THE

# The Council of State Debates

# (Official Report)

Volume II, 1928

(11th September to 26th September 1928)

FIFTH SESSION

## of the

# SECOND COUNCIL OF STATE

1928



CALCUTTA : GOVERNMENT OF INDIA OENTRAL PUBLICATION BRANCH 1928

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## COUNCIL OF STATE.

Wednesday, 26th September, 1928.

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

## QUESTIONS AND ANSWERS.

SCHOLARSHIPS FOR TRAINING CANDIDATES FOR THE ARCHAROLOGICAL SER-VICE.

140. THE HONOURABLE MR. MAHENDRA PRASAD: 1. Will Government be pleased to state:

- (a) the circumstances which necessitated the institution of the scholarship system for training candidates for the Archeeological Service ?
- (b) whether this system was abolished in 1923 for reasons of financial stringency ?
- (c) whether the system was revived in 1926? If so, why?

2. Is it a fact that after the revival of the scholarships in question the Government insisted on following a method of inviting and selecting applicants which was different from that proposed by the head of the Archæological Department?

3. If the answer to question 2 be in the affirmative, will Government be pleased to explain its own method?

4. Is it a fact that the selection of Archæological scholars was made about a fortnight before the creation of the Public Service Commission?

5. If the answer to question 4 be in the affirmative, has Government taken any steps to move the Public Service Commission to ratify its selection of scholars ?

6. If the answer to question 5 be in the negative, does Government intend to take any such steps ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH: 1. (a) The system was instituted to increase the supply of young Indians trained in archæological work.

(b) The system was then temporarily suspended.

(c) Yes, for the reason given under (a) above.

2. The Director General of Archæology in India in 1926 proposed that candidates should be selected without reference to a Board of Selection, but Government preferred to adhere to the ordinary procedure.

3. Scholars are selected on the advice of a Selection Board.

4. The precise interval was one month.

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6. No. It is not the function of the Public Service Commission to ratify Government's selection of scholars.

REVISION OF THE LIST OF VOTERS OF THE COUNCIL OF STATE IN THE UNITED PROVINCES.

141. THE HONOURABLE MUNSHI NARAYAN PRASAD ASTHANA: Was the list of voters of the Council of State recently revised in the United Provinces? If so, with what object? Is the election of 1930 to be held on the basis of the lists now prepared?

THE HONOURABLE MB. S. R. DAS: Fresh rolls for the constituencies of the Council of State in the United Provinces were recently prepared under the automatic operation of sub-rule (4) of rule 9 of the Council of State Electoral Rules, which provides that an electoral roll shall continue in force for three years, and that a fresh roll shall be prepared after the expiration of that period.

In the event of a general election being held in 1930, it would, in the absence of a direction under the proviso to the sub-rule in question, be conducted on the rolls recently prepared.

REMODELLING OF THE EAST INDIAN RAILWAY STATION AT ALLAHABAD.

142. THE HONOURABLE MUNSHI NARAYAN PRASAD ASTHANA: (a) Is it contemplated by the Government to remodel the East Indian Railway station at Allahabad? If so, when ?

(b) Has Government received complaints about the want of an intermediate class waiting room at the station, the inadequacy of the third class waiting room and the insanitary situation and character of the urinals?

THE HONOURABLE SIR GEOFFREY CORBETT : (a) The Quinquennial Programme provides for remodelling the Allahabad Yard in 1930-31-32. It is impossible to say yet whether the project will be taken up.

(b) Government have received no complaints to this effect. They are sending a copy of the Honourable Member's question to the Agent, East Indian Railway, in order that he may consider whether the arrangements at Allahabad require improvement.

PAY AND ALLOWANCES OF THE TASK WORK DELIVERY PEONS OF THE HEAD TELEGRAPH OFFICE AT ALLAHABAD.

143. THE HONOURABLE MUNSHI NARAYAN PRASAD ASTHANA: (a) What are the pay and allowances paid to the Task work delivery peons of the Head Telegraph Office at Allahabad and other first class offices ?

(b) Is it a fact that recently the telegraph task work peons of the Allahabad Telegraph Office and some other places have submitted a petition to the Director General of Post Offices detailing their grievances ? If so, what action has been taken upon that petition ?

(c) Does the Government propose to give these peons the same pay and pension as postmen?

(d) Is it a fact that recently the Director General has issued a circular that five telegrams to the same address be counted as one for calculating the task work allowance? If so, why? Is it proposed to withdraw the circular?

THE HONOURABLE MR. A. G. CLOW: (a) If by the term "other 1st class offices" the Honourable Member refers to those offices in the United Provinces Circle that are open for 24 hours, then the answer is that the subsistence allowance of task work peons at Agra and Allahabad is Rs. 8 per month in addition to which the peons earn, in Agra, for each delivery of not more than five messages at the same time to one addressee, 6 pies, and in Allahabad 6 pies if delivery is effected on bicycles supplied by Government and 8 pies if delivery is made on foot. They also get a house-rent allowance of Rs. 2 per month.

