to introduce this amendment.

Mr. President : The question is :

'That leave be given to introduce a Bill further to amend a certain section of the Code of Criminal Procedure, 1908.'

The motion was adopted.

Rao Bahadur T. Rangachariar : I introduce the Bill, Sir.

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 (Amendment of rule 4 of Order XXXII in Schedule I).'

Under Order XXXII, rule 3 of the Code of Civil Procedure it is provided : that where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor, and rule 4 of the same provides that no order shall be made on any application under this rule except upon notice to the minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other 'natural guardian of the minor, or where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing an objection which may be urged on behalf of any person served with notice under this sub-rule.'

Now rule 4 provides that any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit :

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or in the case of a guardian for the suit, a plaintiff.

Now, sub-rule 4 provides that :

'Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.'

Now, Sir, during my practice at the bar for the last 22 years, I have seen that it is not uncommon when pleaders are occasionally appointed guardians under rule 3, but rule 4 says that if there is no other proper person available, then an officer of the Court may be appointed. Under that rule a discretion is given to the Court to arrange for costs for defending the suit or appeal as the case may be. In many cases it has happened that where pleaders have been appointed guardians, requests have been made to the Court to provide for costs of the defence, but the Courts have found it impossible under the existing law to grant such requests. There was recently a similar case in the Allahabad High Court, but the High Court was unable to accede to the request, and the result was that the guardian, who was appointed, had to refuse to act, and in that case, which is still pending, not less than three gentlemen were appointed

and all of them have one after another refused to act as guardians upon this very ground. Therefore, I submit that the amendment which I wish to move would enable the Courts to arrange for the costs of defence in cases where pleaders are appointed as guardians. Now the amendment which is proposed to be made is :

‘That in sub-rule 4) of Rule 4 of Order XXXII in the First Schedule in the Code of Civil Procedure, 1908, after the words ‘its officer,’ the words ‘or any pleader’ and after the words ‘such officer,’ the words ‘or pleader’ shall be inserted’.

So this is simply to obviate the difficulty which I have just explained, and that is the reason why I have brought forward this motion before this House.

The Honourable Dr. T. B. Sapru (Law Member) : Sir, I regret that I am unable to support the motion of my Honourable friend, Lala Girdharilal Agarwala, and I must offer opposition on behalf of Government. In the first place, my friend, Mr. Agarwala, has not been able to make out a case in support of his Bill. My Honourable friend has referred to his 22 years’ practice. I should have expected that he would cite at least three cases that had occurred during his 22 years’ practice showing how the difficulty has actually been felt. In all humility I can claim a larger practice behind me in the same province from which my Honourable colleague comes and in the same Court where he practises. At any rate until 1920, I was not aware that there was any real or genuine difficulty being felt on this account either in the subordinate courts or even in the High Court. I am not aware of the unfortunate case to which he referred this afternoon. Probably it happened since I left the High Court.

Now, Sir, I believe the whole of my Honourable friend’s argument is based upon a misconception. It is well known to lawyers that in theory an advocate or a pleader is really an officer of the Court, and I should have thought that no Judge would have felt any difficulty at all in applying the provisions of the law as it stands to the circumstances of each case where it was necessary to appoint a pleader. Therefore, with all respect to my Honourable colleague, I would say that this is a perfectly superfluous and unnecessary measure, the more to be deprecated because it is in the nature of an isolated attempt to deal with a Code like the Code of Civil Procedure. On these grounds I would strongly oppose the motion made by my Honourable colleague.

Mr. President : The question is :

‘That leave be given to introduce a Bill further to amend the Code of Civil Procedure, 1908 (Amendment of Rule 4 of Order XXXII in Schedule I)’.

The motion was negatived.

THE INTEREST ACT 1839 AMENDMENT BILL.

Khan Sahib Maulvi Abdul Quadir (Central Provinces: Nominated Non-Official) : Sir, the piece of business standing against my name in to-day’s list is to move for leave to introduce a Bill to amend the Interest Act of 1839 by inserting a new section in it to the effect that no creditor whether of a secured or unsecured loan shall be entitled to recover by suit interest in excess of the principal amount due at the date of the suit. The

[Khan Sahib Maulvi Abdul Quadir.]

