

13th February 1930

THE  
LEGISLATIVE ASSEMBLY DEBATES  
(Official Report)

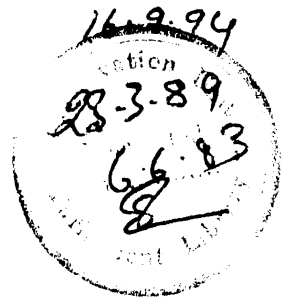
Volume I, 1930

(20th January to 24th February, 1930)

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SIXTH SESSION  
OF THE  
THIRD LEGISLATIVE ASSEMBLY, 1930

~~Chamber suggested~~ 18-X-73



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1930

# **Legislative Assembly.**

## ***President :***

**THE HONOURABLE MR. V. J. PATEL.**

## ***Deputy President :***

**MAULVI MUHAMMAD YAKUB, M.L.A.**

## ***Panel of Chairmen :***

**PANDIT MADAN MOHAN MALAVIYA, M.L.A.**

**MR. M. A. JINNAH, M.L.A.**

**SIR DARCY LINDSAY, KT., C.B.E., M.L.A.**

**SIR ZULFIQAR ALI KHAN, KT., C.S.I., M.L.A.**

## ***Secretary :***

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

## ***Assistant of the Secretary :***

**RAI SAHIB D. DUTT.**

## ***Marshal :***

**CAPTAIN SURAJ SINGH BAHADUR, I.O.M.**

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# LEGISLATIVE ASSEMBLY.

Thursday, 13th February, 1930.

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The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. President in the Chair.

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## MOTION FOR ADJOURNMENT.

### STRIKE ON THE GREAT INDIAN PENINSULA RAILWAY.

**Mr. N. O. Kelkar** (Bombay Central Division: Non-Muhammadan Rural): Sir, I beg to ask for leave to make a motion for an adjournment of the business of the Assembly, for the purpose of discussing a definite matter of urgent public importance, *viz.*, the situation arising out of the general strike on the Great Indian Peninsula Railway by the employees, and the attitude of the Railway Administration towards the strikers.

Sir, the matter referred to in this motion is very definite and very urgent. In fact I have got to mention only the subject of the strike to get the acquiescence of the Government and also an admission that the matter is definite and urgent. I may at once assure Government that I am not moving the motion in any unfriendly spirit. I only want to contribute to peace, if I can, by bringing such a motion before the House and giving an opportunity to Government to make a definite statement of policy with regard to the strike. It may perhaps be said that I might have made a motion some time ago, because it is now nine days since the strike commenced, but in a matter like this it will be admitted easily that the urgency increases with time, and perhaps it would not in fact have been right to move such a motion at an earlier stage. But the thing is now developing with a certain velocity, and in any case Government have got to step in to conciliate the strikers to a certain extent or justify their own action if they wish to do it. In any case a statement from them is necessary and called for. Now, Sir, nine days have passed since the strike commenced. Every day we were expecting that Government would take some action and come forward with certain measures calculated to end the strike in a conciliatory spirit.

**Mr. President:** The Honourable Member is now dealing with the merits of the motion.

**Mr. N. O. Kelkar:** I do not want to deal in any way with the merits of the case, but I want to say that the thing is going on as if it were a trial of strength and therefore the urgency is that we and the public cannot tolerate this any longer and allow the belligerents to indulge in this warlike pastime. I really regret on this occasion the absence of people like Mr. Joshi and Diwan Chaman Lall, who being Union people, connected with the Unions, might have been of some use in the matter.

[Mr. N. C. Kelkar.]

But even we, the independent Members of the Assembly, have got a duty to perform because we represent the public here though we do not represent the Trade Unions. I do not wish to embarrass Government in any way, but I think that as it is now nine days since the strike commenced, they have certainly thought out the action they would like to take to conciliate the strikers or to do at least as much as they can do to bring them round to accept the concessions and reforms that would be granted to them. The losses that are being caused by the strike are enormous to both sides, to Government as well as to the public and the strikers also. In the case of the strikers it is a personal loss and risk. Their demands may be all right or they may be all wrong; some may be right and some may be wrong; that is another matter altogether. But it is due to them to say that they might not have gone on strike in a light-hearted fashion because that involves considerable risk to their future employment. Therefore I say that Government should welcome this opportunity which I wish to afford to them by making this motion. I would only say this, that if they oppose this motion, there is just a chance that they might lay themselves open to some sort of blame or censure in the eyes of the public, because this is a genuine effort to raise a matter of public importance for discussion, and if we could not do even that in this Assembly, then probably the Assembly is useless if we are only to sit here with folded hands and are unable to raise even a point for discussion. I therefore say to Government that they should not oppose this motion and I appeal to the Members of this House also to support my motion.

**The Honourable Sir George Rainy** (Member for Commerce and Railways): Sir, I am not in any way disposed to dispute the public importance of the question which the Honourable Member desires to raise on the motion for adjournment. But I think I am bound to draw attention to the terms of the Standing Order, which require that it must be on a definite matter of urgent public importance. The Honourable Member dealt with the point of urgency and the ground he took was this, that the question would become more urgent with every day that passed. I think, however, Sir, that this is not the manner in which the question of urgency has usually been considered by the Chair in the past, and proposed motions for adjournment have in the past been ruled out of order on the ground that they ought to have been raised at an earlier date. Apart from that, I must draw attention to the terms in which the notice has been given. The definite matter is said to be "the situation arising out of the general strike on the Great Indian Peninsula Railway by the employees and the attitude of the Railway Administration towards the strikers". The urgent matter is a "situation" and an "attitude". I submit, Sir, that this is much too indefinite a notice to bring the question within the procedure of a motion for adjournment. I think it was incumbent on the Honourable Member to put much more clearly and definitely the precise point he wished to raise and to show what its urgency was. It is obvious, I think, that the more indefinite the matter raised is, the more difficult it must be to establish the urgency.

Finally, Mr. President, the Honourable Member said that his object in moving the motion would be to evoke a statement from Government. I quite understand the desire of Members that Government should make some statement on the matter, but I do not think that settles the point

whether a motion for adjournment in these circumstances is the proper method of obtaining it. It would be quite open to the Honourable Member, for instance, to put down a short notice question if all he wanted was a statement from Government, and I submit on these grounds, Sir, that neither definiteness nor urgency has been established so as to bring the matter within the Standing Order.

**Mr. M. S. Aney** (Berar Representative): Sir, I did not think when I came to the House that the eminently reasonable terms in which the motion of my Honourable friend, Mr. Kelkar, was worded (*An Honourable Member*: "Louder please.")—that is the great difficulty for me today particularly because I have been suffering from bad coughing—that the very eminently reasonable terms in which the motion of my Honourable friend, Mr. Kelkar, was worded could have been taken exception to on the ground that they neither disclose any ground of urgency nor even a definite issue as required by the Standing Orders. Now, the terms of the motion mention two facts, one the situation arising out of the general strike by the railway employees on the Great Indian Peninsula Railway. That is certainly a definite matter which everyone of us can easily understand. There has been a strike for nine days and it has caused serious dislocation to the traffic and inconvenience to the travelling public involving danger and risk to life of thousands of passengers travelling by railway. The words "the situation arising out of the general strike" in which something like 50,000 strikers have downed tools are clear. There can be no question of the issue being indefinite and in view of the other matters involved, it is also a question of urgency. Nine days have passed, and every day telegrams are being received that there has been no movement towards the reconciliation of the strikers or that there has been a movement to create difficulties in the way or to try to break the strike by using such powers as the Railway Administration may possess, and so on. These telegrams are being received every day. That indicates an attitude which will surely bring the strikers and the Railway Administration into conflict. On the other hand telegrams received from certain places disclose a very serious state of affairs. It is stated that the strikers insist on their right of being in the quarters allotted to them, while the Railway Administration is asking them to vacate their quarters, that the strikers want to have Satyagraha and other things. Such things we are hearing every day and is it not the duty of the House to consider the whole situation which is disclosed to us by the various telegrams received? They are of a conflicting nature no doubt. They may be exaggerated. "Situation" and "attitude", the two words which are mentioned in the motion itself are sufficient evidence for everybody who has followed what is being published every day to be convinced that the matter is certainly definite and is of a very serious and urgent nature. For these reasons it behoves the Government not to oppose the motion and gag the discussion but to give the House a fair chance of having a discussion and seize the opportunity to explain their conduct and to show what remedies they have got in contemplation to tide over the difficulties.

**Mr. M. E. Jayakar** (Bombay City: Non-Muhammadan Urban): I rise to support the motion moved by my Honourable friend, Mr. Kelkar. The purpose of the Standing Order, to which reference was made by the Honourable the Railway Member, is that the matter which is the subject matter of the adjournment motion should be stated with sufficient definiteness in order that the Government might know which are the points

[Mr. M. R. Jayakar.]

which are going to be raised in the course of the debate. That is the principle of the Standing Order. It does not go beyond that and if the House judges by that test, I do submit that the words of this motion bring it within the principle of that Standing Order. There are two definite matters of urgent importance mentioned in Mr. Kelkar's motion. The first is the situation arising out of the general strike on the Great Indian Peninsula Railway and second, the attitude of the Railway Administration towards the strikers. It is likely that the Honourable the Railway Member with the expert and intimate knowledge he has from the inside of things may possibly think that there are many aspects of the situation which are indefinite. But one has to judge of this from the point of view of a member of the public, from the point of view of those like my Honourable friend Mr. Kelkar, who have to judge the situation from outside as members of the public. All that they know is that the situation created is undesirable and they therefore desire to discuss the attitude of the Railway Administration towards the strikers. Therefore, I submit, Sir, that it has been made absolutely definite, so far as Mr. Kelkar could make it, as to what is the object of this motion and Government have a very clear indication that what we want to raise in the course of the debate is the situation created by the strike and particularly the attitude of the Railway Administration with reference to the strikers. Reference has been made by Mr. Anev to one or two phases of the attitude of the Railway Administration, namely, that outsiders have been admitted, and secondly, that notices have been served on the strikers to vacate the premises in a very short time. These are two or three of the aspects which strike us as members of the public. It may be that the Railway Administration is aware of many more aspects of the situation. But all that I submit is that sufficient notice has been given to the Government as to the points which we want to raise in the course of the debate and I submit, Sir, therefore, it satisfies the tests laid down by the Standing Order.

**Mr. K. C. Neogy** (Dacca Division: Non-Muhammadan Rural): If the contention of my Honourable friend, Sir George Rainy, were allowed to prevail and if it were pushed to its logical conclusion, a very complicated situation would arise. My Honourable friend says that the situation arising out of the strike is not a definite matter at all. Perhaps the Honourable Member would be satisfied if a catalogue of all the elements that go to make up that situation were appended to this motion; for instance, the detention of trains, the late arrival of trains, the ejection of the strikers and the non-appointment of a Conciliation Board under the Trade Disputes Act. Perhaps he expects a catalogue like that to be appended to the motion in explanation of what is meant by the term "situation". Then perhaps the objection would be taken that it is not one definite matter of importance that is contemplated, but there are so many different items of a specific nature which go to make up that particular motion. Now, is it the contention of my Honourable friend that a separate motion of adjournment would be permissible for the purpose of raising each of these different issues which, I submit, are equally important in the public interest and deserve to be raised on the floor of this House? I submit, Sir, that will be the logical consequence of my Honourable friend's contention, and I respectfully request you to overrule his objection in this particular instance.

**Mr. President:** The word "situation" is no doubt indefinite; but in the past this word has been used in connection with a large number of motions

for adjournment of this kind. What is definite in this is "the general strike" and "the attitude of the Government". These two are definite matters and I have not been favoured with any precedent in which a motion of this character has been disallowed on the ground of indefiniteness, although Sir George Rainy in his speech stated that the Chair has in the past not regarded this as a definite matter. On the whole, I consider the motion to be in order and I will ask if any Honourable Member has any objection to the motion.

