

Tuesday, 17th July, 1923

THE
COUNCIL OF STATE DEBATES

(Official Report)

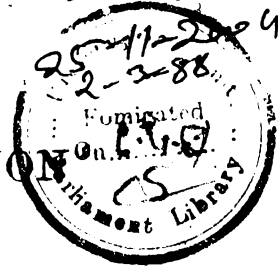
VOL. III, PART III

(From the 16th to the 28th July 1923)

THIRD SESSION

OF THE

COUNCIL OF STATE, 1923.



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1923

Council of State.

The President :

THE HONOURABLE SIR ALEXANDER MUDDIMAN, KT., C.S.I., C.I.E., I.O.S.

Panel of Chairmen :

THE HONOURABLE SIR MANECKJI DADABHOY, KT., C.I.E. :

THE HONOURABLE SIR DINSHAW WACHA, KT.

THE HONOURABLE SIR ZULFIQAR ALI KHAN, KT., C.S.I.

(Vacant).

Secretary :

MR. L. GRAHAM, I.O.S.

Assistants of the Secretary :

MR. W. T. M. WRIGHT, I.C.S.

MR. S. C. GUPTA, BAR.-AT-LAW.

MR. G. H. SPENCE, I.O.S.

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COUNCIL OF STATE

Tuesday, the 17th July, 1923.

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

MEMBER SWORN.

MR. EDWARD HENRY BERTHOUD (Bihar and Orissa : Nominated Official).

QUESTIONS AND ANSWERS.

PUNISHMENT FOR SMUGGLING.

48. The HONOURABLE KHAN BAHADUR SIR AHMEDTHAMBY MARICAIR : Is it a fact that the only punishment under the Land Customs Act for smuggling is confiscation of the article ?

The HONOURABLE MR. A. C. MCWATTERS : The answer is in the affirmative.

The HONOURABLE SIR AHMEDTHAMBY MARICAIR : Are Government going to modify the Acts by imposing fines also ?

The HONOURABLE MR. A. C. MCWATTERS : The Acts to which the Honourable Member refers are all Provincial Acts. The question of modifying them so as to increase the penalties is under consideration.

INDIAN BUDGET GRANT FOR ARMY IN INDIA.

49. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will Government kindly state what is the Indian budget grant in 1923-24 for payment of the claims of British War Office in connection with the raising and training of British contingents to the army in India ? Are British contingents kept in other colonies, whether Crown or self-governing ? If so, are such payments made by the colonies to the British War Office ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF.—The Indian budget grant in 1923-24 for payments to be made to the War Office in connexion with the raising and the training of British troops for service in India is £1,700,000 or, converted at 1s. 4d. to the rupee,—Rs. 2,55,00,000.

The Government of India are not in a position to give the Honourable Member any authentic information on the second and third parts of the Honourable Member's question.

TRANSPORT CHARGES BORNE BY BRITISH WAR OFFICE.

50. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Does the British War Office bear or share transport charges from the British colonies for the British contingents stationed there ? If so to what extent ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : The Government of India have no information on the subject.

ASSISTANT TRAFFIC SUPERINTENDENTS, NORTH-WESTERN RAILWAY.

51. The HONOURABLE SIR ZULFIQAR ALI KHAN : Will the Government be pleased to state the number of Assistant Traffic Superintendents recruited for the North-Western Railway during the years 1914 to 1920, both years inclusive ? How many of these were Indians and how many Europeans ?

The HONOURABLE MR. D. T. CHADWICK : I presume that the Honourable Member wishes to know how many officers of the class now known as Assistant District Traffic Superintendents were recruited between 1914 and 1920. The answer is 28, of whom 11 were Indians and 17 Anglo-Indians and Europeans.

APPOINTMENT OF ASSISTANT TRAFFIC SUPERINTENDENTS AS DISTRICT TRAFFIC SUPERINTENDENTS.

52. The HONOURABLE SIR ZULFIQAR ALI KHAN : Is it a fact that, according to the service rules existing at the time, when the above-mentioned Indian Assistant Traffic Superintendents were recruited, they would, in course of time, be holding charges of Railway Districts as District Traffic Superintendents ?

The HONOURABLE MR. D. T. CHADWICK : Yes, if reported to be fit to hold such a charge.

ALTERATION OF RAILWAY SERVICE RULES.

53. The HONOURABLE SIR ZULFIQAR ALI KHAN : Is it a fact that, by a Resolution, dated Simla, the 31st August 1921, the Railway Board have altered the rules that govern the above-mentioned service ?

The HONOURABLE MR. D. T. CHADWICK : No. The Resolution introduced on State Railways a new branch of the service called the Local Traffic Service on the lines of the new Provincial Engineer Service.

PROVINCIAL SERVICE FOR ASSISTANT TRAFFIC SUPERINTENDENTS.

54. The HONOURABLE SIR ZULFIQAR ALI KHAN : Is it a fact that, according to this Resolution, the Assistant Traffic Superintendents in future will comprise a Provincial Service and the posts originally held by Assistant Traffic Superintendents (Imperial Service) will in future be held by Assistant District Traffic Superintendents ?

The HONOURABLE MR. D. T. CHADWICK : Yes. Officers appointed to this service will be known as Assistant Traffic Superintendents, and those appointed to the Superior Service will be known as Assistant District Traffic Superintendents.

CHANGE IN NOMENCLATURE OF RAILWAY SERVICE.

55. The HONOURABLE SIR ZULFIQAR ALI KHAN : Will the Government kindly give the reasons for this change in the nomenclature of the service ?

The HONOURABLE MR. D. T. CHADWICK : The Assistant District Traffic Superintendents are expected to be qualified for district charge and are liable to transfer from one State Railway to another. Assistant Traffic Superintendents, as a rule, remain on the Railway for which they were recruited.

RECRUITMENT FOR POSTS IN IMPERIAL RAILWAY SERVICE.

56. The HONOURABLE SIR ZULFIQAR ALI KHAN : Is it a fact that, according to the above-mentioned Resolution, 20 per cent. of the Indian-recruited Imperial posts of Assistant District Traffic Superintendents will in future be held by persons who have been promoted from the Provincial Service (future Assistant Traffic Superintendent)? Will the Government be pleased to state as to what percentage of the total number of Imperial Service posts (Assistant District Traffic Superintendent) will be recruited in India and what percentage of these India-recruited posts will go to Indians?

The HONOURABLE MR. D. T. CHADWICK : The answer to the first part of the question is in the affirmative. As regards the second part no definite percentage has been fixed but, generally speaking, the policy is to follow the recommendation of the Public Services Commission. Since the beginning of 1919 for instance 20 appointments of Assistant District Traffic Superintendents have been made on State Railways, and of these 10 have been Indians.

CHANGES IN NAME AND METHOD OF RAILWAY SERVICE.

57. The HONOURABLE SIR ZULFIQAR ALI KHAN : Is it a fact that this change in the name and method of the service has been brought about because such a good number of Indians got the Imperial posts during the war, *i.e.*, 1914-1920?

The HONOURABLE MR. D. T. CHADWICK : The answer is in the negative.

REDUCTION IN NUMBER OF INDIANS HOLDING IMPERIAL POSTS ON RAILWAYS.

58. The HONOURABLE SIR ZULFIQAR ALI KHAN : Is it the desire of the Government to reduce the already existing number of Indians holding the Imperial posts?

The HONOURABLE MR. D. T. CHADWICK : Most certainly not. As the Honourable Member will see from the reply just given, 10 out of 20 appointments made since the war have been given to Indians.

INDIANS IN THE PROVINCIAL RAILWAY SERVICE.

59. The HONOURABLE SIR ZULFIQAR ALI KHAN : Is it a fact that, according to the Resolution above-mentioned, the Indians who are now holding the Imperial posts can be called upon to accept a Provincial post or else resign?