Bill seeks to prevent the accumulation of interest for long periods, and thereby to save many a debtor from utter ruination by his calculating and clever creditors. There is a similar rule in Hindu Law and it is called the Rule of *Damdapat*. It is in operation in the Bombay Presidency, Berar and in the town of Calcutta proper. In the Bombay Presidency and Berar, it is made applicable in cases in which the debtors are Hindus, while, in the town of Calcutta it is applied in cases where both the plaintiffs and defendants are Hindus. The operation of this rule on the lines obtaining in the Bombay Presidency and Berar entails a great hardship upon those who are non-Hindus because, if they are creditors, they cannot recover interest more than the principal amount due on the date of the suit, and, if debtors, they are denied the benefit of this rule altogether and they are made to pay interest irrespective of its being more than the principal amount due on the date of the suit. This rule is a very wholesome one if it were made applicable to all alike. It is so done in many of the Native States even to this day. Owing to its non-existence in other parts of British India, the Hindus and non-Hindus are alike falling victims to the 'Wait and have it' game of their scheming creditors who allow the interest to accumulate to such an extent that it becomes impossible for the debtors to pay up the amount, and they are ultimately deprived of their hearths and homes. The effect of this amendment would, no doubt, be that the creditors will sue their debtors as soon as the amount of interest is equal to the principal amount, and even this procedure is beneficial to the debtors, because, at present, sentiment prevents debtors from parting with part of their property and paying off their debts, and so they go on allowing the interest to be accumulated in the hope of clearing their debts in years of plenty and prosperity; but they are unable to do so and the *Sahookar* allows them time, till the interest, with principal, swells up to the value of the property in suit or with them, and at once rushes into Court and takes everything from them in lieu of money. But if the *Sahookar* were to bring his suit sooner, the debtor would be getting a chance of laying aside his sentimentalism, sell part of his property, pay off his debt and save the remainder of his property for himself and his family. I hope that the Honourable Members of the Assembly will see through the spirit of this measure and sympathise with its object and give their whole-hearted support to it.

The Honourable Sir William Vincent (Home Member): Sir, I think every Member in this Assembly has a great deal of sympathy with the object which the Honourable Member has in view, namely, to curtail the exorbitant demands of usurious money lenders, but it is the duty of Government, in my judgment, to point out the serious objections which there are to a Bill of the present character. If I am the person to put forward those objections, I can at least claim that I have in my time done more in endeavouring to remedy the evil caused by usurious money-lenders than most Members of this Assembly. For some years I worked on a Bill, which was known as the Usurious Loans Bill, and which is now part of the laws of the land, but to which no reference was made by the Honourable Mover. The essence of that Bill is that it enables the Court to examine the transactions between the money-lender and the debtor and to revise inequitable contracts. It also gives the Court power to re-open any contract which it believes to be unfair or unconscionable, that is to say, it can go into old accounts and examine prior readjustments.

This is very important as regards this rule of *Damdapat*, because it is through readjustments and fresh contracts that the law of *Damdapat* is often defeated. I may say that at the time when we examined this question in 1918, we considered this rule of *Damdapat* very carefully. The opinions I received then were not generally speaking in favour of it. The Madras Government, for instance, pointed out that it would not afford any real remedy. The Government of Bombay regarded the rule as being of small, though not of negligible, utility. The Government of Bengal, while advocating it, realised that innumerable stratagems will be devised to circumvent it. The best summary of the objections to the rule of *Damdapat* is, however, I think, found in a note which we obtained from Sir Michael Fenton of the Punjab. He then said :

'The *Damdapat* custom involves regulation of the rate of interest in a manner which would work very unfairly both for debtor and creditor. It would be consistent with the *Damdapat* rule to grant decrees giving interest at one hundred per cent. per annum, if the suit for the principal plus interest at that rate were brought at the expiry of one year from the date of the loan. It would also be consistent with that rule to disallow interest at the low rate of five per cent. if the creditor allowed interest at that rate to accumulate for 15 or 16 years. A *Damdapat* rule which ignored the time factor would be extraordinarily unequal in its operation.'