**The Honourable Sir George Rainy:** I am afraid I must object to leave being granted.

**Mr. President:** In that case those Honourable Members who are in favour of leave being granted will rise in their places.

**Mr. President:** As 25 Members have not stood, the motion falls.

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### STATEMENT OF BUSINESS.

**The Honourable Sir James O'Connell (Leader of the House):** Sir, with your permission, I desire to make a statement as to the probable course of business in the week beginning Monday, the 17th February. As Honourable Members are aware, His Excellency the Governor General has appointed Monday, the 17th, for the presentation of the Railway Budget, Wednesday, the 19th, for the general discussion in this House of the Railway Budget and Friday, the 21st, and Saturday, the 22nd, for the voting on Railway Demands. In addition to these days, there will be meetings for Government business on Tuesday, the 18th, and Thursday, the 20th. On Tuesday, the 18th, the following business will be brought before the House:

- (1) Motion for leave to introduce a Bill further to amend the Indian Income-tax Act, 1922, for a certain purpose.
- (2) Motion for leave to introduce a Bill to amend the law relating to Insolvency for certain purposes.
- (3) A motion inviting the House to proceed to elect two Members to sit on the governing body of the Indian Research Fund Association.
- (4) A motion inviting the House to elect Members to the Standing Finance Committee for Railways.
- (5) A motion inviting the House to elect Members to the Central Advisory Council for Railways.

Thereafter the House will proceed to the discussion of the Supplementary Grants under the General Budget excluding Railways. On Thursday, the 20th February, unfinished business of Tuesday, the 18th will be placed first on the list. Thereafter motions will be made to refer to Select Committees the following Bills:

- (1) The Indian Lac Cess Bill.
- (2) The Indian Tariff (Amendment) Bill.
- (3) The Steel Industry (Protection) Bill.

[Sir James Crerar.]

Motions will also be made to take into consideration, and if those motions are accepted, to pass the following Bills:

- (1) The Bill further to amend the Indian Income-tax Act, 1922, for certain purposes (Amendment of sections 14, 25A, etc.).
- (2) The Cantonment House-Accommodation (Amendment) Bill.
- (3) The Indian Railway (Amendment) Bill.
- (4) The Indian Companies (Amendment) Bill.

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### THE HINDU GAINS OF LEARNING BILL.

**Mr. M. B. Jayakar** (Bombay City: Non-Muhammadian Urban): Sir, I beg to move: "That the Bill to declare gains of learning by a Hindu to be his separate property, be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable the Home Member, Munshi Iswar Saran, Mr. N. C. Kelkar, Mr. K. C. Neogy, Rai Sahib Harbilas Sarda, Sir Purshotamdas Thakurdas and the Mover, and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be four".

The Bill before the House is nothing very new in principle. It is a repetition of a measure which was introduced and passed in the Madras Legislative Council nearly forty years ago. It was then introduced by a very distinguished member of the legal profession, the late Sir V. Bhashyam Iyengar, and had received a certain amount of public support. Later on Government discovered that there were certain objections to that Bill and that public sentiment was not ripe for its acceptance. On that ground mainly the Bill was scotched. That was forty years ago, and I submit that public sentiment in this matter has progressed during the forty years, so that it cannot be said now that this Bill is in advance of public sentiment. Stating the principle quite briefly—and I am purposely getting rid of all technical legal language—I may say that the Bill applies to Hindu joint families and its effect will be that the earnings of members of a Hindu joint family which are the result of any special education received while they are members of the joint family and which are now regarded as earnings of the joint family will be regarded as the earnings of the member who makes them.

My principal object in introducing this measure is this that I intend it to be one of those remedial measures which I have in view, the object of which is to improve the status and general condition of the dependent female members of a joint Hindu family. This is the main object of my measure, and, if passed, it will mean that, if a member of a joint Hindu family dies leaving his own acquisitions, they will pass to his own heirs, his widow or daughter. Supposing he was a member of the Bar or in Government service, or worked in some such capacity, and he earned money with the aid of his own intellect, with the aid of his own brains, and supposing he dies leaving a widow or a daughter—not a male child—

then under the present law, his widow and daughter get only very meagre and limited rights, namely, the widow gets maintenance and residence, the daughter only gets a provision for her marriage, if she be unmarried at his death. But the entire bulk of his property passes to other members of the joint family. I submit, Sir, from my knowledge of the working of this rule of the Hindu law that it is an extremely unjust principle, especially so, in modern days when the disintegration of the family is taking place very rapidly, and new methods of making acquisitions are now coming into vogue. This law might at one time have been sound when individual enterprise and new methods of making acquisitions were unknown to society. But with the growth of individualism and new methods of making acquisitions, I submit, Sir, the time has arrived when the women of the family, namely, the widow and the daughter of the acquirer should be particularly protected.

The second reason why I am anxious that this measure should go through is—and all lawyers will appreciate my point of view—that the present law causes considerable uncertainty and consequent litigation. I shall just explain to the House how this is caused. The old law was absolutely clear. I do not wish to weary the House by going into ancient rules, but the old Hindu law was perfectly clear. Again I do not wish to confuse matters by quoting authorities; they are mentioned in my Statement of Objects and Reasons. I say that the old law was perfectly clear, namely, that a man's earnings made by his learning while a member of a joint family, all that he earned with the aid of his own brain and intellectual powers was regarded as his personal property. I have given references in my Statement of Objects and Reasons to Sanskrit writers like Manu and others. That was the old law with the one exception of a *rishi* called Katyayana. All these lawgivers in ancient times combined to lay considerable premium upon the power of initiative and declared that all that a member earned by his own intellectual powers should be regarded as his own self-acquisition which passed to his widow and to his daughter. Then came the intermediate stage with which we are concerned,—the stage of adjudication by British Indian Courts, the result of which has been to confuse the law. The law as it stands now—Honourable Members will be surprised if I state the law as it stands—is that if a member of a joint family—whom I shall in the course of my speech call a "co-parcener"—if a co-parcener earns something which is the result of his *general* education as against *special* education, though given at the expense of the family, it is his self-acquired property; but all that he earns as a result of his special education, whatever that term may mean, which qualifies him for a profession or an avenue of employment in life, becomes joint family property, if the expenses of that education are borne by the joint family. But this rule is even carried further and is extended to cases where for instance a co-parcener was living in England for education and during his stay there his wife and children in India were maintained by one of the members of the joint family out of his own funds and not out of the joint family funds. Even in such cases, when he returns from England and earns, all that he earns becomes the earning of the joint Hindu family. To clarify the unreasonableness of the present law, I shall give one characteristic illustration. If Honourable Members will turn to my Statement of Objects and Reasons, they will find it on page 2, and I do invite the attention of the House to the

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characteristic injustice of that illustration which is still the law. I am referring to paragraph 11 of my Statement of Objects and Reasons, I had better read it to the House :

"Likewise, the present rule is not favourable to the growth of self-reliance among the dependent members of the family. In a rich family, it offers a premium to extravagance, idleness and perpetual discord. Its injustice is manifestly galling . . . "

Now comes the illustration. Non-lawyer Members of this House will be surprised to learn that such is the law :

"Take e.g., the case in which a father has three sons and incurs the same expenditure on their education. He sends them all to England to be educated for the Indian Civil Service. One is successful, the other two fail. Of the two who fail, one takes to trade and the other is unwilling to do any work and remains idle. The trader earns a large fortune, which the present law allows him to keep to himself, because his education in England was for the Civil Service and not for trade. But, out of the earnings of the Civilian, two shares are claimed, one by the trader and the other by the brother who has been idle. The trader keeps his own earnings and also takes a share of the civilian's earnings."

That is the state of the law at present, the principle being that the huge fortune which the trader earned after being educated in England was earned in trade for which avocation he was not educated in England. His education in England was for the Indian Civil Service. Therefore the trader keeps his own earnings and wants a share of the earnings of the Indian Civil Service man who was equally with him educated in England. That is the present law. It may seem surprising to non-lawyers, but it is so; and the result of that is that there is a great uncertainty in joint Hindu families; nobody knows what is going to be the result of his earnings; after a member earns money up to the last moment of his life, he does not know what law is going to apply in his case, whether after his death, his widow or daughter may get the money or his co-parcener. The result of such uncertainty is that an amount of subterfuge is practised. It is naturally the co-parcener's desire that his earnings should be shared primarily by his widow and daughter and not by distant co-parceners, and therefore he takes to subterfuges and invests the money in the name of somebody else; *benami* transactions take place, and the money which would otherwise have been invested in open and easily convertible channel is put in concealed investments making detection and conversion very difficult. I need not here refer to the embitterment which is caused in the family by this state of the law; those who are members of joint Hindu families or who, in the course of their practice have had to advise Hindu joint families, will bear me out when I say that a perpetual sense of irritation is kept up which often finds its way into the courts. I do not want to exaggerate, but I am clear in my mind that if the cause-lists of the various High Courts are carefully scrutinised, it will be found that at least 15 to 20 per cent.—and the Honourable the Law Member will vouch for the accuracy of this figure—of the cases which relate to joint Hindu families spring out of this uncertainty and unreasonableness of the law. Therefore at present there is considerable need of making the law clear and rational.

I have so far explained to the House the distinction between general education and special education. Another distinction is made by present adjudication, *vis.*, ordinary gains and extraordinary gains of such education,



ordinary or special. So we get four cross divisions, and between them nobody feels certain in Hindu families as to what particular category his own earnings may fall under, after his death. To give one illustration, out of many: If a co-parcener becomes a B.A. at the expense of the family, it is general education. Therefore if he stops there and makes money as a B.A., it is regarded as the ordinary gains of ordinary education and therefore it belongs to him; but if he should be so badly advised—and people do not always go to good lawyers—as to proceed to become an LL.B., which is the next stage after the B.A., that is special education; and all that he earns as a lawyer as a result of his LL.B. degree, becomes joint family property. I have merely to state this proposition to make clear the absurdity and the uncertainty of the present law. If he earns as a B.A., it is not joint family property; if he goes one step further and becomes an LL.B., it becomes joint family property. I can go on multiplying these instances which arise out of the present law. The result is a considerable amount of bitter and wasteful litigation in courts. I can give at least a dozen instances of my own knowledge where a small estate was wasted by the employment of counsel and attorneys, in the city of Bombay and of vakils in the mufassil.

My Bill, Sir, is not intended mainly as a progressive social reform measure, as some critics may describe it; this is a most elementary measure necessitated by two main considerations, namely, the improvement of the status of women in the family and putting a stop to the uncertain and unreasonable nature of the present law and thereby saving the wealth of poor Hindu families.

Now, Sir, let us take another uncertainty that is contained in the word "general education". It is a very indefinite word. What may be general ordinary education in one family may not be so in another. What may be general ordinary education in one class of society may not be so in another. What may be so in one province may not be so in another. The result is that an amount of evidence has to be led to show the character of the education which is the subject matter of the dispute in court, having regard to the status of the family, the community of the parties and all other surrounding circumstances. Honourable Members can imagine the amount of money which is generally wasted in such bitter inquiries, and the consequent harassment. Therefore my submission is that the time has come when all this uncertainty should be removed; and if this measure is passed, as I hope it will be before long, it will certainly have a very good effect in quieting the litigation which takes place now. A co-parcener will know exactly what will happen to his fortune. If Honourable Members turn to the provisions of my Bill, they will see that I have tried to remove this uncertainty in clause 2, where I say:

"(a) the expression 'learning' shall mean education, whether elementary, liberal, technical, special or scientific, and training of every kind, which is usually intended to enable a person to pursue any trade, industry, profession or avocation in life;

(b) the expression 'gains of learning' shall mean all acquisitions of property made substantially by means of learning, whether such acquisitions be made before or after the commencement of this Act and whether such acquisitions be the ordinary or the extraordinary result of such learning;"

All these wasteful inquiries will not have to be made.