The HONOURABLE MR. D. T. CHADWICK : Those who have been brought into this grade will only be reverted in the event of their failing to qualify for district charge.

CHANGE OF POSTS FROM IMPERIAL TO PROVINCIAL SERVICE.

60. The HONOURABLE SIR ZULFIQAR ALI KHAN : Will the Government be pleased to quote any other instance in which men recruited in the Imperial Service have been suddenly, by change of rules, thrown into a Provincial Service ?

The HONOURABLE MR. D. T. CHADWICK : So far as Government are aware no Assistant District Traffic Superintendents have yet been "thrown into" the Local Traffic Service nor will any be so "reduced" unless as already explained in an earlier answer they prove to be unfit for district charge. For a precedent for this Local Traffic Service, the Honourable Member is referred to the Provincial Engineer Services of the State Railways and in the Public Works Department.

• MISGIVINGS CAUSED BY CHANGE OF RAILWAY RULES.

61. The HONOURABLE SIR ZULFIQAR ALI KHAN : Is the Government aware that the above-mentioned Resolution has caused serious misgivings in the minds of the public ?

The HONOURABLE MR. D. T. CHADWICK : Government have no cause to think that such a result has occurred.

KENYA PROBLEMS.

The HONOURABLE THE PRESIDENT : I have received private notice of three questions which I understand the Member in charge of the Department is prepared to answer. They have been sent in by the Honourable Sir Purshotamdas Thakurdas, and as they have not been circulated to the House I will read them out. I have allowed them on the ground of public interest, but in future Members should endeavour to give private notice to me a little earlier.

(1) Have the Government of India heard of any decision, provisional or otherwise, arrived at by the authorities concerned in England in connection with the Kenya problem ?

(2) If the said information in possession of the Government of India justifies the report in the Associated Press as given by Mr. Desai yesterday, will Government be pleased to give this Council the earliest opportunity of expressing their opinion in connection with any decision contrary to the Indian point of view ?

(3) If the decision is unfavourable to India, do the Government of India intend to take any measures to express their great resentment on such a decision, and, if so, when do they intend to take such measures and could they indicate the direction of such measures ?

The HONOURABLE SIR NARASIMHA SARMA (Member for Education, Health and Lands) : 1. The Secretary of State for India has informed the Government of India of the provisional proposals of the Colonial Office, and the subject is under correspondence between the Secretary of State for India and the Government of India, who have cabled their views in reply. No decision has been reached on the subject by His Majesty's Government.

2. The Government of India regret that they are unable to disclose the information in their possession and can therefore express no opinion, directly or indirectly, but they may state that the Associated Press telegram does not upon their information correctly represent the views of the Colonial Office. They do not think that any useful purpose would be served by any discussion in the Council at present. The Honourable Member may rest assured that the Government of India have informed the Secretary of State of the strength of the Indian public feeling in this matter. The Secretary of State is in full possession of the views of the two Houses of the Indian Legislature. The Government of India are doing all that lies in their power to secure a just settlement of the Indian claims.

3. The question does not arise. The Government of India can express no opinion as to the course of their policy in future.

The HONOURABLE MR. LALUBHAI SAMALDAS : Is it a fact that the Secretary of State for India has given an undertaking that during the time that he holds his office, no question regarding the Highlands will be allowed to be raised by him?

The HONOURABLE SIR NARASIMHA SARMA : As the matter is under correspondence, the Government of India regret that they are unable to disclose what has passed between the Secretary of State and the Government of India.

The HONOURABLE MR. LALUBHAI SAMALDAS : Is the Wood-Winterton agreement to be observed by the Secretary of State for India?

The HONOURABLE SIR NARASIMHA SARMA : We have no authority to disclose the Winterton agreement, which has been the subject of further discussion as between the Secretary of State and the Government of India.

BILLS PASSED BY THE LEGISLATIVE ASSEMBLY.

The SECRETARY OF THE COUNCIL : Sir, in accordance with rule 25 of the Indian Legislative Rules, I lay on the table the following Bills passed by the Legislative Assembly at its meeting held on the 16th July 1923 :—

A Bill further to amend the Indian Stamp Act, 1899.

A Bill further to amend the Code of Criminal Procedure, 1898, for certain purposes.

A Bill further to amend the Indian Lunacy Act, 1912.

A Bill to amend the Indian Territorial Force Act, 1920, and the Auxiliary Force Act, 1920, for certain purposes.

A Bill further to amend the Indian Army Act, 1911, and the Indian Lunacy Act, 1912, for certain purposes.

A Bill to amend the Cutchi Memons Act, 1920.

RESOLUTION RE REDUCTION OF ALLOWANCES OF MEMBERS OF THE COUNCIL OF STATE.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member) : Sir, I beg to move that :

“ This Council recommends to the Governor General in Council that, with effect from the beginning of the next session, the travelling and other allowances of the Members of the Council of State be placed on the same footing as those of Members of the Legislative Assembly.”

[Sir Muhammad Shafi.]

Sir, Honourable Members are no doubt aware that prior to the last winter session, with the single exception of railway travelling allowances, the allowances of Members of both Houses stood on an absolutely identical footing. In their Report the Incheape Committee, while pointing out that the expenditure under the Head Legislative Bodies had increased from Rs. 1,71,000, actuals, in 1913-14, to Rs. 7 lakhs according to the revised estimates of 1921-22 and to Rs. 8,50,000 according to the Budget estimates of 1922-23, made the following observations at page 127 of their Report :

“ The large increase which has taken place in expenditure since 1913-14 is due to the appointment of full-time Presidents since the expansion of the Councils, the longer sittings held under the reformed constitution, and the grant of more liberal allowances to Members present in Delhi and Simla. The bulk of the increase is inevitable, but we feel that the matter of reduction or otherwise in travelling and other allowances is one that should be left to the Legislature.”

Honourable Members can well realise the real reasons why the Incheape Committee, instead of giving a definite pronouncement of their own, left it to the Legislature to come to an ultimate decision on this point. When the Demands in connection with the Budget were placed before the Legislative Assembly last session at Delhi, the Legislative Assembly decided, in so far as Members of that House were concerned, to reduce the daily allowances which under the old rules were usually given to Honourable Members of that House. Under the old rules for 7 days before the commencement of a session and for 7 days after the conclusion of a session Members of the Assembly, as well as Honourable Members of this House, could have their daily allowances. The Assembly thought that this was somewhat extravagant and reduced the grant of daily allowances to 3 days before the commencement of a session and 3 days after. This, of course the House will realise, was a voluntary action taken by the Assembly in the interests of economy. Subsequently, when the allowances for Members of the Council of State came under discussion, there was a motion made by one of the Honourable Members in that House similarly to reduce the daily allowances of Members of this House and also to reduce the travelling allowances. Honourable Members are well aware of the difference between the travelling allowances allowed to Members of this House and to those of the Assembly. I appealed to the Members of the Legislative Assembly not to come to a decision upon these two questions themselves, but to leave it to the good sense of this House to reduce the allowances or not, and I undertook to place a Resolution before this House in that connection. The Assembly responded to that appeal of mine and the two motions in that House were withdrawn. This, in brief, is the genesis of the Resolution which I have now moved to-day. The position which the Government wish to adopt in connection with this Resolution is exactly what I explained during the debate I have already referred to in the Legislative Assembly. What I then said was that ‘ what the Government propose to do in this connection is that they will place before the other House a motion for a revision of the rules in this connection, and if the other House agrees, Government will carry out the decision accordingly. But in any case Government propose to take away this privilege from the official Members.’ The position, therefore, at present is this, that official Members of this House as well as of the Legislative Assembly, as well

as the non-official Members of the Legislative Assembly are in an identical position with regard to these various allowances. It is only the non-official Members of this House who occupy a position with regard to railway travelling and daily allowances somewhat different from the rest of the Members of these two Houses. I leave the decision of this question in the hands of this House.