(b) Yes. The petitions have been disposed of by explaining the position in respect of the several points referred to.

(c) No.

(d) Yes. Because the time and labour involved in the delivery of a number of messages to one addressee at a time is the same as for the delivery of one message. It is not proposed to withdraw the circular.

Relaxation of the Existing Regulations regarding Passports in India.

144. THE HONOURABLE SIR PHIROZE C. SETHNA : (a) Is it a fact that passport requirements have been relaxed in several countries on the Continen<sup>+</sup>?

(b) Are Government considering a relaxation of the existing regulations regarding passports in India ?

THE HONOURABLE MR. B. J. GLANCY: (a) As far as the Government of India are aware no Continental country has abolished passports. His Majesty's Government have, however, come to an agreement with certain Continental States for the mutual abolition of visas. India shares this privilege in that British subjects and British Indian subjects are allowed to proceed to such States without visas; but no foreigners are allowed to land in India without a British visa.

(b) No, Sir.

Reduction or Abolition of the Customs Duty on Paper and Printing Ink.

145. THE HONOURABLE SIR PHIROZE C. SETHNA: (a) Have Government received any complaint that the printing and publishing trade of the country is penalised on account of the free import of printed matter?

(b) Have Government considered the advisability of the reduction or abolition of customs duty on paper and printing ink ?

THE HONOURABLE SIR GEOFFREY CORBETT: (a) No.

(b) No. I would remind the Honourable Member that the manufacture of paper in India is protected and that the duty on printer's ink was raised in 1926 from  $2\frac{1}{2}$  per cent. to 5 per cent. in order to secure tariff equality to the Indian Industry.

THE HONOURABLE SIR PHIROZE C. SETHNA: Do the Government consider the raising of the duty from 2½ per cent. to 5 per cent. an adequate protection to the Indian manufacturer ?

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THE HONOURABLE THE PRESIDENT : Order, order. The Honourable Member cannot ask the Government for an expression of opinion.

POLICY OF THE RAILWAY BOARD IN THE MATTER OF PURCHASING OF STORES MADE BY THE DIFFERENT RAILWAYS.

146. THE HONOURABLE SIR PHIROZE C. SETHNA: (a) Is it the policy of the Railway Board to secure preference for indigenous goods over imported goods in the purchase of railway requirements ?

(b) If the answer is in the affirmative, will Government be pleased to say what action the Railway Board has taken to enforce this policy in the matter of purchases made by the different railway systems through their own officers ?

THE HONOURABLE SIR GEOFFREY CORBET  $\Gamma$ : (a) Yes, to the extent provided in the Stores Purchase Rules which are binding on State-managed Railways.

(b) I would refer the Honourable Member to the reply given to his question No. 79 on the 17th September 1928 which explains how the Railway Board ensures that these rules are carried out.

## IMPORT OF AUSTRALIAN WHEAT.

147. THE HONOURABLE SIR PHIROZE C. SETHNA: With reference to the reply to my question No. 87 on the 17th instant, will Government be pleased to state whether they have received representations to the effect that the import of Australian wheat was due to a shortage of crops in India and that such importation is prejudicial to the interests of Indian wheatgrowers ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH : Government have received no such representations.

## MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

SECRETARY OF THE COUNCIL: Sir, the following Message has been received from the Legislative Assembly:

"In accordance with Rule 36 (1) of the Indian Legislative Rules I am directed to inform you that the amendment made in the Council of State in the Bill further to amend the Indian Succession Act, 1928, for a certain purpose was taken into consideration by the Legislative Assembly at their meeting held to-day, the 25th September 1928, and that the Assembly have agreed to the amendment."

## HINDU LAW OF INHERITANCE (AMENDMENT) BILL.

THE HONOURABLE SIR SANKARAN NAIR (Madras: Non-Muhammadan): Sir, I beg to move that the Bill to alter the order in which certain heirs of a deceased Hindu male dying intestate are entitled to succeed to his estate, as passed by the Legislative Assembly and as reported by the Select Committee, be taken into consideration.

The alterations made by the Select Committee are not of such a character as to require any further explanation from me. I therefore beg to move. THE HONOURABLE DR. U. RAMA RAU: (Madras: Non-Muhammadan): Sir, I beg to move the amendment that stands in my name, that in the Title of the Bill the word "deceased" be omitted.

THE HONOURABLE THE PRESIDENT: The Honourable Member is somewhat premature; the House has not yet decided to take the Bill into consideration.

The question then is:

"That the Bill to alter the order in which certain heirs of a deceased Hindu dying intestate are entitled to succeed to his estate, as passed by the Legislative Assembly and as reported by the Select Committee, be taken into consideration.

The motion was adopted.

THE HONOURABLE THE PRESIDENT : The question is :

"That clause 2, as reported by the Select Committee, do stand part of the Bill."

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: (West Bengal: Non-Muhammadan): Sir, I beg to move the amendment that stands in my name:

"That in clause 2 between the figure '2' and the words 'A son's daughter' the words 'A pre-deceased son's widow' be inserted."