I should like to mention one more circumstance before I sit down. All this harassing litigation generally takes place after the earning member

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is dead. During his lifetime his co-parceners have not the courage to fight him. They live together; but they do not raise the question that it is not the self-acquisition of the deceased; they wait until he dies. Very often he lives for a long time; very often after his death the inquiry does not take place until at the end of the period of limitation which in certain cases of immoveable property may be 12 years. The inquiry generally takes place with the widow or daughter on the one side and all the family on the other. The Honourable Members can imagine what an uneven fight this often is. The evidence is gone, account books long lost, the acquirer himself not present to say how the money was acquired; all these things together with the fact that the onus is on the unprotected woman to prove that it is the self-acquired property of her husband or father—it is a most unequal fight for the poor woman. The result is that a lot of money is wasted; and in 90 out of 100 of these inquiries, they terminate in the defeat of the widow or the daughter, because it is a very big handicap under which she labours. The case goes before a Commissioner in the case of a High Court; the Commissioner calls for accounts; no accounts are forthcoming; the acquirer is dead; he cannot come back to life and give evidence as to how he acquired the money. Perhaps his education was acquired fifty years back, of which no records are kept; it is not known where the money came from—whether the money came from the joint family property or whether it was the property of a particular member of the family—all these questions are absolutely impossible to determine at the stage when they arise; no record of them is kept, with the result that very often the doctrine prevails for sheer want of evidence that what is not proved to the contrary is joint family property.

The result is,—and I have seen many cases,—that destitute widows, destitute daughters of the acquirer have been thrown into the streets with a bare maintenance or residence, all his huge earnings, sometimes amounting to lakhs of rupees, going into the hands of the drones of the family, I mean the non-earning co-parceners. I think, Sir, the time has come when this should be stopped. I am one of those who believe that, within proper limits, full advantage should be taken of the powers of this House to legislate for evils which are troubling the society. I say, within proper limits, and the limits are that any thing which is an urgent need of society ought to be redressed. On that principle, and with abundant faith in the wisdom of this House in allowing this measure to go through, I move the motion that stands in my name.

**Mr. N. C. Kelkar** (Bombay Central Division: Non-Muhammadan Rural): Sir, I rise to support the principle of the Bill which has been introduced by my friend, Mr. Jayakar. As a practical lawyer, he has already dealt with the difficulties of the problem which come to his notice in law courts and in practical life, but I am going to speak on this Bill only from a general and theoretical point of view, because I am not a legal practitioner and do not know the practical legal difficulties arising out of the problem. Mr. Jayakar has defended himself against the charge that he is helping wilfully the disintegration of the joint Hindu family system. I also wish to say that that charge cannot be very well brought against him, namely, the charge of wilfully disintegrating the Hindu joint family system; for it is not Mr. Jayakar who is responsible for this, but the genius of the Hindu society

itself in its present condition which is responsible. It is the new civilisation that is responsible for this partial disintegration. Then it is the new forces of economic conditions and new ideals of individual rights and liabilities. All these are in their turn responsible for the breaking up of the joint Hindu family system, howsoever we may want it. It was quite different in olden times. Then the family lived huddled up in one and the same locality; it lived upon limited economic resources, and there was no elbow room for professional or industrial development. In all those respects times have changed. In point of the distribution of wealth, the centre of gravity has now shifted from the family to the individual as a unit.

Now, it may be said that that is making for the development of selfishness in the society, but I think it is not so. Though the family is so breaking up, it is not exactly as if each one is now trying to live for himself alone. For, if you compare the charities and public subscriptions of olden times with those of the present times, you will find that, though there has been to a certain extent a disintegration of the family system, individual Hindus have not been living all for themselves but greatly contributing to public charities and giving public subscriptions, etc. The old Hindu family, if I may say so, was a sort of monarchical form of Government. Call it constitutional or call it unconstitutional but it was monarchical all the same. The head of the family, the father, the *pater familias*, enjoyed all sorts of power within the family, and in this respect he might be compared to the father in Roman Law. The head of the family governed the family society and treated his own sons as if they were practically slaves, so that they had to be liberated and released and made freemen by a kind of ceremony. I do not exactly know the word, but there was a kind of ceremony by which the sons had to be emancipated from their bondage and made freemen. At that time even the Hindu joint family system remained in the same condition, but things have been changing. I will just cite one or two things to show how things have been developing, and it is not now for the first time that we are thinking of enlarging the scope of individual male and female members of the family. Manu is the oldest of our law givers. In his time this was the text.

“*Bharya putrasah darsaha trayo vai adhanah smritah.*”

In his time the text was, the wife, son and the slave were not entitled to any property rights. That was about two thousand years ago, but things have changed evidently. Coming after him, Yajnavalkya says:

“*Tatra syat sadrisham swamyam pituh putrasya chaiv hi.*”

At this later stage we come to a stage of life when the son becomes entitled along with the father to a share in the family property. That way things are moving. If you go to Dayabhaga, there also you will find a more liberal spirit than in the case of the Mitakshara. Now, the point is that from that stage of benevolent despotism in the family, we are now coming to a disintegrated kind of Hindu family in which the rights and liabilities are differentiated as it were. Individual life is now being more accentuated, it is being more specialised and cut up into facets, and aspects, by reason of the growth of individual tastes and the growth also of the means of gratification. Diversity of professions and occupations has now come, and the old caste system based on the pursuit of the same hereditary

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occupations from generation to generation is now being broken. Therefore, now we have come to a stage when co-parcenary may be good, but compulsory co-parcenary is certainly an evil; but on the other hand, conscious and willing co-operation may be good, and as I have said, even when the family is broken up, it is not as if members of Hindu families do not wish to co-operate with one another. The same sentiment of family affection remains, the same care and anxiety for the welfare of the younger generation or the younger members of the family and of the women of the family remains, though of course there is more latitude for the elaboration of individual rights and liabilities.

In this matter I may perhaps illustrate the point by just parodying to a certain extent the words of the Government of India Act. In the Preamble there, we have been told that we are to get a progressive realisation of responsibility in political matters. Now, the same thing is happening in the realm of the Hindu law, because here we are getting a progressive realisation of individual responsibility in family life. I may also illustrate the same thing by taking an analogy from history. Most of you have read perhaps of that famous ship in Grecian history, the ship in which Theseus returned as a victor after his victory over Crete. This ship was naturally looked upon as an object of national pride. In course of time it also became a historical relic and therefore a thing to be preserved by all efforts and endeavours. I do not know whether it was put in a dry dock or a wet dock, but in whichever dock it was, the devastating effects of time began to take their toll from the body of the ship, and what happened was that plank after plank began to get loose from the frame work of the ship and to be destroyed. But the ship was not to be left in that dilapidated condition. Anxious minds and skilful hands came to the rescue, and as soon as each plank was removed from the ship, another was neatly put into its place, so that again the ship became as whole as it was. I take this analogy for illustrating what is practically happening to Hindu society now and the interpretation of our Hindu Shastras. Even supposing we are standing on the same sure ground of Hindu law, yet bit by bit, step by step, stage by stage, we are drifting away from it to a certain extent. All this naturally is the work, not only of time, but also of our own endeavour, our own intellect and our own progressive sentiments. There is also the same good will that there was before for maintaining the integrity of the the joint family life, but law has been finding it very difficult to maintain the exact stand that was taken before, and in that respect I may just say that what is happening now to the law-giver, whether commentator or judicial arbitrator or adjudicator, is practically what happens to a man who is enjoying the game in a skating rink,—whether the man is skating in a rink or on ice. He is determined to stand firm and dig the heel of his boot firmly into the ice or the rink floor. But he cannot escape sliding. He must slide, but he will only slide gracefully if he can. In that way the law courts are now dealing with Hindu law. They have been trying to keep the balance, but they are losing the balance in a number of cases. Now, what Mr. Jayakar does is not wilfully to destroy the joint family life, but as he has said in the Statement of Objects and Reasons, practically to restore or revive the old law. He is only cutting out the forest of doubt and conflict arising out of the vagaries of commentators and modern law-givers in the judicial courts.

Now, to show what the old law was, I will just refer to one or two texts and leave it to the House to judge whether the old law was not really what Mr. Jayakar wants it to be. I am giving you two quotations from Yajñavalkya. They are in Sanskrit and the House will bear with me if I quote them in the original :

*"Pitruḍṛavya virodhena yadmyatwayamarjitam,  
Maitramoudvahikam chaiv dayalanāna na tatbhavet,  
Kramadabhyagatam dravyam kṛitamabhyuttaret tu yaḥ,  
Dayadebhyo na tat dadyat vidyaya labdhamevacha".*

It explains what you can enjoy yourself and what you cannot, that is to say, what you should enjoy in partnership and jointly with other people. First of all, that which is self-acquired, subject to this condition that it should not have caused detriment to the paternal property or estate. But there it ends. I have translated the first line. My contention is that there it ends. The next is an illustration of the property which a man has a right to enjoy by himself without a claim to it by any other man. They are the gifts you receive from friends, and the dowries you receive on the occasion of your marriage. These are not to be given to *dayadars*, that is relations, and they are not subject to partition. That is complete in itself. Then the next is :

"If something has come in a particular manner from old times to you as your own, then you can enjoy it yourself; and then if you have restored certain things by your own efforts, that also belongs to you and cannot be claimed by other people."

Then the last but not the least is this :

*"Dayadebhyo na tat dadyat vidyaya labdhamevacha."*

Whatever is earned by a man by his *vidya* is his own property and cannot be claimed by his relatives. Now the commentators enjoy their own vagaries like Judges of High Courts and Privy Councillors. All these have contributed to put the Hindu law out of shape and the Hindu law is not what it is or what it ought to be, simply because these commentators, along with judicial courts, have introduced the results of their vagaries into the interpretation of the law. Here is a case in point in which the commentators have played tricks with the original texts. What I read to you are two different and separate slokas and things are mentioned separately, but the commentators took it into their head to take the word *Pitru ḍṛavya virodhena* (that is, subject to the limitation that it should not be produced by any detriment to the family property), and made it govern everything else. Now, the question naturally arises—how is it proper to do so? Now, take *maitram*. What is the propriety of saying that gifts of relatives and friends should not be by way of detriment to the ancestral property? There is no meaning in saying that. The same thing applies to *oudvahikam*, gifts received in marriage by way of dowry. How can you say that dowry should not be by way of detriment to the ancestral property? A dowry is a thing which comes by itself, certainly without detriment to the ancestral property.

Then there is another point. If you restore the property already destroyed, that becomes your own because you have done something for it and therefore you are entitled to the fullest enjoyment of that restored property. Here also you cannot say that it is governed by the limitation that it should not be detrimental to the value of the parental property. But the clearest thing is *vidyaya labdhamevacha*.

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If anything is got by learning, a thing put in the text separately by itself, then this limitation does not operate. *Maitramoudvahikam* says Yajnavalkya and *Maitramoudvahikam chait madhuparik mevacha* says Manu. You will see practically the same thing common to both Yajnavalkya and Manu. They are speaking definitely of the same subject, but Manu makes it quite clear. And there is *Pitrubhyan yasya yaddattam tat tasyaiva dhanam bhavet*—whatever is acquired by learning, it must be left to himself and not to others.

Then there are also texts saying that if special gifts are made by the father to the son, they will also become a separate and special property, even if it is given by the father out of his own estate. It is a special gift, namely, the *vidya*, which is a special gift made to a particular son. Therefore, *vidya* as well as the accretions or the earnings of property arising out of the *vidya* must belong to himself separately. So, in my opinion there is absolutely no doubt that what Mr. Jayakar is attempting by this Bill is not to spoil the law or wilfully to help the disintegration of the family property, but to restore and revive the oldest law, and free it from, of course, the havoc that has been caused to it by the intervening commentators and the judicial law courts.