The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General) : Sir, there was not much necessity for elaborating on a point like this. I can assure the Honourable Dr. Mian Sir Muhammad Shafi that this Council will always be ready and will always be willing to support Government in any matter where a scheme of retrenchment has to be brought about. This Council, I have not the slightest doubt, will agree to the proposal made by Government that their travelling allowances as well as their daily allowances should be placed on the same footing as those of the Members of the Legislative Assembly. I do not think there will be much talk or criticism on that point, as I know the feeling now prevailing is that every possible endeavour should be made not only by various departments of Government, but by individuals and Members of the Legislature to help the Government in effecting economy. I will only say one word, Sir. We shall cheerfully abide by this decision. But I hope, Sir, that Members of Government will also set an example and dispense with their luxurious travelling and other allowances and try and effect economy in the expenditure which Government Members now entail on the Indian Exchequer. I hope there will be a similar response from the Members of the Executive Council.

The HONOURABLE SIR EDGAR HOLBERTON (Burma Chamber of Commerce) : Sir, I am afraid I am not prepared to be so broad-minded or liberal-minded as my Honourable friend. I am quite prepared to admit at once that the allowance of 7 days at each end of the session is too much, and I shall not raise the slightest objection to reducing that to three or even to one day. But I do not see in the least why this Council should give up one of the very few privileges which remains to it by way of comfortable travelling. Most of us are people of a certain age in life, busy men, people whom it does not do any good to be hustled and bustled and crushed in railway carriages. I do not think you will find, if you examine the lists, that we exercise this privilege of a complete compartment every time we travel; it is only in times of stress. Also, I do consider that people like the non-official Members of this House, who come up here perhaps partly because they like it but chiefly because they want to serve the State, should be allowed a certain number of privileges. Also a great many of us are busy people. We have a great deal of work to do while we are travelling and I put it to you that it is impossible—absolutely impossible—to do any work except when you have a carriage to yourself. From this point of view, I entirely disagree with my Honourable friend, Sir Maneckji, about the Government Members and their travelling allowances. It is perfectly essential that responsible Government officers should have a carriage to themselves when they travel, or it will be quite impossible for them to cope with the work which they have to do. I crave, Sir, the indulgence of a similar extension of privilege for the Members of this House.

The HONOURABLE SARDAR JOGENDRA SINGH (Punjab : Sikh) : Sir, if I may add a word, I am in entire agreement with my friend here—I think the privileges and dignities of this House should be maintained, and I am surprised that the Leader of the House should be the person to bring this Resolution forward.

The HONOURABLE SIR ZULFIQAR ALI KHAN (East Punjab : Muhammadan) : Sir, although it seems rather undignified to fight over this affair, it seems to me—from what I conclude from the Honourable Sir Muhammad Shafi's speech—that it was due entirely to his intercession that the Members of the Assembly consented to wait till he put this Resolution here before the Council and not to cut down our allowances. I think this is a very humiliating position, especially when, as my Honourable friend on my right has said, most of the Members of this Council are busy men and they have to travel in reserved compartments in order to do some business and also on account of the age of the elderly Councillors. Well, Sir, whatever the Members may decide, I for one would raise a protest against this cutting down of the allowances, not because we feel we gain anything by getting Rs. 20 a day or by keeping reserved compartments, but because the dignity of this august Chamber is bound up with such privileges and one essential thing that we want to show is that we are not entirely at the mercy of the Lower Chamber. If they want to cut down our powers, if they want to cut down our daily allowance, I think we must not submit to such an arrangement. As all the Honourable Members know, the daily allowance of the Members of the Lower Chamber was raised from Rs. 15 to Rs. 20 *per diem* and we raised no objection. They are as honourable as we are, and therefore when it came up, we did not mind it. But when they cut down our powers and our allowances simply because they are jealous of these.....

The HONOURABLE THE PRESIDENT : I do not think the Honourable Member ought to make that observation. The ground put forward is economy. I think it is wrong to put it on the ground of jealousy.

The HONOURABLE SIR ZULFIQAR ALI KHAN : I am sorry. You are perfectly right, Sir, perhaps I was mistaken in saying that they were jealous but all the same, from the very start we have noticed that the dignity of this Upper Chamber is a thing which the Lower Chamber has not willingly accepted and I protest against it.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS (Bombay : Nominated Non-Official) : Sir, in spite of what has fallen from the few Honourable Members who disagreed with the Honourable the Leader of the House, I cannot help feeling that the motion put before the House is one which will meet with the general approval of the House. I, however, Sir, expected that the Honourable the Leader of the House would have stated to the Council why Government had to make any differentiation from the start between the daily allowances of Members of the two Houses; or on what grounds Government had from the start to make any differentiation as regards the travelling allowances to Members of the two Houses. I am afraid it has been overlooked by the Honourable the Leader of the House when he moved his Resolution that the House would, as the Honourable Sir Maneckji Dadabhoy said, readily agree

with the Resolution. I think it would be useful to hear from the Honourable Leader of the House the grounds on which Government thought it necessary to make any differentiation at all between the travelling allowances of Members of the two Houses from the very opening of the two Houses. It is quite possible that some of the considerations may be what the Honourable Sir Edgar Holberton mentioned, in which we would like to know if Government think the conditions then prevailing have changed.

I also think that it would have been very interesting to have from the Honourable the Leader of the House some figures as to the approximate saving that would be made to the Indian Treasury by the curtailment of the two allowances. As far as I am aware I think the concession to this House is a reserved compartment or two first class fares. The concession to the other House is—I speak subject to correction—two first class fares. I hope the Honourable the Leader of the House will correct me if I am wrong.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : With regard to that particular statement, it is one and three-fifths, I think.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS : Whatever it is, I think it would be very interesting to know how many Honourable Members of this House, non-officials especially, utilise the luxury of a reserved compartment for themselves, and what is the approximate saving that the Honourable the Leader of the House estimates would be made. It is possible, I understand, that very few Honourable Members indulge in that luxury. It is possible that the saving may not be large enough to call forth a serious difference of opinion. But apart from that and subject to the Honourable the Leader of the House making out a case for the consideration which led the Government of India to lay down from the start that Members of this House were entitled to more luxurious concessions for travelling than the Members of the other House—and those conditions have changed—I think it is very likely that the Honourable the Leader of the House may make some addition to the Resolution, say, that “until the financial condition of the Government of India improves” or to a similar effect. I only throw out this suggestion for the consideration of the Leader of this House. I personally say, reduce everything, both the allowances to the officials and the non-officials and let us get down to rock bottom and a balanced budget without the necessity for further taxation or certification.

I, Sir, wish to add one more word before I sit down. Of the many recommendations made by the Incheape Committee, the one that the Honourable the Leader of the House has put before the House to-day in the form of a Resolution is perhaps the mildest and one that will lead to comparatively the least economy or saving. Every pie goes to make a rupee and every rupee goes to make a crore and to that extent I am agreeable, but I would certainly very much appreciate it, if the Honourable the Leader of the House would say what other recommendations of the Incheape Committee have been accepted as far as travelling allowances and the curtailment thereof by various Government departments are concerned. I think it would carry much more weight if the Leader of the House could put that before the House, and say “Government have done this for various departments and wish you to agree to a little sacrifice and continue the same until our financial conditions

[Sir Purshotamdas Thakurdas.]

improve." I am in agreement with the principle underlying the Resolution, but I hope the Leader of the House will be able to give the information I have indicated in order to ensure the Resolution not being negated.