The reasons which have prompted me to give notice of this amendment had already been discussed in the Council of State on the last occasion when this matter was referred to the Select Committee. This is not a new proposal that is being made in this Council. In 1923, when Mr. Seshagiri Ayyar's Bill was circulated to the different Provincial Heads and the different High Courts for their opinion, many of those authorities pointed out that the relations mentioned in Mr. Ayyar's Bill were not all that ought to be taken into account.

A predeceased son's widow occupies a position in a Hindu family which is somewhat peculiar, because under Hindu law in the case of the husband who dies during the lifetime of his father, the widow is denied all rights in the family property. If the husband had outlived the father and died after the father, then the widow would have come in automatically under the ordinary rules. When we are here considering the cases of the son's daughter, the daughter's daughter, the sister or the sister's son, I think it is only fair and proper that we should also consider the case of a predeceased son's widow in this connection; and in my opinion, and also in the opinion of some other Members, the predeceased sons's widow occupies a position which is superior to any of the relations who are mentioned in clause 2. That is the reason why I have put the predeceased son's widow before all those relations mentioned in clause 2, that is, in the beginning. The widow in a Hindu family occupies a position which is a much more superior position than that occupied in a family under any other system, and the reason is that although she belonged to a different gotra before, as soon as she is married she takes the gotra of the husband and she becomes a sapinda, in the sense that she is of the same body as the husband; and not only that, she is also entitled to receive funeral oblations from the relations of her husband's family, in the same way as if she belonged to the same family. Under these circumstances, I think that a

[Srijut Rama Prasad Mookerjee.] predeceased son's widow ought to be put in in the place where I have placed her.

THE HONOURABLE SIR C. SANKARAN NAIR : Sir, I regret I have to oppose this motion. Honourable Members will mark the radical difference between the position of the son's widow and the other members for whom relief is proposed to be given in this Bill. In this Bill the persons referred to are the son's daughter, the daughter's daughter, sister and sister's son, all of them are blood relations. The widow's position stands on a very different footing. Ι do not say she is not entitled to relief. But what I am pointing out is that the position of those who have come into the family by marriage stands on a very different footing from those who are related by blood to the deceased. This Bill was intended only to assist the blood relations. Now, when the Bill was introduced, there were besides the persons noted in the Bill itself, others also whose names were all struck out. The son's widow was not one of them. My friend stated to the Council that though the son's widow was not in the original proceedings yet there was a considerable body of opinion in favour of the son's widow. I forget the exact words, but I believe that is the substance of his He did not take the trouble to tell the Council what the strength remark. of that opinion was. I have gone through all the opinions received and the opinions are scarcely worth consideration by this Council-Madras, Bengal, Burma, the Central Provinces, Delhi, Ajmer, the North-West Frontier Province, Baluchistan, Coorg, Assam-there was nobody in these provinces who ever considered the case of the son's widow or who ever suggested any relief for her. From Bombay there were two, naturally because in Bombay the widows occupy a high position. In the United Provinces there were two; in the Punjab there was only one who suggested relief to the son's widow and in Bihar and Orissa there were two. That is how matters stand. It is scarcely strong enough to justify any statement that the opinion of all India has been taken on this question. It has not been, and therefore we should not now consider this question. It is premature, and then there are many further questions to be considered if you want to bring in the son's widow. You will have to say whether you propose to give the widow an absolute or a qualified estate. In the Bill itself the words used for the son's daughter, etc., are qualified estate, but there are many instances in Bombay where the widow is given an absolute estate. Accordingly, we will be prejudicing the position of the widow if we make the amendment now in the Bill itself as my friend has suggested. We have proceeded on the footing that while we are giving relief to women and giving them a place in the order of succession, we should not prejudice their rights in any other respect, and therefore when any woman has any rights under the Hindu law according to such law as is administered in any Presidency, we should not take away existing rights, and in that view we have made certain amendments in the Bill. Accordingly without qualifying the statement, we cannot insert the words in the amendment.

Then there are also other difficulties. The widow's position would vary very much so far as marriage is concerned. If she marries according to the custom of the community her rights may be—I do not say it is, there is a difference of legal opinion—but her rights may be different from those of the widow who is married under the Remarriage Act as to forfeiture of rights. All that has to be considered. Then again in Bombay for instance, where the son's widow has a right of succession, the son's widow takes only after the sister and half-sister. Now, in the Bill you find that the predeceased son's widow comes long before the sister and half-sister. We are thus prejudicing the position of the sister who is in the Bill; we are prejudicing the position of the half-sister who has been eliminated from the Bill and who was there before. We should not do that, according to the principle which we have followed in the Select Committee; but whether we are doing it or not, it is a matter which requires fuller and more careful consideration. Then, there is another matter. The son's widow comes only after what we call the *gotrajas* or *sapindas*, that is to say, those who are males and members of the family.