Now, with regard to the vagaries of the judicial courts, I would just give you a few illustrations. I am not a practising lawyer myself, but I can give you certain instances about this and I think you will find them rather interesting. Mr. Jayakar has already told you how case law differs and how equity in this matter varies with the whim of the translator. Every interpretation varies according to the whim or the vagary of the particular light in which a judicial officer looks at the matter. For instance, Mr. Jayakar has already told you that views differ as to what is general education and what is special education, and there is a very thin line, if there is a line at all, between the domains of general education and special education. It is very difficult to distinguish between special and general education. Special education as well as general education merely depends upon the condition of the society or the condition of the family in the particular case. Now, there are decisions which say that education given up to the B. A. standard is general, but if a boy only matriculates and does not take up the college course but goes to law and becomes an advocate or a pleader, then that becomes his special learning. Mr. Jayakar has already mentioned the difference in the interpretation of what special education is in the case of a man who goes in for the Indian Civil Service and the other who takes to the trade of his father. There, the interpretation is not the same. The last curious instance that I will mention to you is that in *Chalakonda vs. Ratnachalam*, in 2 Madras, in which the question was whether the gains of the girl were from special learning and accomplishments, and whether her mother, who educated her and trained her, was also entitled to them along with her and had a right to that property. Now, the court decided that, as she was only a dancing and singing girl, it was an earning in which the mother had a share. And on that point the commentator, Mr. Maine, who has written a very useful treatise on Hindu Law, humorously deals with the subject and says that if the woman, instead of being merely a dancing and singing girl, had actually taken up the profession of a prostitute and a concubine, then perhaps it might have been her special earning and not a general kind of earning to which the mother was entitled.

Now, I have given these illustrations only to show to the House how vagaries have been creeping in in the interpretation of the law as it stands, and therefore I think that Mr. Jayakar is doing a great service by this Bill because it seeks to cut up the forest of doubt and hesitancy. Sometimes the judges hesitate to give their decisions and are simply carried away by the impulse of the moment without necessarily following any definite rules of interpretation.

For these reasons, I think Mr. Jayakar's Bill should commend itself to this House and that it should be sent to the Select Committee. In my opinion, however, some amendments to the Bill may be necessary which may be carried out in the Select Committee. For instance, I think that, though the law should be as is stated in Mr. Jayakar's Bill, a provision might be inserted enabling the father to enter into a sort of contract or agreement with the son whom he is giving special education, so that he might be able to get back a share in the property arising out of that special learning. The point is this. Sometimes parents are enterprising. They find that the boy is intelligent and is also enterprising. They therefore take a large share out of the property in hand and invest it upon the boy. Now it cuts both ways. If it is inequitable, on the one hand, for the distant relations to claim a share in this man's self-acquired property, it is also inequitable on the other hand that this boy, who has been educated with the family property, should enjoy the whole gain obtained by him without taking any care of his younger brothers or other relations. Therefore, it may occur to a thoughtful father to make a contract or an agreement with the son, and I think that agreement or contract should be treated as valid in a Bill of this kind. The son should not have the power by reason of this Bill to say to the father: "You cannot even make that agreement with me, or if you make that agreement, it will be ineffectual". The father ought not to be prevented from entering into such an agreement, and if that is done, I think the equities of both sides would be properly met. This is only one illustration of a possible amendment that might be made in the wording of the Bill. Apart from this, I heartily support the principle of the Bill and say that it should be sent to the Select Committee.

**Khan Bahadur Sarfaraz Hussain Khan** (Patna and Chota Nagpur *cum* Orissa: Muhammadan): Sir, I rise to give my whole-hearted support to the motion made by my Honourable friend Mr. Jayakar. Though, unfortunately the Hindus and Muhammadans are not united at the present time in the country, yet I wish to give the whole House to understand that, so far as social rights and the social progress of my countrymen, the Hindus, are concerned, I am as much sympathetic to them as any one else. I do not want to give my silent vote in favour of the motion, but I want to give my vocal vote, so that the whole House might understand that, so far as the social rights and the social progress of the two wings of the Indian community are concerned, they are at one, and that the Muhammadans have real sympathy with the Hindus in this matter.

**Mr. M. K. Acharya** (South Arcot *cum* Chingleput: Non-Muhammadan Rural): Sir, to the eloquent peroration of my Honourable friend, Mr. Jayakar, I may assure you, that I listened with great sympathy. But my old, orthodox and uncivilised brain always thought that Saraswati and Lakshmi very rarely lived together. Men of learning very rarely become laden with wealth, as my Honourable friend Mr. Jayakar is. My first difficulty is to ascertain in what measures the two opposites meet together,

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namely learning and the gains got therefrom. My second difficulty is this. As my Honourable friend, Mr. Jayakar, has admitted, some 85 or 40 years ago a greater lawyer, perhaps at least in his days, than even Mr. Jayakar, the late Sir V. Bhashyam, who later on became an ornament of the Bench of the High Court of Madras, brought forward a Bill of this kind. Doubtless in view of all the old and new and intermediate anomalies to which my Honourable friend, Mr. Kelkar, has referred and which we have had at the hands of lawyers and judges—I am not a great admirer of them . . . .

**An Honourable Member:** Oh! you are.

**Mr. M. K. Acharya:** No, I am not. However, in view of all that, when that great lawyer brought forward his Bill, the Bill was almost passed into law by the Madras Legislative Council. But in those days public feeling was so very strong against that Bill—that is 40 years ago—that the Governor did not give his assent to that Bill being passed into law. Now my difficulty is this, whether during the past 40 years, in spite of the great advances we have been making, in spite of the fact that there are great heroes and heroines who are emerging from Ahmedabad and Allahabad and many other places beginning with “A” and ending with “bad”, who think they are forming the public opinion of this country and who may be much enamoured of Mr. Jayakar’s Bill, in spite of all these considerations, Sir, I doubt if real public opinion wants this Bill badly. However I do not want to disappoint my Honourable friend, Mr. Jayakar, who has made such big appeals. I dare say that, later on, if public feeling is very strongly against it, my Honourable friend, Mr. Jayakar, who is always so anxious to keep the law in touch with public opinion and who I am sure will be here in another Assembly, will be the first to bring forward a measure to amend or modify his Act. I therefore do not propose to move the amendment\* which stands in my name, but shall support the motion of Mr. Jayakar for referring the Bill to the Select Committee. I hope the Select Committee in which my Honourable friend, Mr. Kelkar, is going to be a Member will make valuable suggestions and will most carefully consider the Bill and give no room for the outside public to quarrel over the good intentions which my Honourable friend, Mr. Jayakar, has in view; and I should certainly be very happy in helping Mr. Jayakar to immortalise himself with an Act of his own to his credit.

**Rai Sahib Harbilas Sarda** (Ajmer-Merwara: General): Sir, I rise to give my whole-hearted support to the motion made by my Honourable friend, Mr. Jayakar. The object of the Bill is a very simple one. The Bill does not cover the whole field of the Hindu law of inheritance, nor does it affect all Hindu families in the country. It will affect stray cases here and there. As my Honourable friend the Mover of the Bill has shown, under the old Hindu law the gains of learning of a man were his personal property. But it was only when the commentators, with views of their own, came into the field and interpreted them in their own way, and also when judicial officers sitting in Westminster or in India with their own preconceived notions about things that obtained in their own country at the time and who were ignorant of the language in which these texts were written, it was only then these officers began to interpret the law that it took a shape quite different from what it originally had.

\*“That the Bill be circulated for the purpose of eliciting opinions thereon.”



Now, however, with the invention of printing and the part which electricity and steam are playing in the production of books, which bring large profits, and which enable people to go about delivering lectures and earn large sums of money, when technical education and expert knowledge in the various branches of learning required in different walks of life are becoming more and more important, it has become increasingly necessary that the law should be so modified, or rather the old law should be revived so that it may not hamper the spread of learning.

Those who argue that because a man has been educated at the expense of a family, the gains of learning of that man should become family property, forget that, in the first instance, the law is not what they expect it to be. Secondly, they must also remember that it is not education only that enables a man to make large profits or huge earnings, but it is something which existed before education was given. It is the brains of a man, it is the moral powers of a man that enables him to earn large sums of money, and the brain is not the creation of any education given at the expense of the family. Education may sharpen the edge of the faculties of the brain, but brain exists independently of that education. We also find that education, by itself, is not sufficient to enable a man to earn large sums of money. As the Honourable the Mover pointed out, though education is given to a number of pupils reading in the same classes upto the same standard, only a few of the pupils attain marked success and earn large sums of money. If it was only a question of education, then all those who receive the same training should be able to earn large sums of money and attain the same degree of success. Thus it is not education only, though it may be helpful to some extent, but something which existed before education was imparted, that enables a man to earn large sums of money. The gains of learning must therefore, be the property of the person who possesses that brain. The question is essentially one which is acquiring great importance day by day and should be decided by the enlightened notions of justice and equity that obtain at the present time. I find that an attempt was to be made to kill the Bill by moving for its circulation and postponing the day when it may have to be passed.

**An Honourable Member:** The Honourable Member, Mr. Acharya, did not move his motion for circulation.

**Rai Sahib Harbilas Sarda:** I know that he did not move his motion. I appeal to the Government to consider this question in a spirit conducive to progress, take an enlightened view of the question, and cast their vote on the side of progress. The Government should not seek shelter behind the screen of immobile and no-change orthodox opinion which unfortunately regards every step forward, even the slightest change to keep pace with the requirements of time, as a blow to its existence. I hope that Government will help in the evolution of society not by lip sympathy alone but by giving practical aid in this process of evolution, and vote that the Bill be referred to a Select Committee, where, if necessary, amendments not touching the principle of the Bill, which principle I hope the Government now accept, could be made.

**The Honourable Sir Brojendra Mitter (Law Member):** Sir, the Bill before the House is a measure which concerns the Hindus only. It deals with secular rights and no religious principle is involved in it. As the general sense of the Hindu Members of the House is in favour of the principle

[Sir Brojendra Mitter.]

of the Bill, Government will not stand in the way. The attitude which Government take up in the matter is one of neutrality and they leave it to the Hindu Members to shape the Bill in manner best suited to the conditions.

**Mr. M. E. Jayakar:** Sir, I am very thankful to those Members of the House who supported my Bill, and particularly I am thankful to Khan Bahadur Sarfaraz Hussain Khan for his excellent sentiments in the matter. I may mention that I made an attempt to have one or two Muhammadan Members on the Select Committee and in that connection I spoke to one or two friends; but they said that it would perhaps be better that they should remain outside the Select Committee and give their support in that capacity. That, Sir, is the reason why I have not included in my Select Committee a couple of my Muhammadan friends whom I should have very much liked to have on it. I am particularly thankful to my Honourable friend, Mr. Acharya, for having agreed, at my suggestion, to drop his amendment for circulation, because sending the Bill for circulation at the present moment means that it may not come back during the life of the present Assembly. It may or may not be dealt with in the next Assembly whose personnel may be different. The Mover may or may not be here and difficulties may arise. I am, therefore, very thankful to my Honourable friend, Mr. Acharya, for having consented to drop his dilatory motion. I may mention at once for his consideration,—I am referring to some of the remarks which he made,—that fortunately for me I am not a member of a joint family at all. Therefore, the Bill would not make the slightest difference so far as my own position is concerned. I am, therefore, not actuated by personal motives in pushing forward this measure. The main purpose of my Bill is to put a stop to the uncertainty and the harassing and expensive litigation which the present position causes. That is the main object, and the second purpose relates to the status of women, which will be improved by reason of this measure becoming law.