The HONOURABLE THE PRESIDENT : As this is a matter which concerns the privileges of the Council of State, I should like to say a few words. I have the more reason for doing so, as possibly that some Members of the House know, when the rules were framed, I was in a position perhaps to know as much about them as anybody in the House. I can assure Honourable Members they were not framed with the intention of making any invidious distinction between the two Chambers. I think the Honourable the Leader of the House, if he will examine the matter, will find that in practically all Colonial Legislatures, where there are two Houses, one a small Chamber and one a large Chamber, there is generally a distinction drawn between the composition of the Houses and between the allowances of the Members of the Houses. As a rule the franchise is different; frequently the age of the Members is different, and the numbers are always different. The second Chamber is always a very much smaller Chamber and I think it is probably for those reasons that the difference in allowances is made. These considerations apply in the case of the Council of State. As Sir Edgar Holberton pointed out, the Members of this Chamber are also not young men. They are possibly not entirely decrepit, still they are on the verge of decrepitude. (Laughter). On these grounds some distinction is made between the allowances. The Honourable the Leader of the House will be able to say if this is correct, and whether that is not the reason why, in the first instance, the distinction was made.

On the merits of this case I do not desire to speak, but I have one word to say, in regard to the question that was raised by my Honourable friend, Sir Zulfiqar Ali Khan, the question of *izzat*. I do beg Honourable Members to remember that if we stand on our dignity, we must support the dignity of other people. This case comes before us, if I may say so, in the most courteous way. Apparently a motion for reduction was made in the other House, but was withdrawn on the intervention of the Honourable the Leader of this House, and as I understand the matter was left to your discretion. Surely you cannot make that a ground of complaint. I do think however it is a pity that the framers of this Constitution did not provide some automatic method of determining these rather petty questions which would avoid any suggestion of conflict between the Members of the two Chambers on a matter in which their personal interests are concerned. I suggest that when the Constitution comes to be revised the points may be borne in mind by the Government.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : If I may venture to say so, my Honourable friend, Sardar Jogendra Singh, instead of expressing his surprise that I should have moved this Resolution in the House, ought to have appreciated the exact nature of the circumstances in which the Resolution has been moved in this House to-day. Perhaps I did not make it perfectly clear to him that this is a votable item over which the Assembly have legally the absolute control. It

was open to the Assembly to reduce the allowances at present enjoyed by Honourable Members of this House and a motion to that effect was actually made in that Assembly. I, in the interests of this House, intervened and appealed to the Honourable Members of the Assembly not to take a decision on that question, but to leave it to this Honourable House to come to whatever decision they liked upon this question. Instead of expressing surprise that I should have moved this Resolution in the House to-day, my Honourable friend ought to have appreciated the exact circumstances under which I have had to place this motion before the House. As regards the origin of these differences, as far as I recollect, you, Sir, will remember that in the old Imperial Legislative Council the rule was that Members were entitled to a first class compartment when travelling from their places of residence to Simla or Delhi, and that privilege was continued in the case of Honourable Members of the Council of State, and not allowed to Members of the Legislative Assembly. As far as I recollect, at that time the consideration which you, Sir, have mentioned with regard to similar differences existing in the case of Colonial and other Parliaments was not, I believe, before the Government. The real reason was that it was thought the Council of State took the place of the old Imperial Legislative Council, and it was decided that the allowances which were at that time enjoyed by Members of the old Council should be continued to the Members of the Council of State. That is, as far as I remember, the consideration which weighed with the Government in coming to this decision. As regards the information which my Honourable friend Sir Purshotamadas Thakurdas has called for, I regret I am not in a position—it must be obvious to Honourable Members that without previous notice I cannot be in a position—to furnish that information to the House. If the House thinks it necessary to have that information before coming to a conclusion on this matter, then I am afraid the debate will have to be adjourned. Meanwhile, I ask the Honourable Members to remember that the undertaking given by me in the Legislative Assembly was, as I read out in my opening speech, that should this House agree, the Government will carry the decision of this House into effect by amendment of the rules; and as I pointed out in my opening speech, the official Members have already been deprived of the privilege which they enjoyed before the discussion in the Legislative Assembly last March, and they no longer enjoy the privilege of travelling in a reserved compartment as they did under the old rules. So that the position simply is this, that all official Members of both Houses, as well as the non-official Members of the Legislative Assembly, occupy an identical position in regard to these allowances. It is only the non-official Members of this House who enjoy the privilege, and Government leaves it to the non-official Members of the House to come to a decision on it.

THE HONOURABLE THE PRESIDENT : The question is that the following Resolution be adopted :

‘This Council recommends to the Governor General in Council that, with effect from the beginning of the next session, the travelling and other allowances of the Members of the Council of State be placed on the same footing as those of Members of the Legislative Assembly.’

The motion was negatived.

A^TENDMENT OF STANDING ORDERS.

The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: General) : Sir, I beg to move, with your permission :

“ That the report of the Select Committee on the Standing Orders on petitions relating to Bills pending before the Council of State, be taken into consideration.”

As there are several new Members in this Council who have taken their seats recently and who are perhaps not acquainted with the previous history of this order or the circumstances under which this order has now been brought forward, I would like briefly to relate the circumstances under which this action was taken. In the first year of the existence of this reformed Council I moved a Resolution permitting petitions against public wrong, public grievances and disabilities. If I read my Resolution it will give the Council immediately an idea of the nature of the Resolution. I moved then :

“ That this Council recommends to the Governor General in Council that this Council be authorised if necessary by statute to receive from the public petitions on matters relating to public wrong, grievance or disability or to any act or acts of public servants or to public policy to investigate the complaint and to make a report to this Council, and that a Committee be constituted on public petitions with powers to examine witnesses and record evidence.”

This Resolution of mine was not accepted in its entirety, but the Government then showed an inclination to make an investigation into the subject to see how far they could meet my views. They promised to make an investigation and on the 4th of February 1922 issued a Notification appointing a powerful and well-represented Committee in which our worthy President and the President of the Assembly were also included, among other Members. The Government also defined the terms of reference in explicit manner and I may draw your attention to those terms. They were :

“ To examine the question whether the two Chambers of the Indian Legislature should exercise any powers with reference to petitions, and, if so, what those powers should be ; and further, in that case whether Standing Committees of the two Chambers should be constituted and, if so, what should be the procedure and what limitations should be imposed on the powers of the Committees.”

A full investigation was made by this highly placed Committee in which legal knowledge was very strongly represented, and they submitted their report to the Government of India a few months later. The Government of India took no action on that report, and it was left to my friend the Honourable Mr. Khaparde by way of an interpellation to inquire in this Council what action Government intended to take on that report. The Government Member replied that the Government did not intend to take any action and that it left it to the Members of this Council to take such action as they deemed desirable. I was then engaged on the Fiscal Commission and my Honourable friend, Mr. Khaparde, took up the matter and moved a motion for reference to a Select Committee of the draft Order which was prepared by the Committee to which I have already referred. The Order was drafted in an extremely careful manner. It was on the lines of the procedure in the House of Commons and in pursuance, or rather in conformity with the report of the Committee, rather limited this right of petitioning to matters relating to

pending legislation only, and not to that larger field of inquiry at which my Resolution aimed, namely, investigation into public grievances, public injuries and public wrongs. This Order is now in the hands of Honourable Members and my motion now is that it be taken into consideration.

This is, Sir, the brief history of this order. I must say that, though it does not substantially comply with my Resolution, it is a step forward and a very important and very substantial step forward. This right will be appreciated by the general public. The public are always interested in the Bills that come up before the Legislature. In the past they have sent up representations and petitions, which have some times been ignored and rarely taken up by Honourable non-official Members of this Council. Now, under this Order a regular Committee will be appointed with a Chairman. That Committee will be seized with powers to investigate into such matters or such petitions relating to Bills before this Council, and they will have power to present the petitions either *in extenso* or a summary of them with their report to this Council. I think this is a very valuable Order and it does really make an important addition to our present statutory rules. I therefore now move that this draft Order may be taken into consideration.

• The HONOURABLE THE PRESIDENT : The question is :

“ That the Report of the Select Committee on the Standing Orders on petitions relating to Bills pending before the Council of State, be taken into consideration.”