In the same file there is another criticism—a very good one—by Mr. Justice Ayling of the Madras High Court, on this point, and I commend it to the attention of the Assembly. The main argument that he used was that there is no more justification for an arbitrary limit upon the amount of interest than there is for a limit on the rate of interest. The two things are really the same. 'To fix the amount of interest', he added 'is a most clumsy and unequal remedy'.

Now, the question of limiting the rate of interest has been considered both in this country and in England several times. One of the most powerful Committees that sat in England within the last 25 years considered this subject in 1898, and that Committee reported as follows :

'Your Committee consider that a high rate of interest is not in itself incompatible with fair dealing and that no limit of interest can be prescribed which would be adapted to the widely different conditions under which these loans are contracted, and further that if a maximum rate were fixed by statute, the interest would tend in all cases to rise to that maximum.'

Now if it is unreasonable to fix the rate of interest, having regard to varying risks of different loans, surely it is equally unsound to fix the amount of interest. The mischief does not end there, however, and, the practical effects of a *Damdapat* rule are various. In the first place, all payments made by the debtor are always credited to interest whether that is intended or not. In the second place, the system encourages the entry of a large fictitious sum, which is not paid, in the original bond. In the third place, it encourages frequent nominal readjustments of old debts, when new fictitious sums are entered in the bond in order to enable the creditor to claim the benefit of this rule. Lastly it forces a money-lender to bring a suit earlier than he would have otherwise done. I am confident, and I ask the Assembly to examine the point, that we have in the Act of 1918 provided what is a far more just and really more efficacious remedy than *Damdapat* for this evil of usurious loans. I have already explained what that Act provides, and those who have experience of the Courts—some of them, I think, supported me when I introduced the Bill into the Council—will know whether

[Sir William Vincent.]

it has worked effectively or not. There is one other point, Sir, that I wish to mention and then I shall finish. I do not want to take up any more time on this Bill. There is a general idea that all money-lenders are nothing but a race of blood-suckers. I take a very different view. There are good men and there are bad men among them, but I can assure this Assembly that if it were not for the *Banias*, if it were not for the money-lenders, no business would go on in this country at all. The money-lender replaces the banks and is the back-bone of the agriculturists and the back-bone of all small dealers in the country. If you injure him by a number of oppressive laws, you really make business impossible. There was another Bill that we had—I think Mr. Yamin Khan promoted it—which proposed innumerable restrictions upon the money-lender. I want him and this Assembly to realise that the money-lender is one of the most useful members of the society in this country. Upon him, as I say, nearly all the small business men of this country depend. I do not say there are no black sheep among them. But I maintain that the *Bania* is often a maligned individual, I say further that the Courts have already ample powers of dealing with any inequitable transactions that may be made by him. I hope that we shall not, by accepting this Bill now revert, in modern civilised days, to what is really a very rough-and-ready system devised for primitive times. A rule of that kind may be suitable for primitive people. I have worked it myself in the Sonthal Pargannas. It was in force there—and I can only say from practical experience of working it that even in those conditions, it is one of the most difficult laws to use justly and fairly, because it encourages trickery of all kinds on the part of money-lenders who really do not act honestly in the matter. Sir, I have now put the objections to this Bill before the Assembly and I hope that they will weigh them carefully before they reopen the questions raised by this Bill when the whole question has only very recently been examined and fully considered both by the last Council and by the Government.

Mr. Muhammad Yamin Khan (Meerut Division : Muhammadan Rural) : May I be allowed to speak a few words, Sir ?

Mr. President : At this stage, which is only 'leave to introduce the Bill', there is only one speech by the Mover and another speech by any Member who wishes to oppose it. The Honourable Member will have ample opportunity, when the Bill comes up for further discussion, of expressing his views.

The question is :

'That leave be given to introduce a Bill to amend the Interest Act, 1839.'

The motion was negatived.

Mr. President : I have received a suggestion from certain Honourable Members that it might be convenient to have the adjourned debate on the motion regarding the Civil Marriage Bill on Friday afternoon.

I am not in a position, at this moment, to say whether it will be convenient for it to be taken on that day. I hope to be able to make an announcement to-morrow.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 18th January, 1922. •