As for the amendment suggested by my Honourable friend, Mr. Kelkar, that would be considered by the Select Committee. I am very thankful to him for having accepted the principle. Leaders of his eminence accepting the principle will be of considerable help to me in getting this measure through and securing popularity for it. But I may mention to my Honourable friend, Mr. Kelkar, that if he looks at clause 3 of my draft Bill, he will find that all that it says is this, that no property, being the gains of learning, shall be held not to be the exclusive and separate property of a coparcener by reason of such learning having been imparted to him by any member, etc. Therefore, it leaves out cases where there is a special agreement of the nature he has in view. It only speaks of cases where, by reason of the learning being imparted, or by reason of the cases mentioned in clause (e), the property is regarded as joint family property. Therefore, the case which he wants to provide is not touched by clause 3. However, if he wants to have a specific provision made for the case of agreement between the man who supplies the money and the person for whose benefit it is supplied, I am quite sure that the Select Committee will consider this question. Speaking for myself I have no objection to the case of special agreement being specially provided for. I am very thankful to the House for the reception it has given to my measure.

**Mr. President:** The question is:

"That the Bill to declare gains of learning by a Hindu to be his separate property, be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable the Home Member, Munshi Iswar Saran, Mr. N. C. Kelkar, Mr. K. C. Neogy, Rai Sahib Harbilas Sarda, Sir Purshotamdas Thakurdas and the Mover, and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

The motion was adopted.

### THE SPECIAL MARRIAGE (AMENDMENT) BILL.

**Mr. M. R. Jayakar** (Bombay City: Non-Muhammadian Urban): Sir, I now proceed to the second Bill which stands in my name. I do so with a certain amount of apprehension that it may not receive the same measure of support from the House as my last Bill did. I see my Honourable friend, Mr. Ghuznavi, shaking his head somewhat violently. However, I beg to move that the Bill further to amend the Special Marriage Act, 1872, be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable the Home Member, Sir Purshotamdas Thakurdas, Nawab Sir Sahibzada Abdul Qaiyum, Sir Darcy Lindsay, Khan Bahadur Sarfaraz Hussain Khan, Munshi Iswar Saran, Rai Sahib Harbilas Sarda, Sir Hari Singh Gour, Sardar Gulab Singh and the Mover, and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be four.

(At this stage Mr. President vacated the Chair which was taken by Mr. Deputy President.)

This Bill is intended to complete the process of simplifying and regularising the marriage law of India, which process began in the year 1872. I may at once mention that the credit of bringing in this measure is entirely due to my Honourable friend opposite, Sir Hari Singh Gour. It is really his Bill, but it has been allotted in my name and therefore I am moving it. As I said, the process of simplifying the marriage law began in the year 1872, when the Government of India passed a measure which is Act III of 1872, the effect of which, stated briefly, is this, that any person in India could marry any other person in India irrespective of religion, caste, community or any other difference, provided,—and that is an important qualification,—that the parties to that marriage went before an officer called the Registrar and declared that they did not profess to belong to any particular religion. Taking an illustration, if a Hindu married a Christian, the man and the woman went before the Registrar and the Christian said, of course for the moment, that he or she did not belong to the Christian religion, and the Hindu said that he or she did not belong to the Hindu religion. That was the principle of that measure. In practical working, it was found that this measure bred insincerity and hypocrisy, and its practical effect in working was this, that a man and woman who took advantage of this measure and went before the Registrar had to forswear his, or her, religion momentarily, if I may say so. They came back five minutes after the marriage and were absorbed in their own religion once more.

**Dr. A. Suhrawardy** (Burdwan and Presidency Divisions: Muhammadian Rural): Can the Honourable Member cite instances of that?

**Mr. M. E. Jayakar:** I am speaking from experience.

**Sir Hari Singh Gour** (Central Provinces Hindi Divisions: Non-Muhammadan): Mr. Justice Greaves of the Calcutta High Court had to deal with an instance of this.

**Mr. M. E. Jayakar:** I know of several instances, though I have not got them in my pocket. But the Honourable Member will give me credit for knowing them in the course of my personal experience. I know several instances where the more honest minded and more cultured section of the community has been restrained from entering into this form of marriage by reason of the obligation to have to go before the Registrar and momentarily swear to what is not often a fact, namely, that they do not profess this religion. That was the obligation to swear to a falsehood under which alone such marriages could take place. The result was that the fullest benefit was not taken of the Act which was passed in the year 1872.

Then came the second stage of this marriage reform and a Bill was introduced by my Honourable friend, Dr. Gour, for which great credit is due to him and which measure should alone immortalise his good work as a Member of the Assembly. This Bill was passed into Act XXX of 1928. It was a very courageous and bold measure which he brought forward and it has been taken advantage of to a much larger extent than its supporters thought possible at that time. What that Act did,—speaking briefly again, because I do not wish to weary the House with all the technicalities of its provisions,—was that it was confined only to Hindus, Buddhists, Jains and Sikhs; that is, Hindus and those who profess to belong to allied religions. To them the Act applied, and it was provided that those who profess these four religions need not forswear their religion at all. I am stating its effect in brief because I realize that I am addressing a number of people who are not lawyers and I do not wish to weary them by going into the technicalities of this subject. Stated briefly, its effect was that the four communities, Hindus, Jains, Buddhists and Sikhs, that is Hindus and those who are more or less allied to Hinduism, if I may say so without disrespect to Jains, Sikhs and Buddhists, could contract marriages *inter se* without being required to make the declaration of which I have spoken. In regard to those who at that time were outside these four communities, especially the important communities of Muhammadans and Parsees, who were kept out, as Dr. Hari Singh Gour assures me, at that time those who represented the Government promised him that, if he was content with half a loaf at that time, in course of time, as these ideas advanced and as public opinion became educated, it would be more easy for him to push forward the entire measure which is now before the House. I have that assurance from Dr. Sir Hari Singh Gour and I hope he will make the matter clear in his speech in support of this Bill. Therefore, that Bill was ultimately confined to Hindus, Sikhs, Buddhists and Jains. But in order to arrive at a social equipoise, if I may say so, certain penalties were attached to those who contracted such marriages amongst Hindus, Jains, Buddhists and Sikhs, namely, that certain privileges and functions which the Hindu and the allied communities regard as the essence of their family life had to be given up. In other words if a person wanted to have the luxury of marrying outside his own community, and his own religion, he had to give up certain privileges, social and quasi-religious which were regarded as the essence of his family life. For instance, if a Hindu married under that Act, he could not marry another wife while one was alive. For marrying another woman he would be punished for bigamy. That was one important qualification of his personal law. The second was, the wife would be entitled to

divorce, which is not allowed in Hinduism. Thirdly, he would be regarded as having, by his marriage under the Act, severed connection from his joint family. Fourthly, succession to the issue and to himself would be governed by the measure which is called the Indian Succession Act. Lastly, and this was a most important privilege, of which he was deprived as the price for his marrying outside his community, it was provided that as soon as he married, his father, if he happened to be the only son of his father, would be regarded as sonless and would be entitled to adopt a son immediately. In other words, that measure established a social equipoise, if I may say so. For marrying outside his own community he was called upon to give up five important privileges which he enjoyed as a member of the Hindu society.

That Act was passed in the year 1923. Now my measure goes further. It is the last stage, if I may say so, and completes the process of marriage reform which began in 1872. I will here give expression to one sentiment before this House, that I am full of admiration to find that, in the year 1872, that means nearly 60 years ago, the Government of this country was so moved by progressive, liberal and courageous notions, that they passed a measure in the year 1872 when the House with which they had to deal was not one-tenth as representative as the present House can be said to be, when British power had not consolidated itself in this country in one-tenth of the measure that it has now, when the Government Benches were not representative of Indian sentiment to one-tenth the degree that they are now, I say that, even in those days, when the charge that the Government is alien was far more true than now, the Government had the courage to pass this measure and put it on the Statute-book. That attitude is a great lesson for the present Government to copy, and I hope they will copy it with reference to this Bill. Measures of this description can only be pushed forward under present conditions with the support of that body which is called the Government, and I do submit that, having regard to the progressive nature of this legislation, Government will consider seriously what their attitude on a matter of this importance ought to be. It is obvious that a measure of this description must cause in orthodox sections of the Indian community a considerable amount of discontent and dissatisfaction. No measure of this character can be pushed through without causing somewhere some irritation, some discontent. But it is always a question of finding out what is the balance of benefit. If there is to be progress, nationalisation, Indianisation of the entire country on the one hand and there is the opposition of certain sections on the other, the choice ought not to be very difficult to make, and I hope Government will make that choice when their turn comes.

As for the principles of this measure, I just want to put three or four features before my Honourable friends. First of all, it is a purely optional, enabling measure. (Hear, hear.) It is not a compulsory measure at all. It does not say that a Hindu must marry a Muhammadan or a Muhammadan must marry a Hindu. It is not of that character. It is purely an enabling, optional measure. It only means that those who want to marry outside their caste under this Bill, must have their activity legalised and made valid.

The second consideration which I wish to urge before the House is this, that such a measure exists in all civilised countries. We have only to step outside British India and we will find that such marriages are permissible even in a State like Baroda. I am only mentioning one out of

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the three or four Indian States. One has simply to step outside British India and marry anybody he likes by going into a place like Baroda territory. Likewise he will be entitled to marry if he goes outside India into any foreign country like Europe. The limits of the present law are therefore purely territorial. A measure of this description makes marriage more or less a question of personal volition, personal affinity, apart from religious considerations. Conceptions about marriage are bound to progress on these lines as time advances. I say that the principle of this Bill has been accepted not only in Baroda but in all progressive countries outside India.

The third important principle of this measure is that it will make more and more popular, more and more common and acceptable to the people, ideas of monogamy. One of the principles of this measure is that those who marry under this Act can only marry one spouse at a time. Any marriage under this Act has to be monogamous. Therefore, I have a hope that, if this measure gets through, it will be a most powerful incentive in spreading and making popular notions of marriage being monogamous especially among the two sister communities, Hindus and Muhammadans. It will be one means of widening the salutary notion that marriage ought to be a monogamous transaction, that marriage means that the man and the woman will regard one another's love while they are alive as the only constituent tie between them, and that no other attachment is possible, and I have a hope that the beneficent effect of this notion will spread more and more widely if this Bill gets through.

**Dr. A. Suhrawardy:** May I inquire of the Honourable Member what he means by monogamous? Unless it was a slip of the tongue, and if I am not mistaken, he seems to mean thereby marriage once in one's lifetime.

**Mr. M. R. Jayakar:** I hope the Honourable Member, in the vehemence of his desire to oppose this Bill, has forgotten the plain meaning of the English word "monogamous". It means one wife or one husband at a time.

**Dr. A. Suhrawardy:** I wanted to know what the Honourable Member meant in the light of what he has been saying. I certainly know that monogamy means the union of one man with one woman for life.

**Mr. M. R. Jayakar:** Monogamous means the union of one man with one woman at a time. That is what I understood it to mean, but if the Honourable Member takes exception to this meaning, I can only say that he must have come here today with the determined intention to oppose this Bill tooth and nail. Monogamous means that a man cannot marry two wives at a time, just as a woman cannot marry two husbands at a time. That is perfectly sensible, and that is the only meaning of the word "monogamy". Let my Honourable friend oppose this Bill by all means, but let him not start hares which have no substance.

Therefore, my submission to the House is that the effect of this measure will be—and I am very hopeful about it—to make this notion of monogamy more and more popular, which is the great need of the two communities. I only speak of the Hindu community because my Honourable friend the learned Doctor may object to my speaking for the Muhammadan community. I speak of the Hindu community with great humility and say that

there is great need for spreading this notion of monogamy, and one of the effects of this measure, if it becomes law, will be that this notion will become more and more popular. I am not suggesting that, among the intelligentsia of the Hindu community non-monogamous marriages are common; no, they are rare, but still the effect of this Bill is bound to be that monogamous marriages will become more and more acceptable to the community.