The motion was adopted.

The HONOURABLE SIR MANECKJI DADABHOY : Sir, I move that the Standing Orders as amended be passed.

The HONOURABLE THE PRESIDENT : I propose to put the Standing Orders separately to the Council, in case any Honourable Member has any observation to make. Honourable Members will find annexed to the Select Committee's report a new Chapter headed “ Petitions,” which it is proposed to add to the Standing Orders. I will read out each Standing Order by its number. If any Honourable Member has any remarks to make on that number he will ofcourse rise.

No. 73.

The question is :

“ That Standing Order No. 73 be added.

The motion was adopted.

The HONOURABLE THE PRESIDENT : The question is :

“ That Standing Order No. 74 be added.”

The HONOURABLE SIR EDGAR HOLBERTON : May I ask, Sir, if this procedure is similar to that which obtains in the House of Commons now ?

The HONOURABLE THE PRESIDENT : I think a general question of this kind would have been more properly addressed to the Honourable Member who made the motion, at the time of his moving that the draft be taken into consideration,

The HONOURABLE SIR MANECKJI DADABHOY : I answered that point.

The HONOURABLE THE PRESIDENT : Strictly, the Honourable Member ought to have asked the question before the motion for consideration was passed. It is passed now. But if the Honourable Member wishes to make a statement, he may do so.

The HONOURABLE SIR MANECKJI DADABHOY : I may say for the benefit of the Honourable Member that it does resemble in great measure the procedure adopted in the House of Commons.

The HONOURABLE THE PRESIDENT : The question is :

“ That draft Standing Orders Nos. 74, 75 and 76 be added to the Standing Orders.”

The motion was adopted.

The HONOURABLE THE PRESIDENT : The question is :

“ That draft Standing Orders Nos. 77, 78 and 79 be added to the Standing Orders.”

The motion was adopted.

The HONOURABLE THE PRESIDENT : The question is :

“ That draft Standing Orders Nos. 80, 81 and 82 be added to the Standing Orders.”

The motion was adopted.

The HONOURABLE THE PRESIDENT : The question is :

“ That the Schedule be added to the Standing Orders.”

The motion was adopted.

The HONOURABLE THE PRESIDENT : Now the Honourable Member had better move that the Standing Orders, as approved, be passed.

The HONOURABLE SIR MANECKJI DADABHOY : Sir, I beg to move that :

“ The Standing Orders as approved be passed.”

The HONOURABLE THE PRESIDENT : The question is :

“ That the Standing Orders as approved be passed.”

The motion was adopted.

SPECIAL MARRIAGE (AMENDMENT) BILL.

The HONOURABLE MR. LALUBHAI SAMALDAS (Bombay : Non-Muhammadan) : Sir, I beg to move that :

“ The Bill further to amend the Special Marriage Act, 1872, as passed by the Legislative Assembly, be taken into consideration.”

Sir, in support of this measure I deem it necessary to refer to the measure that was passed in 1872 known as Act III of 1872 and the movement that preceded it. It is well known, Sir, that from the time that we in India came into contact with Western education and Western civilization, there was a broadening of our views regarding our social customs. Some of the Hindus started movements which were considered as heterodox movements, known as the Brahmo Samaj, the Prarthana Samaj and others ; on the other hand, young men who went to England,

were on their return put out of caste, and they were obliged practically to form a caste of themselves, and as a result it was very difficult for them to get married in their own caste. This difficulty was put before Government, by the leading Brahmos and at a meeting in 1868 Sir Henry Maine took up this subject and introduced a Bill to legalize marriages outside their castes. He resigned before that Bill was passed. Sir James Stephen, who was in charge of that Bill later on, amended the Bill to a certain extent and the Bill, as amended, was passed, and it now stands on the Statute-book as Act III of 1872. This, however, Sir, was not the only occasion when the Government of India thought it right and fitting to interfere as regards the social customs of Hindus. Measures were passed such as the Prevention of Satti Act, Prevention of Infanticide Act, the Caste Disabilities Removal Act, and the Hindu Widows Remarriage Act. This shows that the Government of India at that time were prepared to take the responsibility of introducing social reform measures and seeing these carried through. After 1872 no difficulty was felt by people taking advantage of Act III of 1872. When however the Privy Council decided the well-known case in which it said that a Hindu by adopting a custom which was not entirely in accordance with the orthodox Hindu customs did not lose his rights as a Hindu, many of those who had got themselves married under Act III of 1872 felt that the benefit of this decision should be extended to them and that their children at the time of marriage should not be obliged to style themselves as non-Hindus under Act III of 1872. I know, Sir, that many eminent Brahma Samajists have felt this as a stigma. Respectable Brahma Samajists told me years ago, before Mr. Bhupendra Nath Basu's Bill was introduced—'it is really humiliating to us to be asked to sign ourselves as non-Hindus when in all respects we want to be Hindus and we are Hindus, except that we do not follow certain customs.' It was to meet their difficulties that the first attempt was made, not in British India, Sir, but in an Indian State, where, the Prince, with the powers that he has and with the knowledge that his action would not at least be cried down on racial grounds took action which perhaps the British Government in India could not take. The enlightened Maharajah Gaekwar of Baroda in 1908 passed an Act known as the Civil Marriage Act. That Act is not restricted to the subjects of his State; any man, or for the matter of that any woman, can go to Baroda for a day or two and get married under that Act to a woman or man not belonging to the same caste or same sub-caste. I know of instances, Sir, where people have availed themselves of this opportunity. Only recently a very well-known young man of my community has married a girl belonging to the Brahma Khatri community. His Highness the Maharajah was gracious enough to be present on the occasion to show his approval of the action taken under this Act. In 1911 an attempt was made in British India to have a similar measure passed. Mr. Bhupendra Nath Basu introduced a Bill in 1911 to remove the disabilities imposed by Act III of 1872. That Bill was not passed in the old Legislative Council. The Government of India for reasons well known to themselves had not the courage to support it, and it was thrown out. Matters continued like this till 1916 when an Act on similar lines was passed by the Durbar at Indore. In 1918, Mr. V. J. Patel introduced a Bill of a much more restricted character in the old Imperial Legislative Council. But when the matter came up before

[Mr. Lalubhai Samaldas.]

the Council it was thought that as the new reforms were likely to come into force very soon, it would be advisable to leave the matter open to the new Legislative Chambers. When the new Legislative Assembly came into existence, my friend Dr. Gour took an early opportunity of introducing a Bill on much wider lines. That Bill was thrown out in the House in January 1922. Dr. Gour, however, was persistent enough. In September 1922, he introduced the Bill again in the Legislative Assembly. Orthodox Hindus rose to oppose it. They based their opposition not on the ground that they did not want to grant the request. People may be Brahmos, or Sikhs or Jains, but they should not be forced to style themselves as non-Hindus, etc., against their will. They opposed it on the grounds that by passing the Bill they will be interfering with certain provisions of the Hindu Law as regards succession, adoption and the rights of religious ceremonies. Those were the three main grounds on which it was opposed by orthodox Hindus in the other place. The ground on which the Muhammadans opposed it was that they did not want to take advantage of such a measure. They said that they can have marriage with Christians and Jews and that they did not want to have marriages solemnised under this Act. Similar objection was raised by my Parsi friends in the other House, and, as a result, Dr. Gour practically gave an assurance that when the matter went to the Select Committee, he would see that those communities who did not want to take advantage of this measure would not be included therein. The matter, Sir, was referred to a Select Committee composed of eminent lawyers conversant with Hindu Law. The Chairman of the Committee, as usually is the case, was the late Law Member Dr. Sir Tej Bahadur Sapru. He was not present at the time when the final report of the Select Committee was published. But he was good enough to put before the Select Committee his considered opinion on the subject. That report was practically adopted by the Select Committee. The Select Committee, Sir, consisted of men like the present Home Member, Sir Malcolm Hailey, reformers like Messrs. Joshi and Jamnadas Dwarkadas, orthodox Hindus like my friends Messrs. Seshagiri Ayyar and T. Rangachariar, and other lawyers like Mr. Samarth. Dr. Gour was of course on the Committee. They included Professor Latthe a Jain and one English gentleman, Mr. Darcy Lindsay. The Select Committee came to a practically unanimous conclusion. They accepted all the suggestions made by Dr. Sir Tej Bahadur Sapru and made that Bill as inoffensive as possible to Hindus, orthodox as well as others. The Bill then went before the other House, and there after a very interesting and exciting debate it was carried by a majority of 37 against 27. That is the Bill, Sir, which I am now submitting to this House for consideration. With the permission of the House, Sir, I would refer only to the salient points of the Bill, leaving the detailed consideration later on, if any Honourable Member opposes any of the clauses of that Bill. The most important amendment made in the original Bill is that none but Hindus, Jains, Sikhs and Indian Buddhists who are practically considered Hindus are included in this Bill. All the other communities, Muhammadans, Parsees, Christians and Jews, who were not anxious to take advantage of this Bill are excluded from it. Then, Sir, the other amendment made is that if a person who is a member of a joint family contracts such a marriage, he would sever his