This amendment places the widow before her. So, I say there are all these points to be considered, and there are also further difficulties in principle to be solved. Her case, I admit, is really a hard one. In cases of joint families, where there are lots of people and succession goes to the collateral reversioner, the case of the son's widow is a hard one. On the other hand, it is not a hard case where the families consist of, say, a father and son and his wife. Now, from the opinions received, it will be seen that the agriculturists in the Punjab are not generally in favour of the son's widow's claim. In other parts of the country where the joint family system prevails and where the son's widow is handed over to the collateral reversioner, the position is a strong one. There is also a further point which we have to consider. According to Hindu law, a woman who has been unchaste before the succession opens is not entitled to the property. As the Bill would stand, if my Honourable friend's suggestion is accepted, we may be overriding that position.

There is another matter, Sir, which seems to me to be conclusive in this respect. A Bill is going to be introduced in the other place. I have got a copy of it in my hand, and in that Bill all the rights of the widows are going to be considered. That Bill deals with all these matters more fully than this amendment. That Bill deals with not only the rights of the son's widow, but it deals with the case of all the widows in the family. It also deals with one great principle which we may have also to deal with if we are to recognise the widows. There it is said that a widow shall be entitled immediately on her husband's death to claim partition of the property. That is of course a far higher right than what is attempted to be given here. It is thus a question for consideration how we are to recognise the widow's rights, whether we are to recognise her rights by putting her in the place of her deceased husband at once so as to enable her to claim in the joint family property a share which her thusband would be entitled to if he had to sue for a partition, or whether she is only to succeed after the death of her father-in-law as stated by my Honourable friend, are all matters which require very serious consideration.

For all these reasons I would advise the Council strongly to reject the motion. I say again I suggest its rejection not for want of sympathy, but because there are so many questions to be considered before we can recognise that claim. I do not suggest for a moment that that claim should not be considered, nor do I say that the reasons against her admission are conclusive or strong or preponderating, but at present I am strongly against including the son's widow. In view of the fact that the matter is to be fully considered in the other place, I would strongly advise my Honourable friend to withdraw his

## [Sir C. Sankaran Nair.]

amendment, because if we pass this measure here and it goes to the other place and if they come to an adverse conclusion.....

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : Nominated Non-Official) : Has that Bill been introduced in the other place ?

THE HONOURABLE SIR SANKARAN NAIR: The Bill is to be introduced in the Delhi Session. There was no time to introduce it now.

THE HONOURABLE SIR MANECKJI DADABHOY : Who is the author of it ?

THE HONOURABLE SIR SANKARAN NAIR: The author is Rai Sahib Harbilas Sarda. In view of the fact that a more comprehensive Bill is going to be introduced in the other place shortly, I would strongly advise my Honourable friend to withdraw his motion.

THE HONOURABLE MR. G. S. KHAPARDE (Berar Representative): Sir, this strongly reminds me that the objection which I first took about piece-meal legislation is very sound. My Honourable friend also finds it difficult now to support parts of this because the other parts are left open, and he argues that because those parts are left open we better pass this. That again reminds me of the story of the woman who wanted her neighbour to feed her husband and provide medicine for her own husband. This is exactly like that, and as I say my objection stands on a very firm footing from the very beginning, that piece-meal legislation in matters of inheritance, more especially as complicated as it is in India, particularly among the Hindus, should not be undertaken in this fashion....

THE HONOURABLE SIR SANKARAN NAIR : This does not arise now.

THE HONOURABLE MR. G. S. KHAPARDE : Sir Sankaran Nair in arguing the matter said that the first objection he took was that the present Bill was intended only to provide for what are called blood relations and the son's widow coming into the family was not a blood relation; but she becomes one. I say whether she becomes a blood relation subsequently or after her coming into the family, she is a blood relation, and perhaps she is much nearer than the sister or sister's sons or anybody else, because under the Hindu law she forms part of her husband's body; so that his objection in this matter cannot hold water.

Then another point is, my friend Sir Sankaran Nair is in sympathy with the claims of the son's widow, but he feels a difficulty, and what is it? That difficulty is, whether she is to have a life estate or full ownership, and that she will displace the position which the sister occupies at present. I say all these objections occurred to us before, and therefore we proposed that the whole matter might be comprehensively considered when the other Bill came in. Why should we pass parts of this Bill now and wait for the other parts to be passed in the other House when it comes on ? My own idea is that the whole question should be left over to be considered comprehensively and once for all when the other Bill comes on ; otherwise, by piece-meal legislation you will pass this Bill and leave it to the mercy of the other place, and as my friend said, whether you pass this Bill here or you do not pass it, it comes to the same