Another important effect of this Bill will be that it will leave no room for artificial conversions. At present what happens is this, that if a man and woman like one another and want to marry, they often change their religion, not because there has been a psychological change of religious belief which is the true foundation of religious conversions, but simply because they want to marry one another. I am aware of many instances; the latest of this kind is only three days old. (*An Honourable Member*: "Only three days old!") The House is aware of what was reported in the papers three days ago. I do not wish to mention names, but a European gentleman changed his religion and converted himself to another religion possibly because the religion of his intended wife was a different one. I am aware of several instances of this kind where a man changed his religion in order to marry a wife belonging to another religion, or a woman changed her religion in order to be able to marry a husband of another religion. I think such practices would stop in course of time if this Bill becomes law.

The last and the most important consideration which I would urge upon the House is that it will considerably facilitate the unification of Indian races. I do want the House to give its best consideration to this aspect of the case. I know I am treading upon very delicate ground when I say this, but I am one of those nationalists who look forward to a time when the distinctions which are more or less a question of personal religion—distinctions of Hindu, Muhammadan, Christian, and so on—will disappear. I am full of faith that allegiance to a religious tenet or tenets will become more and more a matter of personal choice and predilection and less and less a matter concerning a question like marriage. I am full of hope that this Bill, if and when it becomes law, will make this process easy. We are now dealing with a very small measure, but I am full of hope that it will be one of the most potent instruments for bringing about the unification of social practices apart from religion amongst the several races that inhabit this country. Such unification is absolutely necessary if this country is to become a self-governing one. This is no doubt a very small measure, but its effect has to be considered in the light of the forces which would be released and loosened, so that in course of time these man-made distinctions between one religion and another will interfere as little as possible with the processes of social aggregation. I think a measure of this kind is inevitable, and I think the time-spirit is in favour of a measure which takes marriage out of the controversies of religion and makes it more and more a matter of personal loyalty and personal attachment. This is the process which I want to see accelerated in course of time, and I submit this measure will be one of the means of doing that. Lastly, I would just say a word to the orthodox sentiment, not only in this House but outside. I will say this with great humility. Sir, I am aware that in many quarters it will generate forces of great opposition. Well, orthodoxy would not be true to itself if it did not do so. I respect orthodoxy as I respect many genuine sentiments in life, but my submission to these orthodox centres, wherever they may be, is that this step

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will have to be taken some day as we go on. If public sentiment is not ripe for it, that is the only ground on which the opposition can be put. Nobody can oppose the principle of the Bill on its merits. Nobody can say that India shall always have the distinctions of Hindu, Muhammadan, Christian and so on. Nobody can say that twenty, thirty or forty years hence these distinctions will not disappear. They may remain long so far as personal faith in religious tenets is concerned, but so far as the marriage law is concerned they are bound to disappear; it is only a question of time. Therefore, the opponents of this Bill can only rest their opposition on the ground that the time is not yet. I am not dealing with the ultra-orthodox, I am leaving them alone, but I am addressing those who are rational and look forward to the time when, though the religions may remain as matters of personal faith, these social distinctions between Hindus, Muhammadans, Christians, Parsis, Jains and Buddhists, will all disappear and there will be one Indian nation valuing its Indian domicile more than its religion. This Bill is an apotheosis of Indian domicile, if I may say so. If that process is to be accelerated, such a measure as this will have to be the law, if not today, ten years hence. The opponents can only postpone the measure, they cannot kill it outright. Let me tell them, in absolutely plain words, that this change of notions is bound to come. Some other man, ten years or twenty years hence, will rise in my seat and move this measure. They can only oppose it by saying that the time is not yet. I can understand that opposition, but my answer to that will be, "Very often we have to make the time". It is possible to exaggerate the objection, "The time is not yet", and I think we are exaggerating it. Look at the ease with which some orthodox communities, have digested this Bill. We cannot imagine a more orthodox community than the Hindus; we cannot imagine a more religious community than the Jains; we cannot imagine a more learned community than the Buddhist; we cannot imagine a more militant community than the Sikhs, the law already applies to them. Nearly five years ago it started applying to them. These four important communities have digested this Bill. No disaster has overtaken them. I remember the time in 1928 when there was a great commotion among these communities but the good sense of these communities has asserted itself, and these four important communities have digested this Bill. I have no doubt that the great and ancient communities, the Muhammadans, the Christians and the Parsis, will do likewise. I say, therefore, that it is possible to exaggerate the plea, "the time is not yet". The time is now, if only we will take courage in our hands and proceed.

**An Honourable Member:** We have not had time to digest even the Sarda Act.

**Mr. M. R. Jayakar:** If my Honourable friend had said this twenty years ago, he would have been right; he is not living in the present age, if he thinks so. He is a Rip Van Winkle. However, that is a different matter, and I therefore submit, do not exaggerate this plea of the time not being ripe. If the House is opposed to the principle of the Bill, let it throw it out. But if it is not opposed to the principle of the Bill and thinks that it is the next step in the stage of our evolution as one nation, let it not oppose the Bill. Let it give it its support and courageously fight for spreading the noble conceptions underlying this Bill as widely as it can. I submit, Sir, this Bill ought to go to the Select Committee I have mentioned.



**Pandit Hirday Nath Kunzru** (Agra Division: Non-Muhammadan Rural): On a point of order, Mr. Deputy President. The Preamble of the Act which my Honourable friend, Mr. Jayakar, seeks to amend runs as follows:

"Whereas it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jain religion [and for persons who profess the Hindu, Buddhist, Sikh or Jain religion.]" . . .

**An Honourable Member:** That has been changed by the law of 1928.

**Pandit Hirday Nath Kunzru:** I am reading the amended Act:

"and to legalise certain marriages the validity of which is doubtful."

If the amendments which clause 2 of the new Bill seeks to introduce are accepted, the Preamble will run as follows:

"Whereas it is expedient to provide a form of civil marriage for persons domiciled in British India (and for persons who profess the Hindu, Buddhist, Sikh or Jain religion), and to legalise certain marriages the validity of which is doubtful."

Apart from defects of language, Sir, it seems that the effect of the amendment proposed in this Bill would be to restrict the law further. If the Preamble is made restrictive, I wish to know whether, when the Bill goes to Select Committee, it will be possible to widen its scope so that it may apply not merely to persons who profess the Hindu, Buddhist, Sikh or Jain religion, but also to other persons who profess the Christian, Jewish, Muhammadan or Parsi religion. The object of the Bill, of course, is to have a form of civil marriage, to insist on no declaration which would compel a man to renounce his faith. But I find that the Bill has been drafted in such a way that, if it is accepted, the law would become more restrictive than it is at present. I want to have your ruling, Sir, on the subject, as the attitude of many of us will depend on the ruling you give.

**An Honourable Member:** What is the precise question?

**Pandit Hirday Nath Kunzru:** I want to know whether in the Select Committee it will be possible for us to achieve the real object of the Bill by making the law applicable not merely to persons who profess the Hindu, Buddhist, Sikh or Jain religion, but also to others who do not profess these religions or who profess the Christian, Jewish, Muhammadan or Parsi religion.

**Mr. M. B. Jayakar:** I am very thankful to my Honourable friend for drawing my attention to what is an inadvertent omission. He is perfectly right, but what happened was this. Unfortunately Members have not got before them the text of the old Act. The Preamble of the old Act is this:

"Whereas it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jain religion and for persons who profess the Hindu, Buddhist, Sikh or Jain religion."

What my amendment seeks to do is to drop out all these words, namely:

"who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jain religion, and for persons who profess the Hindu, Buddhist, Sikh or Jain religion."

and in their place substitute the words, "who are domiciled in British India", so that the amended Preamble would read:

"Whereas it is expedient to provide a form of civil marriage for persons domiciled in British India."

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Unfortunately in print, the word "etcetera" has been omitted in sub-clause (3) of clause 2: it should be "who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion, etc." It is a purely inadvertent omission, and I am thankful to my Honourable friend for having pointed it out. My amendment is that all these words in the Preamble will go and the words "domiciled in British India" will take their place. That is the purpose of my amendment. In other words, anybody domiciled in British India, whatever the religion he professes may be, will be subject to this Act.

**Pandit Hirday Nath Kunzru:** That is precisely the point of order—whether it would be possible to make this change in the Select Committee.

**Mr. Deputy President:** I think the question which my Honourable friend, Pandit Hirday Nath Kunzru, has asked ought to be put in Select Committee when the Bill is before the Committee; and it will be for the Chairman of the Select Committee to give an answer to this question. I am not called upon to give any ruling on this point.

**Pandit Hirday Nath Kunzru:** May I, with all respect, point out that on previous occasions the President has been appealed to in order to ascertain what is the principle of a Bill, and he has not unoften responded to that appeal. The question before the House is an important one and before we can vote upon it, we must know what the exact significance of this measure is.

**Mr. M. R. Jayakar:** I have explained it.

**Pandit Hirday Nath Kunzru:** I entirely agree with the purpose which my Honourable friend, Mr. Jayakar, has in view; but we must know whether the purpose that we wish to accomplish will be effected by this Bill or whether a state of things which we do not wish to introduce will be brought about. If the effect of this Bill will only be to make it restrictive, we would rather leave the law as it is and seek some other opportunity of extending it.

**Mr. M. R. Jayakar:** I have already explained that it is an inadvertent omission—that the word "etcetera" has been omitted in clause 2 (iii).

**Mr. Deputy President:** I think my ruling stands, that I am not called upon to give any ruling on this point at this stage, and that it will be for the Select Committee to decide it.

**Mr. Abdul Haye (East Punjab: Muhammadan):** Sir, it is with profound respect for my friend, Mr. Jayakar, that I feel called upon to rise and oppose his motion. It is not always a pleasant thing to oppose my Honourable friend in this House, but I do so for religious reasons. I want it to be clearly understood by this Assembly that for us, Muslims, it is a matter of vital importance that, in such matters, our religion should be left untouched. The law of marriage has been given to us by the Koran and we, Muslims, believe that it is a revelation made by God. Sir, with us, Muslims, religion is a living force, and it has not yet become a dead letter.

**1 P. M.** My Honourable friend when moving his motion said that the Act of 1872 was prone to breed insincerity and hypocrisy. That may be so, but I ask him what is his position today. You stand here today and you say, "You are a Muslim. According to your religion it is

not permissible to marry a certain person, but if you really want to marry her I will give you the necessary legal sanction".

**Khan Bahadur Sarfaraz Hussain Khan** (Patna and Chota Nagpur *cum* Orissa: Muhammadan): May I ask my friend one question? Is there any Koranic law on the subject?

**Mr. Abdul Haye:** The Koranic law of marriage is that a Mussalman is at liberty to marry another Mussalman, and he is also at liberty to marry a *Kitabiya*, that is a female who believes in a revealed book, whether she be a Jewish or a Christian lady, and it is clearly laid down that no Mussalman shall marry an idolator or a fire-worshipper.

**Khan Bahadur Sarfaraz Hussain Khan:** May I ask my friend if Aryas are not idolators?

**Mr. Abdul Haye:** The Honourable Member ought to know it.

**Khan Bahadur Sarfaraz Hussain Khan:** I know more than you do.

**Mr. Abdul Haye:** What I was trying to . . . .

**Nawab Sir Sahibzada Abdul Qaiyum** (North-West Frontier Province: Nominated Non-Official): What about the Moghul Emperors marrying Hindu ladies?

**Mr. Abdul Haye:** It was absolutely illegal. Merely because Akbar did it, we cannot hold it to be legal. He certainly did an unlawful act.

**Dr. A. Suhrawardy:** We have no evidence that their wives were Hindus.

**Rai Sahib Harbilas Sarda** (Ajmer-Merwara: General): There are in the Agra Fort places where the Hindu wives of the Emperors worshipped Hindu gods.