connection with the joint family. This was an amendment which was strongly insisted upon by the orthodox Hindu members. They said they did not like a man who married a woman from any other caste to have the right to force himself and his wife on the joint family. Then as regards the rights of succession, the same rights and disabilities are given to the members who contract such marriages as they are entitled to under the Caste Disabilities Removal Act. Moreover a special provision is made that nothing in this section is likely to confer on any person a right to religious offices or service or to the management of religious or charitable trusts. That makes it quite clear, Sir, that anybody who contracts a marriage under this Act cannot by right insist on performing any religious service to which he would have been entitled had he not contracted a marriage under this Bill. Another important point raised in the other place was one regarding the rights of succession of children of such marriage, and by a majority the Select Committee came to the conclusion that the provisions of the Indian Succession Act of 1865 should apply to the children of such marriages. Then, Sir, another right which has been taken away from a person contracting such marriage is the right of adoption. Speaking for myself, I do not like that right having been taken away. Right is also given to the fathers of such persons to adopt in case they have no other living son. I believe Dr. Gour thought it much better to meet all reasonable opposition and to grant reasonable concessions, as it was necessary to get as much support as he could for this Bill. I think in measures of this kind, it is much better to have a halfway house than to go the whole hog and lose it. I think Dr. Gour deserves congratulations on having adopted this method. That is, in short, Sir, the scope of the Bill which I am now submitting for the acceptance of this Council. The Bill, as I have said, does not force anybody to contract such marriages. It is of a permissive character. It is only those who want to take advantage of this measure that can avail themselves of it. One other important change that has been made in the proposed Bill is that those who want to take advantage of Act III of 1872 will not be obliged to subscribe to these clauses but can register themselves as non-Hindus or non-Muhamadans or non-Christians under Act III of 1872. All these concessions to various leaders of opposition have been made to win their support and I think that the attitude adopted by my Honourable friend Dr. Gour is the correct one. I hope, Sir, that this Bill will meet with the approval not only of non-official Members on this side but also of the official Members on the opposite side. Government used always to take a leading part till recently in all social reform movements. Recently somehow or other they are adopting a very very cautious attitude. I want, Sir, to appeal to the Honourable the Leader of the House and to the Honourable the Home Secretary to give full freedom to Members of Government as well as other official Members, whether Members of the Government of India or otherwise, to vote and speak as they like. I know, Sir, that in the other House the Honourable the Home Member said that Government Members will not vote or take part in the discussion. But with the signature of the Honourable the Home Member on the report of the Select Committee and the expressed views of the late Law Member, Dr. Sir Tej Bahadur Sapru, is it right and fair, Sir, that the Government Members should keep themselves aloof and not take part in this debate?

[Mr. Lalubhai Samaldas.]

If they do not approve of it, let them by all means say so, but if they approve of it, let them support it because this social reform is merely doing justice to some eminent Hindus who are classed either as Brahmors or Hindu dissenters. I hope that this measure will be carried unanimously.

The HONOURABLE MR. J. CRÉRAR (Home Secretary) : Sir, I do not propose to address myself to the merits of the measure before the House, but in view of the remarks which have just fallen from the Honourable the Mover, it seems desirable that I should explain the precise attitude of Government towards it. The measure is undoubtedly an important one, and as has been indicated by the course of debates in another place, not entirely without contentious features. Government recognise that, but they recognise also that it affects more particularly the sentiments, and indeed the religious sentiments, of the communities specifically referred to in the Bill, and they therefore deliberately decided that it would be more proper on their part to leave a matter of this character to the decision of the Legislature, entirely uninfluenced by any attitude taken up in the matter by Government. This decision has been announced in another place and observed in the progress of the Bill to its present stage. Members of the Executive Council will take no part in the debate either by way of speech or vote. Other official Members of the House will be entirely at liberty to participate in the debate in any manner they choose.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, of all the measures before this Council, none is of a more controversial nature and none has aroused such wide opposition as this measure has done. The Honourable the Mover says that one of the reasons why he introduces this Bill is that he finds it very humiliating for a Hindu to sign as a non-Hindu under the old Act. Such measures, which cut at the root of the religious laws, ought not to be welcomed, and in my opinion neither this House nor the Assembly has any right whatsoever of legislating on religion. What we observe of the other communities, we see that our Muhammadan brethren have not made any attempt whatsoever to amend the holy Koran and no other religious people have attempted to modify their religious laws. Undoubtedly there is at present a microscopically small number of persons calling themselves advanced cosmopolitans, apostles of the fullest degree of freedom of thought and action trying to cut at the root of the religious law. What is their number in India ? As far as I know, of all the people in India, 96 per cent. are illiterate, and out of that 96 per cent. of the illiterate people I can with great confidence say that those advanced people do not at all with full responsibility say that they really represent their views in this respect. I know that this measure has met with great opposition and there have been meetings all over India condemning it. The Honourable Mr. Lalubhai Samaldas has said that in one of the marriages which took place at Baroda, where unfortunately such a law is in force, His Highness the Gaekwar was present. In religion whether a person is a Ruling Chief, a King, or an Emperor, he cannot amend the established law. In the eyes of the law, whether it is religious, or whether it is ordinary law, the King and the Muzgar are on the same footing. I claim therefore, Sir, that a person who does not like to observe the Hindu law, and yet after breaking it likes to

call himself a Hindu, is an anomaly. Sir, if this Bill is passed our society will very greatly deteriorate. What I mean is this that if such marriages are allowed which enable the people to break the religious law, the people, particularly those who are weak in their morals, will easily fall victims to temptation and society will greatly suffer. I am very strongly of opinion that it will encourage polygamy, which is now a thing of the past. At present the rules of society do not allow any Hindu, whatsoever his position in life may be, to marry a second wife when the first wife is alive, and no respectable man, or a man of any consequence will give his daughter or a near or dear female relative in marriage to such a person. To persons of weak morals there will be no potential check, and the facilities and the wide scope which this legislation, if passed, will allow will be disastrous particularly to the higher and more respectable classes of people. There will be no hindrance or no practical bar in their way, and the result will be that any person, particularly a person who is a person of means, will even in the presence of his first wife and in the presence of a number of children, marry a second or even a third wife when the second gets into his disfavour. The passing of the Bill will really mean helping the slackening of the code of morals amongst the people, and encouraging multiplicity of marriages. No Hindu with any sense of responsibility can give his consent to such a measure. Reform does not mean revolution. The two are clearly distinguishable. I quite agree that, as times change, reforms are necessary. We must adapt ourselves to the changing needs of the times, but to the present day reformer I may utter a word of warning. If they want to reform the people and their customs and habits, let them carry the people with them. The reform will come when the people whom it concerns, or at least a majority of them, stand by it. To act in direct contravention of the wishes of society, which are expressed in the crystallised form of the personal law which the society which is subject, and to which it adheres, is not a reform, but is a revolution.