thing; it makes no difference whatever, because in the other place they may reject our measure altogether. If they reject it, it will be all right; if they pass it, it will still be all right, because we shall bring in another Bill to do something more. I think no argument is needed to show the futility of this legislation as at present introduced. It is innocuous, whether you pass it or not. Why not therefore reject it here and be done with it ? As I myself think, we have overridden so many principles of the Hindu law in recent legislation, and this measure specially overrides so many other principles, and to introduce the son's widow would only be an act of charity and an act of good-will, and certainly it will not do greater harm than what has already been done by previous legislation. Ŧ therefore support this amendment strongly and it should be passed, so that if the other Bill ever comes before the other House for consideration they may remember that we raised this objection from the very beginning about piecemeal legislation, and the difficulty is felt as to what position to give to the son's widow. That difficulty will be felt when that Bill comprehensively dealing with the widows is taken up for consideration. Why not put all the things together and consider them at the same time? I therefore strongly support this amendment.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN (Punjab : Nominated Non-Official): Sir, as a controversy has arisen over this matter whether the amendment should be accepted or not and as Sir Sankaran Nair wants to reject if, I think we may be called upon to vote, and so I want to explain my attitude as well as that of most of my co-religionists in this matter. This is primarily a Bill which affects our one all-powerful sister community, and I think that community is the best judge to decide whether or how they should oarry this measure. If any decision were taken with our votes, they might say that we have meddled with religious legislation which is entirely their own.

When saying this, the cause which has led us to adopt this course is, that we too at times may have to bring forward such legislation and we want that, when such a time comes, they will also be magnanimous enough to allow us our own way with our own majority of votes. We are afraid, Sir, that, when there has been a certain report at the end of which it is said that every legislation which the overwhelming population of certain provinces, say, the Punjab or Bengal, may pass for their own interests it may be brought to the Central Legislature and may be turned down. Many such subjects are mentioned therein that they should be afterwards decided by the majority in the Central Legislature. We are aware of the fact that always, we, being the minority, will be at the mercy of those who are in the majority in the Central Legislature, and we want to adopt this course that, when the time comes and there is anything that we want to have. they will be just as kind to us and allow us to have our own way.

If I am allowed, Sir, I would also suggest to the Government Benches that, when there is a legislation like this, it really should be allowed to the party concerned to vote and decide it by its own majority.

As the question may be put to the vote, Sir, I thought it proper to stand up and explain this attitude of ours.

THE HONOURABLE MR. NARAYAN PRASAD ASTHANA: (United Provinces Northern: Non-Muhammadan): Sir, the amendment that has been moved has my every sympathy. The son's widow no doubt has got a very

## [Mr. Narayan Prasad Asthana.]

just claim on the estate of the deceased father-in-law and it was in the United Provinces that in the Tenancy legislation her rights were recognised and the son's widow was placed after the widow and the brother. Therefore, the claims of a son's widow are very legitimate. But the question before the Council is this : whether the son's widow should be made an heir in the present legislation. The difficulties that have been pointed out by the Honourable Sir Sankaran Nair are no doubt serious, and I think that we should at present leave out the case of all these persons who come by marriage into the family and take up the case only of those persons who are related by blood. Moreover, the case of the son's widow was never considered by the Legislative Assembly from where this Bill has come. If it had been considered and rejected, or if it had been considered and accepted, then this Council would have been in a much better position to accept or to reject the amendment which has been brought forward. The Bill as it was presented to the Legislative Assembly did not contain any reference to the son's widow and it was passed twice. It came once to the Council but was shelved, and it has now come to us for the second time. In my opinion, therefore, we should be better advised in accepting the Bill and letting it pass as it stands instead of making any innovations in the Bill, so that when it goes to the other House they may not be able to say that we have changed it quite out of their sanction. Moreover, the objection that has been taken by the Honourable Mr. Khaparde as to piece-meal legislation is answered by the question which was put very recently by Sir Hari Singh Gour in the Legislative Assembly when the Honourable Mr. Crerar declared in reply to that question that the Government was not prepared to take up the codification of the Hindu Law. Therefore, it is necessary for us to go on by piece-meal legislation and to make a reform in the Hindu Law in that manner. If my friend, the Honourable Mr. Khaparde, brings in a comprehensive measure of codification of Hindu Law, we will see what we can do.

My friend, the Honourable Colonel Nawab Sir Umar Hayat Khan, has said that the votes of the Muhammadans would be neutral in this matter. I think that where the justice of the case is so obvious, where the matter is one which should be decided by the whole community in India, I do not see why the Muhammadans should be neutral in this matter. As to the officials, we have already been taught the value of the official votes the other day, and I do not think that the officials should be neutral in this matter, because we find that where the question of legislation comes in, it is on the entire body as a whole that the responsibility should rest and not on any one community or another. My opinion, therefore, is that the Muhammadans, as well as the Official Benches, should cast their votes in whichever direction they choose.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I should like to explain, after what the last speaker has said, that the Government propose to take up a neutral attitude with regard to this amendment that has been proposed. The members- of the Government will not vote but the official Members will be free to vote in any manner they think best in regard to this amendment. There is just one other remark I should like to make in regard to this, and that is, I will ask the Honourable Members to bear in mind that the question of the succession of the son's widow has never been circulated and the opinion of the public has not yet been invited as to whether the son's widow should be given the position that the amendment seeks to give.

Since which an amendment has been moved :---

"That at the beginning of the clause the words 'a predeceased son's widow' be inserted."

The question is that those words be there inserted.

The Council divided :

Nawab Mahomed.

Malik Muhammad.

The motion was negatived.