**Mr. Deputy President:** I think this is all beside the point.

**Mr. Abdul Haye:** If my friends will permit me, I will make one observation, and it is this. If you want to begin the unification of the communities in India, you cannot do so by passing this legislation. What about our social life in this country? My friend said that he had got nothing to say to those who believe that eating and drinking is also a religion with them. I ask what about the majority of the Hindus, that great community to which the Mover of this Bill has the honour to belong?

**Mr. M. R. Jayakar:** It already applies to Hindus.

**Mr. Abdul Haye:** Is it possible, I ask, for the Honourable the Leader of the Opposition to come to dinner with me tomorrow evening? If that is not possible, it is nothing but hypocrisy to talk of such legislation. (*An Honourable Member:* "It is permissive.")

Then, Sir, Honourable Members must bear in mind that legislation of his character will not create the Indian nation. It will not bring about the unification of the various communities in India. The Muhammadan law as it stands permits marriages between Mussalmans and Christians and Jews. Has the unification of the communities been brought about by such . . . .

**Mr. Muhammad Yamin Khan** (United Provinces: Nominated Non-Official): You refer to *Ahl Kitab*, and you also refer to Mussalmans marrying with Christians and Jews, but there may be some other books also in which certain sections of the Mussalmans believe.

**Mr. Abdul Haya**: Unless it is specifically stated in the Koran that certain sections believe in a certain *Kitab*, we cannot draw upon our imagination.

**Mr. Muhammad Yamin Khan**: "We have sent our Messengers at all times", our prophet has said . . . .

**Mr. Abdul Haya**: I am perfectly aware of that, but is it possible for you to say that a certain person was a prophet and not a pretender unless you have the authority of the Koran?

What I was submitting was that this unification by inter-marriages between the various communities has not been brought about in Egypt where the Christians and Muslims live side by side, nor has such unification been brought about in Jerusalem, where only recently there have been communal riots resulting in bloodshed.

Then again, this Act of 1872, which is sought to be amended and made applicable to Mussalmans, comes directly in conflict with our personal law. For instance, under this law, if it is enacted, it will not be possible for a Mussalman to marry one of his cousins . . . .

**Sir Hari Singh Gour**: You will not be able to marry under the Act, but you can marry under your own law.

(At this stage Mr. President resumed the Chair.)

**Mr. Abdul Haya**: Sir, what about the law of *Idat*, the unique and celebrated doctrine under which a widow or a divorced woman is not permitted to contract another marriage for a certain period? *Idat*, I maintain, is absolutely necessary to preserve the legitimacy of descendants and avoid confusion of blood. Under this Act it would be open to a Mussalman widow to go and contract another marriage within the period of *Idat* and that marriage would be held to be perfectly legal. I submit, Sir, that we Mussalmans cannot but oppose this measure.

**Mr. Anwar-ul-Asim** (Chittagong Division: Muhammadan Rural): Sir, generally, I do not like to fish in troubled waters, but it seems that it will be pertinent on the part of those who are sitting in this Central Muslim Group, hedged in between by my friends here on one side and by my friends on the Treasury Benches on the other to express an opinion. My personal opinion, so far as the Bill as it stands now is concerned, is this. This measure, if it is passed into law, will give a sort of latitude to those people professing my faith—a loophole, as Mr. Jayakar puts it—to retain their own faith and at the same time to indulge in the luxury of contracting marriages with others; because, Sir, you find the Honourable the Mover has very tactfully suggested in his Bill the omission of certain words from Schedule II. That is perhaps the only redeeming feature of the Bill so far as those people who do not belong to his faith and who would like to marry with others are concerned. In short it will save a Moslem from the terror of declaring openly that he is not a Mussalman for the purpose of this marriage, but on the other hand it is likely to create troubles and complications which we now cannot foresee. But of course here in this country,

unfortunately, as we are situated, personal opinions do not go far. Personal opinions have sometimes out of necessity got to be subdued and submerged into that vocal force which is known as public opinion and it is rightly so. The part of the country from which I come is a very orthodox part of the country, and if a man of my type wanted to give his goodwill, or for the matter of that his moral support, to this measure, he would be subjected to all sorts of unnecessary troubles not knowing perhaps that he is giving his best and acting according to his light.

**An Honourable Member:** You will not be returned again?

**Mr. Anwar-ul-Azim:** I can assure anybody that, even if Pandit Malaviya were to contest my seat, he would not be able to dislodge me by the grace of God.

So far as the amending section of this law is concerned, there is one other pertinent matter which I might ask my friend about and it is this. If he wanted really to do any good to the Mussalmans of this country, would it not have looked well if he had consulted the great associations of *Ulemas* at Deoband and other centres of this country as to whether the time had come when the Mussalmans believing in the unity of God and also believing in the *Shariat* could subject themselves to the clutches of the law as is sought to be enacted through this legislation? I think neither Mr. Jayakar nor Sir Hari Singh Gour, the real author of the Bill, had taken the trouble. While Mr. Abdul Haye was talking, it was perhaps supposed that there might be some difference of opinion amongst the Mussalmans themselves about this matter, but I can assure the House and also those who have got any respect for the sentiments of the Mussalmans of this country that there can be no two opinions so far as the Koranic injunctions are concerned and for that matter the *Shariat*.

Mr. Jayakar, in his very lucid statement of his case, has expressed the view that, perhaps, if this law is enacted, it will bring in some sort of fusion amongst the people of this country. I mean fusion of race. He will pardon me if I point to him that he has got a living example now-a-days in the Anglo-Indian community in this country. Natives of this country have contracted marriages with believers in Christianity and of course a community has grown up. May I not pertinently ask him how far the emergence of that class and also the emergence of a class of people in Burma known as the Karens and Kabayas have advanced the cause of India towards its national goal. On the contrary, at the time of the discussion of the Railway and the General Budgets, tall cries are raised to the effect that the Anglo-Indian community are monopolising the railways and are doing such and such things. If we encourage any measures of this kind at this stage, when the country is in such a ferment, it seems to me that we shall add another trouble to the already troubled waters. With these words I oppose the motion.

**Maulvi Mohammad Shafee Daoodi** (Tirhut Division: Muhammadan): I rise to oppose my Honourable friend, Mr. Jayakar's motion. I would like to place my views before the Honourable Members of this House in two distinct portions. One would relate to the technicalities of the matter and the other in regard to what my Honourable friend, Mr. Jayakar, has been pleased to call the broad view of the matter, the solidarity of the great Indian nation and so on and so on. In the first part of my speech I would like to draw your attention to the fact that I find from this paper

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that the Governor General has been pleased to accord sanction under clause (b) of section 67(2) of the Government of India Act to this measure. I do not know how my Honourable friend, Mr. Jayakar, has secured this previous sanction of the Governor General in a matter which relates to the Muslim community, without the community being consulted. I do not know who is the Honourable Member who has given the assurance to His Excellency the Governor General that this is a matter in which the previous sanction of His Excellency the Viceroy can be given without consulting the learned theologians among the Muslims and the large body of men who are well versed in Muslim law.

**The Honourable Sir James Orerar** (Home Member): I do not think that my Honourable friend quite realises that he is commenting upon an act of the Governor General. I submit that it is not in order.

**Maulvi Muhammad Yakub** (Rohilkund and Kumaon Divisions: Muhammadan Rural): Not the act of the Governor General but the advisers of the Governor General who gave the wrong advice.

**Maulvi Mohammad Shafee Daoodi**: I have got a very serious grievance in this matter. I brought it to the notice of the House on the former occasion when the Child Marriage Bill was being discussed here, and at that time also I very definitely pointed out that there was no previous sanction of the Governor General obtained in regard to the inclusion of Muslims in that Bill and still the learned Home Member put his own interpretation on the sanction given by His Excellency the Governor General in that case, and he said that by implication the Governor General had sanctioned the inclusion of the Mussalmans also. I find, Sir, that he has committed the same mistake in this matter also. It is not possible for His Excellency the Governor General to go into the details of these matters. The Governor General has got to depend upon the advice of some one else, be it the Department or the Executive Council. Now, I am certainly complaining against those who are concerned with this affair. Why it is that they have given this advice to His Excellency the Governor General to accord his previous sanction to a Bill which primarily concerns the Mussalmans? They ought to have known that it was absolutely against the personal law of the Mussalmans and therefore they ought not to have committed the same mistake which they committed not long ago in regard to the Sarda Bill. I am really surprised how they could commit this mistake so soon after their previous mistake. I fail to see how it is that the Department has gone rotten to this extent. Why is it, Sir, that the Department does not look into these matters properly, which are so serious? It is a very serious matter indeed, and to grant sanction to a measure which affects the interests of the Mussalmans so vitally is certainly far from desirable.

**Mr. M. S. Aney** (Berar Representative): Is the Honourable Member not criticising the conduct of the Governor General?

**Mr. A. H. Ghuznavi** (Dacca Division: Muhammadan Rural): He is criticising the Department.

**Mr. President**: I think the Honourable Member would be well advised to leave this subject there.

**Maulvi Mohammad Shafee Daoodi**: Thank you, Sir; I have finished with this aspect of the case.

It is true, Sir, that in regard to the subject-matter of this Bill the knowledge of the Honourable Members who are here is very limited indeed. I find that even my Muslim friends are not well versed as to what it really means and what its implications are. I am not complaining against any one, but my object is to tell my friends that they ought to know first what the Islamic law is and then they could, of course, give their opinion after having that knowledge.

Now, my Honourable friend, the very revered and respected Nawab Sahib Sarfaraz Hussain Khan asked the question whether there is anything in the Koran itself in regard to this matter. I have already quoted the relevant passage from the Koran in this Session and I would give my friend its reference in the Koran. It is in Chapter II, verse 221, and I think it is the 27th *Ruku*. I need not quote the Arabic words, but the translation of Maulana Mohammad Ali is this:

"And do not marry the *mushrik* women until they believe. And certainly a believing maid is better than a *mushrik* woman—even though she should please you."

**Khan Bahadur Sarfaraz Hussain Khan:** I quoted this passage at the time when Sir Hari Singh Gour's Bill was introduced and I know it fully well, although I am not a Maulvi. But the thing that I wish to know is what is your conception of a *mushrik*?

**Dr. A. Suhrawardy:** The conception is the conception of the Shia law!

**Maulvi Mohammad Shafee Daoodi:** The passage will be complete after I have quoted the other portion, otherwise it will remain incomplete. Therefore, let me complete it:

"And do not give believing women in marriage to *mushriks* until they believe, and certainly a believing servant is better than a *mushrik*, even though he should please you."

To my friend, Nawab Sahib, I would say that from this it is clear that a woman who is a Muslim is not permitted to marry a *mushrik*. That is very clear. If it is clear, then the matter is set at rest so far as the Koranic verse is concerned.

**Sir Hari Singh Gour:** This is so far as the women are concerned. What about the men?

**Khan Bahadur Sarfaraz Hussain Khan:** Are Aryas also Mushriks?

**Maulvi Mohammad Shafee Daoodi:** As you know Nawab Sahib, those persons are called *mushriks* who associate some other power with the Almighty. It is, of course, a matter for investigation to find out whether the Aryas are *mushriks* or not. We are not concerned here with Aryas alone.

Having explained to my friend, the Nawab Sahib, as to what the particular verse is in the Koran in regard to this matter, I would like to pass on to the other point. It is this. My friend, the Honourable Mr. Jayakar, was pleased to say that in 1872 the Government was so broad-minded that it had to yield to the wishes of the people and enacted this Act III of 1872. I think my friend might know that the Bill of 1872 was tabled after the Brahma community had wished it. It was they who insisted on it at that time, and to meet their wishes it was enacted. This was perfectly right. I would say that every Government ought to be responsive to the public demands of a particular community. We cannot deny the

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fact that the Brahmos at that time had great difficulties in their social life, and when they made that demand it was right for the Government to come to their aid and enact a law by which they could marry, and the marriage might be considered valid in the eyes of the law. But it is not the same case now as you maintain. You are trying to thrust upon the Mussalmans what they have never demanded. If the Bill had come from a Mussalman Member, I would have understood that there was some change in the mentality of the Muslim community and that they wanted to take advantage of Act III of 1872; but that is not so.