My friend Dr. Gour when discussing this Bill in the Assembly said that it was a permissive measure. But Sir, it is the thin end of the wedge. In religious laws no amendments whether permissive or otherwise can be made. I should be better pleased if a person who breaks his own religious laws did not call himself a member of the religion the ordinances of which he violates. As far as reforms are concerned, how in the world do we reform the people? Not certainly by force; and yet there is in this House a measure before us which has been passed by a small majority in the Assembly. Somebody will say there is no force, it is only permissive. Quite so; but the question is whether any section of the Hindu community has asked for the grant of this permission except a few of these so-called reformers. You permit a Hindu to marry in a sect which is opposed to the Hindu law, the Hindu community has refused to give such permission from time immemorial and refuses the permission to-day with equal force and determination. And yet our present-day reformers insist on getting this Bill through. The members of a religious community have the right to change their manners and customs but not religion, but when it is done against the wishes of the masses and in the teeth of vigorous opposition, the reformers are usurping their authority, an authority which their religion never meant to confer on anybody. Sometimes, Sir, it is said that these two Houses do not quite represent the views of the people. I do

[Lala Ram Saran Das.]

not agree with that, but in measures like the one before us where the personal desires of a few are concerned, an exception may be made to the general rule. I am afraid, Sir, that in this House to-day, when the attendance of Hindu members is so meagre, I know what the fate of this Bill will be, but I, as an orthodox Hindu, cannot but oppose it. The Honourable Mr. Lalubhai Samaldas has said that on the Select Committee there were two eminent orthodox Hindu gentlemen. Both of them were Madarassi gentlemen. I have been in the Madras Presidency and I know that orthodox rules supreme there. There reformed Samajes and reformed associations scarcely exist. I toured in the south for 3½ months and was surprised not to see any sign-board of the Arya Samaj, the Brahma Samaj, the Dev Samaj or any other Samaj, anywhere. The Madras people do not perhaps realize the conditions which prevail in Northern India and particularly in the United Provinces and the Punjab. In Madras it is very rare to see a man of good social standing following this new Marriage Bill, even if it be passed. In the Punjab, the United Provinces and in Bengal perhaps the instances of this will be numerous. I therefore think the Madras gentlemen have not realized what the conditions are in upper India. I am not a lawyer, Sir, and I do not wish to labour the constitutional point, but I hold that even lawyers have no right whatsoever to amend the holy books. The Honourable Mr. Lalubhai Samaldas has said that in 1872 when the Civil Marriage Bill was passed, Sir Henry Maine stated on behalf of the Government "that so long as he chose to exercise it under the sanction of religion, the State need not interfere." The State, as far as I know, has pledged itself not to interfere in matters religious, and so I would request the non-Hindu and official Members to kindly leave this matter entirely in the hands of the Hindus. With these few words, Sir, I strongly oppose the measure.

The HONOURABLE MAHARAJA SHOSHI KANTA ACHARYYA CHAUDHURI (Bengal : Nominated Non-Official) : Sir, I beg to support this Bill. This Bill is of a mild nature and does not force anybody to accept its provisions. People may avail themselves of it or they may leave it alone. It concerns Bengal mostly, where the Brahmans when they are about to marry have to declare that they are not Hindus, but their succession and other rights are regulated according to the Hindu law. Under this Bill they have not to declare that they are not Hindus, but their succession will be governed by the Indian Succession Act. They thus do not gain much, and it is quite optional for any one to accept the Act or not. With these words, Sir, I support the Bill.

The HONOURABLE SARDAR JOGENDRA SINGH (Punjab : Sikh) : Sir, my friend the Honourable Lala Ram Sarandas has talked a good deal about the holy Books, but he has not stated to what holy Books he refers. (*The Honourable Lala Ram Saran Das—All the holy Books.*) Their number is legion, and their teaching as various. He also said that no such marriages were contracted in ancient India. Any one who has any acquaintance with the Puranas will not deny that most of the marriages contracted by the religious Reshis were of a very elastic nature, and sometimes were between members of two different castes. I think that the Honourable

Lala Ram Saran Das will not deny that marriage law in ancient India was much more elastic than it is to-day. There is no law at present enabling people of different castes to get married; the Brahma Marriages Act provides that only those who confess that they profess no religion can marry under the Act. Why should people who are professedly religious have to make such a statement? In a series of articles which I wrote many years ago in the "Pioneer" I pointed out the difficulties under which people in the Punjab and in the United Provinces laboured in the absence of a law of the kind, and I was very glad when Dr. Gour introduced this Bill before the Assembly; so far as we in the Punjab and in the United Provinces are concerned, I am quite sure we welcome the Bill and I hope this Council will pass it.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General) : Sir, despite the wholesome and sound advice given by the Honourable Lala Ram Saran Das that the non-Hindus should not meddle with this Bill, I take the liberty of intervening in this debate. My reason for intervening in this debate is that twelve years ago when a similar Bill was introduced in the late Imperial Legislative Council by the Honourable Mr. Bhupendra Nath Basu I gave that Bill my warm support. I am afraid the opposition to this Bill is based not on a correct appreciation of the provisions of this Bill. This Bill as drafted by Dr. Gour, and as far as I am able to understand, proceeds on the lines of least resistance. No measure of this kind could possibly attract universal approbation. Orthodox Hindus and other bigoted people not accustomed.....

THE HONOURABLE THE PRESIDENT : It is not necessary to assume that orthodox Hindus are bigoted people.

THE HONOURABLE SIR MANECKJI DADABHOY : I mean the general bigoted public is liable to misconstrue the provisions of this Act. The Honourable Mr. Lalubhai Samaldas has taken considerable pains to explain the precise position which this Bill would occupy; it is absolutely of a permissive kind, it does not force any Hindu, if he desires, not to avail himself of the provisions of this Act, to resort to this Act. It does not at all detach a Hindu from his Hindu institutions or the laws of Manu or from the Hindu scriptures in any way if he wishes to retain them for his spiritual welfare. There is no breach of the holy laws which my friend, the Honourable Lala Ram Saran Das apprehends will take place under this Bill. Being of a permissive character, a man who is of age and who wants to contract a marriage is at perfect liberty to make his choice or marry in the form that he desires. I say to put any obstruction in the passage of the Bill is incompatible with the existing Hindu civilization and the existing state of affairs. India is rapidly progressing. The High Courts and other Courts have been making rapid inroads on the construction of ancient laws and usages as Dr. Gour explained when introducing the Bill. My friend is again under some misapprehension when he says that a Bill of this character will promote immorality, that it will increase polygamy. If he gives a slight reflection to this matter, he will perceive that it will have the effect, on the other hand, of suppressing polygamy, and not encouraging it. The Hindu law, as it stands at present, gives sanction to polygamy; but a man who marries under this Act will be precluded from making

[Sir Maneckji Dadabhoy.]

another marriage and he would place himself immediately within the pale of the Penal Code and would be liable to be prosecuted for bigamy. So my friend is entirely under a misapprehension as to the scope of this legislation. As this legislation has been framed on the lines of least resistance, as it does not make it obligatory for any man to resort to it, as it is absolutely of a permissive character, I think in the present advanced and progressive times there ought to be no opposition to it. You, gentlemen, the Hindus especially, Members of this Council, are constantly asking for political advancement. Remember that there can be no real political advancement till you set your own house in order and proceed to make a substantial social advance.