Clow, The Honourable Mr. A. G.

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Maneckji.

## AYES-9.

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Khaparde, The Honourable Mr. G. S.

Mahendra Prasad, The Honourable Mr.

Mookerjee, The Honourable Srijut Rama Prasad.

Ashthana, The Honourable Mr. Narayan

Suhrawardy, The Honourable Mr. Mahmood.

NOES-14. Akbar Khan, The Honourable Major | N

Macmillan, The Honourable Mr. A. M.

Maqbul Husain, The Honourable Khan Bahadur Sheikh.

Nawab Ali Khan, The Honourable Raja.

Sankaran Nair, The Honourable Sir.

Sethna, The Honourable Sir Phiroze. Uberoi, The Honourable Sardar Bahadur Shivdev Singh.

Vernon, The Honourable Mr. H. A. B.

THE HONOURABLE MR. MAHENDRA PRASAD (Bihar and Orissa: Non-Muhammadan): Sir, this Bill is intended to remove sex disqualification. Previously, a son's daughter, daughter's daughter and sister had no place in the line of succession. Now, it is intended that they should be included. It is mentioned here that the sister's son should also be an heir. By introducing the sister's son we are introducing a male and not a female as is intended by this Bill. Moreover, if we introduce the sister's son, there would be a change in the law of succession and the agnates would be shunted off to a lower place. I think that is quite unfair. As the Bill is only to remove sex disqualification, let only the son's daughter, daughter's daughter and sister be included and given a place, but not the sister's son who does come in as a bandhu. In fact, he is one of the persons who has got a right to succeed. Let him occupy the position which he occupied before. Why should he be given this new position as proposed in the Bill? Therefore, I move my amendment that the words "sister's son" be omitted.

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Rama Rau, The Honourable Rao Sahib Dr. U.

Ray Chaudhury, The Honourable Mr. Kumar Sankar.

Sinha, The Honourable Mr. Anugraha Narayan. THE HONOURABLE THE PRESIDENT: I would point out to the Honourable Member that if this amendment is carried into effect clause 2 becomes almost meaningless. The clause would then read "A son's daughter, daughter's daughter, sister, and shall, in the order so specified, be entitled...." Perhaps I can help the Honourable Member to put it right.

The original question was :

"That clause 2, as reported by the Select Committee, do stand part of the Bill."

Since which an amendment has been moved :

"That for the words 'sister, and sister's son' the words 'and sister' be substituted."

THE HONOURABLE SIR SANKARAN NAIR: Sir, my Honourable friend wants the sister's son to go out of the clause. I do not believe that objection was taken by anybody in the Legislative Assembly, nor was any objection taken to the sister's son in the opinions that have been received, except the general opinion with regard to including the son's daughter, daughter's daughter and sister. The reason why the sister's son is brought in, I presume, is because he is the son of a female and does not come in for that reason, and when we remove the disqualification as to the sister we bring in the sister's son in accordance with the principle that after the owner himself his son comes in. There is no reason at this late stage why the sister's son should be given up.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: I would oppose the amendment which has been moved by my Honourable friend Mr. Mahendra Prasad: the sister's son occupies a position under the Dayabhaga in Bengal which is not given to the sister's son in the Mitakshara. I think that of all the relations who are mentioned in clause 2 the sister's son is certainly one who is nearest from the point of view of affection or from the point of view of nearness of relationship and his case ought to be considered. The Honourable Mr. Mahendra Prasad stated that we are only considering the female relations. But if at the time of considering the cases of the female relations we take into consideration a male relation who has been relegated to a very distant place in the Mitakshara we will be simply doing a justice which is due to the sister's son, and I hope that the Honourable Member will not press his amendment.

THE HONOURABLE MR. NARAYAN PRASAD ASTHANA: Sir, I rise to oppose the amendment which has been moved. My grounds are that the daughter's son has been given a very high place in the Mitakshara and I do not see why the father's daughter's son should not have a place in close proximity to the other heirs. It is only an accident that the father's son comes in, otherwise the father's daughter's son, namely, the sister's son would have been heir to the estate of the deceased father. Therefore, my submission is that the sister's son is very nearly related to the deceased and he must be given a place just after the father's daughter.

Sir, I oppose the amendment.

THE HONOURABLE MR. G. S. KHAPARDE : I support the amendment.

THE HONOURABLE, THE PRESIDENT : The original question was :

"That clause 2, as reported by the Select Committee, do stand part of the Bill."

Since which an amendment has been moved :

"That for the words 'sister, and sister's son' the words and 'sister' be substituted."

The question I have to put is that those words be substituted.

The motion was negatived.

THE HONOURABLE THE PRESIDENT: Does the Honourable Member (Mr. Mahendra Prasad) wish to move his amendment for the omission of the proviso ?

THE HONOURABLE MR. MAHENDRA PRASAD : No, Sir.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: In view of the opinion already expressed by the House with regard to the predeceased son's widow, I do not think I should press the amendment\* which stands in my name, because this is certainly a more difficult case than the one which I had moved before.