The HONOURABLE MR. LALUBHAI SAMALDAS (Bombay : Non-Muhammadan) : Sir, I am very grateful to those of my Honourable friends who have supported me and especially to my friend, the Honourable Sir Maneckji Dadabhoy who made the position very clear, as regards the provisions of this Bill, that marriages under this law shall be monogamous. I think my friend, the Honourable Lala Ram Saran Das, was under some misapprehension ; as regards this point I will for his information read a paragraph from the Select Committee's Report ; it says :—' We are unanimously of opinion that the Bill should be permissive and that marriages under it should be strictly monogamous. But as this is already provided for in the Special Marriage Act of 1872, we do not think any express provision is necessary in the Bill.' So, Sir, the point that morality is in danger is disposed of. Morality would be in danger if this measure is not adopted, because of persons entering into promiscuous marriages of the kind which my Honourable friend, Lala Ram Saran Das, rightly condemned. This Bill will prevent such marriages because it lays down that such marriages shall be monogamous. The question of Hindu religion in danger has always been raised, Sir, whenever any social reform measures are introduced. That was so when the Satti Prevention Bill was introduced in 1872, and this cry was also raised when the Bill to raise the age of consent was passed in the old Legislative Council. Sir, if I honestly thought that my religion was in danger, I would have never touched this Bill, I would have opposed it with all the strength I could, but in supporting it I am convinced that the Hindu religion is not in danger. When people talk of ' religion in danger ', do they realize what religion really means ? Religion in the real sense, in the high sense of the term, means something much higher than mere caste prejudices or caste traditions. If such religion was in danger, I should be the first to oppose it. I can assure my Honourable friend, Lala Ram Saran Das, that the Hindu religion is not in danger. If anything, we are seeking to prevent Hindus from going into other folds and contracting marriages by going out of Hinduism altogether. To prove this, I would cite one instance, a recent instance where a Hindu contracted marriage with a Christian woman. He went to the Padre and said that he was prepared to be a Christian, if it was absolutely necessary for him to become one to marry the girl. The Padre said that he would not take him into the fold of Christianity merely on that ground,—but if he really believed in Christianity, he was prepared to convert him to Christianity. The Padre further said that he had no objection to performing the marriage but that

he would not admit him into the Christian fold. What happened thereafter was this. That man after marriage got tired of this wife and said that as he was a Hindu he had the right to marry again. This shows that my friend, Lala Ram Saran Das was mistaken when he said that polygamy was not now in existence. This man, actually under the influence of his Hindu friends has married a Hindu girl, the result being that the poor Christian girl is thrown on the mercy of the Padre. It is to prevent this kind of thing that we want a Bill of this character. The other objection raised by the Honourable Lala Ram Saran Das was that it will help only a small minority. That statement is correct. But because it is only a minority that is in need of such assistance, are we to sit silent and allow them to go on suffering humiliation under Act III of 1872? May I quote in this connection the eminent author Sir Henry Maine, who said in 1868 :

“ It was not the policy of the Queen's Government in India to refuse the power of marriage to any of Her Majesty's subjects and he doubted whether even orthodox Hindus would wish to deny to the Brahmos a legal privilege fully enjoyed by Sambals and Gonds.”

I do not think my Honourable friend Lala Ram Saran Das wants to class the eminent Hindus, the Brahmos and others, as lower than Sambals and Gonds or wants to deny them a privilege which they ought to have. My friend said that no lawyer has got a right to interfere or make any alteration in the Hindu religious books. My friend Sardar Jogendra Singh asked ‘ which books ? ’ and he said ‘ all.’ If he takes all books, I take him at his word. What about the Manu Smriti ?

Manu the eminent lawyer who laid down the Hindu Law allowed such marriages. I daresay my friend knows about such marriages between Hindus of different castes. (*The Honourable Rai Bahadur Lala Ram Saran Das* : They are things of the past). I am glad that the Honourable Lala Ram Saran Das realizes that alterations have been made even in Manu's Code of Law. If the later law-givers had the right to alter the Manu Smriti, then we have as much right to make alterations in later Scriptures, when Manu allowed marriages amongst different Hindu castes. There were only 4 castes. At the present time there are numbers of castes and sub-castes go up to hundreds. I do not know if that is so in the Punjab, but in Bombay, it is so—taking my own community—I am a Nagar Brahman—I may say that there are six sub-castes among us who not only cannot inter-marry but will not even inter-dine. If we are going to abolish these stupid customs, is there anything wrong in it? The appeal made by Honourable Lala Rama Saran Das that we must wait till times have changed and we all have progressed sufficiently is the nature of the cry that we very often hear from the opposite Benches, ‘ let the time come, let the times improve.’ Whenever we ask for political reforms, members opposite say, ‘ we are in sympathy with you, but let the times change, do not rush us.’ That is what my Honourable friend Lala Ram Saran Das says when we ask for social reform. Wherever the question of vested interests comes in, the men who are in power do not want to lose that power whether it is political power or social power. We want to see that justice is done even to minorities and I hope that this House will unanimously carry this motion.

The HONOURABLE THE PRESIDENT : The question is :

“ That the Bill further to amend the Special Marriage Act, 1872, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

Clauses 1, 2, 3, 4 and 5, the Preamble and the Title were added to the Bill. “

The HONOURABLE MR. LALUBHAI SAMALDAS : Sir, I beg to move that the Bill, as passed by the Legislative Assembly, be passed. I have only one word to say, Sir, and it is that the thanks of the Hindu community in general, and specially of those Hindus who are classed as Brahmos, are due to my Honourable friend Dr. Gour for the way in which he has carried this Bill through the other House and got the support of orthodox Hindus not only like Messrs. Rangachariar and Seshagiri Ayyar but also like my Honourable friend Sir Sivaswamy Aiyer. I hope, Sir, that this motion will be carried.

The HONOURABLE THE PRESIDENT : The question is :

“ That the Bill further to amend the Special Marriage Act, 1872, as passed by the Legislative Assembly, be passed.”

The motion was adopted.

STATEMENT OF GOVERNMENT BUSINESS.

The HONOURABLE THE PRESIDENT : Is the Honourable the Leader of the House in a position to make a statement in regard to the further course of Government business ?

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : Sir, there will be further meetings of this House for official business on Thursday, the 19th and on Tuesday, the 24th July. On Thursday the 19th, a motion will be made for the election of two members of this Council to serve on the Advisory Committee to assist the Publicity Department of the Government of India and motions will be made that the following legislative measures which have recently been passed by the other Chamber be taken into consideration :

A Bill to modify certain provisions of the indenture confirmed by the Moorshedabad Act, 1891.

A Bill further to amend the Code of Civil Procedure, 1908, for certain purposes.

A Bill further to amend the Indian Income-tax Act, 1922, for certain purposes.

A Bill further to amend the Indian Paper Currency Act, 1923.

A Bill to repeal the Acts which provide for a levy of a cess on indigo exported from British India.

The Government have agreed to the following non-official Bills being taken into consideration if time permits after the disposal of the Government business.

The Hindu Inheritance (Removal of Disabilities) Bill.

The Hindu Law of Inheritance (Amendment) Bill.

The Charitable and Religious Trusts (Amendment) Bill.

The Code of Civil Procedure (Amendment) Bill.

On Tuesday the 24th July, it is proposed to set down motions for the consideration of the following Bills :—

The Indian Stamp (Amendment) Bill.

The Code of Criminal Procedure (Second Amendment) Bill.

The Indian Territorial and Auxiliary Forces (Amendment) Bill.

The Indian Army (Amendment) Bill.

The Cutchi Memons (Amendment) Bill.

and it is possible if time permits Government will give time after the disposal of official business for the consideration of any non-official Bills which may have reached that stage. In the event of the official business or the non-official Bills not being completed on Thursday the 19th and Tuesday the 24th, there will be a further sitting on Thursday the 26th.

The HONOURABLE THE PRESIDENT : As the business on the paper is finished, this Council now stands adjourned till Eleven of the Clock on Wednesday, the 18th July 1923.