THE HONOURABLE THE PRESIDENT: Do those remarks of the Honourable Member apply to amendments Nos. 8 and 9 standing in his name on the paper ?

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: Only to No. 8.

THE HONOURABLE THE PRESIDENT: The Honourable Babu Rama Prasad Mookerjee.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : Sir, I move :

"That for the proviso to clause 2 the following be substituted, namely, 'the sister's son shall include an adopted son, provided that such adoption is made by the sister and her husband jointly or by the sister after her husband's death.'"

You will find, Sir, that the Select Committee has made some alteration in the wording of the clause as it stood before. The clause as it stood before was:

"The son includes an adopted son provided that in the case of the adoption to a sister's husband, the adoption has been made with the consent of that sister during her life time"

and now after amendment by the Select Committee it stands :

" provided that a sister's son shall not include a son adopted after the sister's death".

Now, here are these different kinds of adopted sons, that would have to be taken into consideration. A son may be taken in adoption by the sister's husband during the life time of the sister; that adoption may be made either jointly with the sister or separately. If the sister's husband has got more than one wife, then it is open to that husband to take a boy in adoption either jointly with one of the wives concerned or he may take in adoption a boy without making any of the wives a party to the adoption. Now, it has been held by the Courts that if a boy is taken in adoption by a person together with one of the wives, then that adopted son becomes the son of the wife who joins in the adoption. He does not become the son of the wife who does not join; the wife who does not join becomes the step-mother. But in the case

<sup>\*&#</sup>x27; 'That in clause 2 at the end of the first paragraph, after the words 'father's brother' the following words be added, namely: That a father's sister be entitled to rank in the order of succession next after the father's brother."

[Srijut Rama Prasad Mookerjee.]

where the husband takes a boy in adoption without taking any of the wives with him in the ceremony, then that boy becomes the son of all the wives that that person may have. Now this anomaly would arise-that a boy in whose adoption the sister was not consulted, to the adoption of whom the sister was not a party, would become an heir to the paternal family of that sister, although the sister had nothing to do with that adoption. No doubt under Hindu law an adopted son occupies the same position as a natural born son but here we are not considering the case of the rights of an adopted son to the adoptive family but the right to the family of the sister, which is quite a different family. I therefore think that we ought to limit the cases of adopted sons who would be entitled to come in under this clause to only those sons who are taken in adoption during the life time of the sister and with her jointly. The question may arise as to whether a particular boy was taken in adoption with the consent of the sister or not. That would be a question of evidence. That question may come up years after the actual adoption. For that purpose I have worded my amendment in this way that where the son is taken in adoption by the sister and her husband jointly-only those adopted sons would be entitled to come in. I do not think there was any real objection to the inclusion of this amendment in this Bill in the Select Committee provided it could be properly worded by the drafting department. This question was pressed on the Select Committee and it had almost been accepted by the Select Committee, but as there was some objection taken to the wording—the way in which it had been put previously by me when it came up before the Council last week-I have changed it as best as I could. I would certainly accept any other verbal corrections that may be suggested by the Honourable the Law Member. I think I have been able to make myself clear as to the persons who are attempted to be excluded by my amendment and who are not now excluded by the proposal as modified by the Select Committee.

THE HONOURABLE SIR SANKARAN NAIR: This question was fully considered by the Select Committee. The Bill as it stands with reference t<sup>o</sup> adoption marks a departure from the Hindu Law. This amendment is a further departure and we did not feel ourselves justified in departing from the Hindu law to a greater extent than we found absolutely necessary. Therefore I do not support this suggestion of the Honourable Member. I oppose the motion.

THE HONOURABLE THE PRESIDENT: The original question was: "That clause 2, as reported by the Select Committee, do stand part of the Bill." Since which an amendment has been moved :

"That for the proviso to clause 2, the following be substituted, namely :-- 'The sister's son shall include an adopted son, provided that such adoption is made by the sister and her husband jointly or, by the sister after her husband's death.'"

The question is that that amendment be made.

The motion was negatived.

Clause 2, as reported by the Select Committee, was added to the Bill.

THE HONOURABLE THE PRESIDENT : The question is :

"That clause 3 do stand part of the Bill."

THE HONOURABLE MR. S. R. DAS: Sir, I move:

"That in sub-clause (b) of clause 3, for the words beginning with the word 'possessed' and ending with the words 'from a male' the following be substituted :

' possessed by a female in property inherited by her from a male according to the school of Mitakshara law by which the male was governed '. "

This amendment is intended merely to correct an error. The words which I desire to have substituted are the words which were accepted by the Select Committee. Unfortunately, by an error, the Bill, which was signed by the Select Committee and presented to the House the other day, did not embody this amendment which had been agreed to by the Select Committee. I am merely asking that these words. which were accepted by the Select Committee. should be substituted.

The motion was adopted.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: The next amendment in my name is covered by the amendment just adopted.

THE HONOURABLE THE PRESIDENT : The question is :

"That clause 3, as reported by the Select Committee, and as amended, do stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

THE HONOURABLE THE PRESIDENT : The question is :

"That clause 1, as amended by the Select Committee, do stand part of the Bill."

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : Sir, the

amendment that stands in my name is a merely verbal one, namely, that instead of calling this

12 NOON.

Act the Hindu Law of Inheritance (Amendment) Act, 1928, the figure "8" be omitted ; that is, in sub-clause (1) of clause 1 the figure "8" at the end be omitted.

My reason for this amendment is this. This Bill will pass through the Council to-day, and will not be presented to the Assembly before the next year. 1929, so that it would be a misnomer to call it the Hindu Law of Inheritance (Amendment) Act, 1928. I want to omit the figure "8" so that the figure "9" or any other figure may be put in afterwards and passed by the Assembly.

THE HONOURABLE MR. S. R. DAS: I would omit "1928" altogether.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : I have no objection to that.

THE HONOURABLE THE PRESIDENT: The original question was:

"That clause 1, as reported by the Select Committee, do stand part of the Bill."

Since which an amendment has been moved :

"That in sub-clause (1) of clause 1 the date 1928 be omitted."

The question is that that amendment be made.

The motion was adopted.

## THE HONOURABLE MR. MAHENDRA PRASAD : Sir, I move :

"That in sub-clause (2) of clause 1, after the word 'males' the words 'who die after the passing of this Act' be inserted."

When the question of reference of the Bill to Select Committee was being considered, the Honourable Mr. Ramadas Pantulu pointed out certain defects in the Bill, one of which defects was that the Bill sought to give retrospective effect. We have to see what the Select Committee have done in respect of that. No doubt they have removed the words " to which the succession opens after the 31st day of July, 1928", but I am afraid it does not make the position absolutely clear. In the case of a male who died 20 years ago and a female is in possession of the estate, it may be contended that the succession opens after the death of the widow. There might be some doubt as to whether this Bill applies to the case mentioned above. There are certain authorities in favour of the view that the husband lives for purposes of succession till the death of the widow. So, if this amendment is not made, then that will be a fruitful source of litigation as nothing has been stated in any of the clauses to make this point clear; and I therefore think that to make the point clear, it is necessary that this amendment should be made. In fact the Select Committee have accepted the principle already by taking away the words ' to which succession opens, etc.', as I have already said, and I do not think there should be any difficulty in accepting my amendment, which does not want anything more than what they want and what Sir Hari Singh Gour himself wanted, because he himself did not want to give it retrospective effect. All that I want is that it should be given effect to only in cases of property of males who die after it has been passed into law.

THE HONOURABLE MR. S. R. DAS : Sir, I think the Honourable Mover of this amendment is really unnecessarily apprehensive.

THE HONOURABLE MR. MAHENDRA PRASAD: I am not a lawyer; that is the reason.

THE HONOURABLE MR. S. R. DAS: The whole matter was very carefully gone into in Select Committee and the Honourable Member will find that there is absolutely no cause for apprehension at all. As he has pointed out, the words which might have made the Bill retrospective have been taken out, and nothing has been said as to when it is to come into effect, because it is an elementary principle of law, which I think even laymen understand, that an Act does not come into effect till it is passed, and till it is assented to by the Governor General, so that it is only after that that this Bill comes into effect : it cannot affect males who die before the Act comes into effect. It is wholly unnecessary to make the amendment.

THE HONOURABLE SIR SANKARAN NAIR: Sir, I also oppose the amendment. In fact my Honourable friend's speech was full of mistakes. The Bill does not deal with the question of interest at all in any form whatever, and it does not interfere with any vested interests. The Bill as it stood perhaps went a little further, and it was argued that it did interfere with vested interests (though I did not think so), and in order to remove that apprehension those words were removed and the words as they now stand were accordingly inserted. But what really lies behind the motion of my friend is that he wants to give a right to property to certain reversioners who live in the hope that they might outlive the widow and so take the property. That is really what is behind the motion. The words are perfectly clear, and my friend's suggestion cannot for a moment be entertained that those who live in hopes of succeeding to the property of a certain person if they outlive the widow must be compensated; to do so would be against all principles of legislation. I oppose the motion.

The motion was negat ved.

Clause 1, as reported by the Select Committee, and amended by the Council, was added to the Bill.

THE HONOURABLE THE PRESIDENT : The question is :

"That this be the Title and Preamble to the Bill."

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU (Madras : Non-Muhammadan) : Sir, I move :

"That in the Title and Preamble to the Bill the word 'deceased' be omitted."

That is quite unnecessary, Sir, and I move that it may be omitted.

The motion was adopted.

The Title and Preamble, as amended, were added to the Bill.

THE HONOURABLE SIR SANKARAN NAIR: Sir, I move that the Bill, as passed by the Legislative Assembly, and as amended by the Select Committee, and as further amended by this Council, be passed.

The motion was adopted.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH (Leader of the House) : Sir, I have to announce to the House that there is no more work to be placed before it.

THE HONOURABLE THE PRESIDENT : In those circumstances, the Council will now adjourn sine die.

The Council then adjourned sine die.

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