**Sir Hari Singh Gour:** The two Muhammadan Members are the co-authors of this Bill.

**Dr. Ziauddin Ahmad:** Who are they, please?

**Maulvi Mohammad Shafee Daoodi:** I would like to know the names of the two Muhammadan gentlemen who are the authors of this Bill.

**Sir Hari Singh Gour:** Nawab Sahib is one, who is sitting to your right.

**Maulvi Mohammad Shafee Daoodi:** Who is the other, my friend? (Sir Hari Singh Gour did not reply.) That is the history of Act III of 1872. When my friend came to the first Assembly, he had the hobby of bringing in Bills of this type. At that time he brought forward a Bill which wanted to include the Mussalmans also amongst those who would marry without any restriction whatsoever under the Civil Marriage Act in question. At that time, Sir, I find from the debates, that my Honourable friend Dr. Sir Hari Singh Gour met with great opposition, and he was pleased to withdraw that portion which affected the Muslims.

**Sir Hari Singh Gour:** The Bill went to the Select Committee.

**Maulvi Mohammad Shafee Daoodi:** I do not know all that. The Honourable Member at first included Muslims also, but then he saw the difficulty . . . . .

**An Honourable Member:** The folly.

**Maulvi Mohammad Shafee Daoodi:** Or as my Honourable friend suggests, he saw his folly, and so he withdrew that portion of the Bill which affected the Muslims. Now, I rather conjecture that it is not my esteemed friend over there, Mr. Jayakar, who has initiated this Bill of his own accord, because this appears to be the same Bill, containing exactly the same provisions as the Bill which formerly appeared in the name of my Honourable friend, Dr. Gour.

**Mr. M. R. Jayakar:** I am responsible for the present Bill and I take the odium of having brought it in.

**Maulvi Muhammad Yakub:** He is the adoptive father.

**Maulvi Mohammad Shafee Daoodi:** As it is now half-past one, Sir, will you not adjourn the House?

**Mr. President:** The Honourable Member can go on.

**Maulvi Mohammad Shafee Daoodi:** I have to attend congregational prayer punctually at 1-30, I cannot go on.



**Some Honourable Members:** These are days of Ramzan.

**Mr. President:** Is it the general wish that the House should now adjourn?

**Some Honourable Members:** Yes, yes.

**Maulvi Mohammad Shafee Daoodi:** Whatever you may decide, I am going for prayers.

(At this stage, the Honourable Member, Maulvi Mohammad Shafee Daoodi, left the Chamber.)

**Mr. President:** The Honourable Member is a little disrespectful. The House will now adjourn till Quarter to Three.

The Assembly then adjourned for Lunch till a Quarter to Three of the Clock.

The Assembly re-assembled after Lunch at a Quarter to Three of the Clock, Mr. President in the Chair.

**Maulvi Abdul Matin Chaudhury** (Assam : Muhammadan): Sir, on a point of order. Is any Member in order in leaving the House without bowing to the Chair?

**Maulvi Sayyid Murtuza Saheb Bahadur** (South Madras : Muhammadan): When it is a religious matter and a Member wants to offer his prayers to God, there cannot be any point of order with regard to the question.

**Mr. President:** I think we will leave the incident there.

**Maulvi Mohammad Shafee Daoodi:** With all respect to the Chair, I beg to say that the question that I was discussing was that Dr. Gour knew full well what the opinion of the Mussalmans was on this question in 1923. And he or those who supported that measure ought to have known that, between 1923 and 1930, there has not been such a great change in the mentality of the people. I could understand it if some extraordinary thing had happened in the meanwhile which could have given reasons for those who are advocates of reform to bring in this measure again so soon. Believe me, Sir, my difficulty in these matters has been very great. I have been trying to understand what my progressive friends amongst my fellow countrymen are thinking, whether they want to have a pin-prick here and a pin-prick there, or whether they want to have some radical cure for what they consider the wrongs in the country. I could believe in reformers in India who could be bold enough to take steps in matters which are really the root cause of all the troubles in India. Then I could understand that they have got something very noble and high in their minds. I have been seeing for the last six years I have been in this House attempts of a very small character being made, and it is claimed that those attempts are in the interests of the Indians. I do not know how many people are benefited by such measures. If statistics were taken, I think a very negligible percentage would seem to be benefited by measures like these. A few Indians educated in India or in England and other foreign countries might be desirous of having a couple of the kind contemplated in this Bill, but my

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friend should understand that that is a very insignificant matter as compared with the great things with which our motherland is overburdened. I have said on other occasions also that the best course was to tackle the root cause of our troubles and then leave these minor things to adjust themselves. That would have been the best policy which my friend could adopt, but instead of that, I find at one time a question of marriage, at another time a question of preserving alive an animal, and so on and so forth coming up. I would once for all tell my friends who are desirous of seeing our motherland in a better condition to devote their attention to something higher and something nobler, and then they will find humble persons like myself also joining hands with them. I need not say what pernicious things in our country I am thinking of, for he who has any experience of this vast country knows what the trouble is. Therefore to talk of a big nationality and to talk of this advantage and that advantage does not appeal to me at all. It is simply side-tracking the real issue. The real issue is not so much hidden as one would pretend to think; it is as clear as daylight. I hope, Sir, my Honourable friend, Mr. Jayakar, for whom I have great respect, will not take my observations in any other spirit. It is only in a sincere spirit that I am addressing my friends who are supporters of this Bill. I would tell them again that, at this moment when we should be thinking of something higher, we should not meddle in such matters. My friend, Mr. Jayakar, is in a better position in this country and we who love our religion above everything else are in a very bad condition, I admit. The idea that all these things give to us is that, here is a measure which is meant to drive the thin end of the wedge into what we think the most valuable thing.

**Sir Hari Singh Gour:** What is that thing, marriage? (Laughter.)

**Maulvi Mohammad Shafee Daoodi:** Marriage may be a thing of joke to Sir Hari Singh Gour, but it is not a thing of joke to us Indians. It is something sacred.

**An Honourable Member:** He is also an Indian. (Laughter.)

**Maulvi Mohammad Shafee Daoodi:** It is no good telling me that the question of marriage is more important than other questions in this country. My friend, Sir Hari Singh Gour, knows that the foremost question in this country is how to eliminate those evils which are dividing the Indian people into so many sections.

**Sir Hari Singh Gour:** Marriage will do it!

**Maulvi Mohammad Shafee Daoodi:** A Doctor like you might think it, because you are a Doctor of—I do not know what it is . . . . .

**Maulvi Muhammad Yakub:** Doctor of the Faculty of Reformation.

**Maulvi Mohammad Shafee Daoodi:** With these words I would appeal to my friends on the other side not to press this measure and not to allow distrust and suspicion to grow more and more between the two communities which are concerned in the matter.

**Munshi Iswar Saran** (Lucknow Division: Non-Muhammadan Rural): Sir, I wish I could lift this debate out of the quagmire of distrust and bigotry. I plead for a little commonsense and I plead for an appreciation of the forces that are at work in India and indeed all over the world. My Honourable friend, Mr. Mohammad Shafee Daoodi, has really given us a peep into the working of the mind of himself as well as of his friends who, I suppose, support him. Why these pin-pricks? says he—that is the expression that he has used himself. Why not settle the bigger problems, says Mr. Shafee, and these problems will take care of themselves? Sir, to characterise as a pin-prick a measure like this is doing violence to language. To question the motives of those who have brought forward this motion or who support it is to betray a crass ignorance of the ideals of social reformers. I shall only recite to him a Persian couplet and he will appreciate it:

“ Mā rāst rawem O tū kaj-bīnī  
Rau chāra dida kun rihā mā-rā.”

“ I am walking straight, but you see that I am walking in a crooked way. Have your eyes treated and let me alone.”

**Dr. A. Suhrawardy** (In reply to an Interruption) We recite it for your benefit.

**Munshi Iswar Saran**: My complaint against my Honourable friend, Mr. Jayakar, is that this Bill does not go far enough. (Interruption.) One gentleman says, “ Make it compulsory ”. I leave that feat to the opponents of the Bill. They can introduce a measure which will be in accordance with the views they possess. We only make it discretionary and optional.

**Mr. M. K. Acharya** (South Arcot *cum* Chingleput: Non-Muhammadan Rural): You did not last time. (Interruption.)

**Munshi Iswar Saran**: This kind of interruptions I do not mind. One gentleman says, why have marriage at all? I wish the kind and obliging interrupter were in touch with the trend of modern thought in Europe and he would find that many of the ideas which are pooh-poohed now will become the dominating ideas in times to come. (Hear, hear.) (*An Honourable Member*: “Question.”) My friend says “Question”. Yes, you may question it today, but you will cease to question it after some time. You did question the ideals of the Muslim College at Aligarh when it was founded by that great and illustrious son of India, the late Sir Syed Ahmad.

**Mr. Abdul Haye**: Where is the analogy?

**Munshi Iswar Saran**: The analogy is here. At that time the introduction of English education was considered to be a hearsay and

8 P.M. we well know how that distinguished man was subjected to abuse, calumny, misrepresentation and everything else that is horrible. (*An Honourable Member*: “Question.”) I therefore say, do not criticise and oppose this Bill on the ground of its being new. Go into the merits of the question dispassionately, and after having fully gone into it dispassionately, if you come to the conclusion that the measure should not be supported, do not support it. I only plead that you should not reject it simply because you have a vague fear that there is a catch somewhere, or that it has been brought forward to hurt this or that community. May I tell my Honourable friend, Mr. Mohammad Shafee, that Hindus are aa

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much opposed to this measure as Muhammadans? I do not disguise that fact. (Hear, hear.) I do not disguise that fact, because I find a very characteristic and vigorous interruption from my Honourable friend, Dr. Moonje. It appears that the reactionaries have joined forces against the social reformers. (Laughter.) We plead for freedom, we plead for justice. We are trying to discover a way out of the anomalies and difficulties of the present situation.

**Mr. M. S. Aney:** Come to the merits.

**Munshi Iswar Saran:** I am coming to the merits. (Laughter.) This is one of the merits.

**Maulvi Muhammad Yakub:** There is no merit in it.

**Munshi Iswar Saran:** My Honourable friend, the Deputy President, will say one thing today and will repudiate it to-morrow. So it does not very much matter. . . . .

**Maulvi Muhammad Yakub:** Just like a wise man.

**Munshi Iswar Saran:** I sincerely hope that the supporters of this Bill will never acquire the wisdom of the Deputy President.

Now, Sir, the first question is, does this Bill force any one to marry against his wishes? (Hear, hear.) It does not. If you believe that you are going against your religion in marrying some one who does not belong to your religion, you are perfectly entitled to observe your religious principles, injunctions, orders or whatever else you might call them. Now the point is this. Why should you deny, I ask you in the name of common-sense, this liberty to a person who says that he wishes to marry outside his religion, who says that he does not want to remain confined for the purpose of marriage within the limits of his own people? Why deny him that liberty? This, I submit, is the tyranny of the majority.

**Maulvi Muhammad Yakub:** We do not deny it.

**Munshi Iswar Saran:** Very good. If you do not deny it, then you are bound to support this measure. (*An Honourable Member:* "Leave out Muhammadans.") Leave out Muhammadans? Why? Muhammadans are as much my countrymen as the Hindus or the Parsees or the Sikhs and all of them are Indians. They must all have the advantage of this beneficent measure. This is the real reason why no community should be left out. I do not wish to make this debate far more bitter than what it has already been made by some Honourable Members.

Now, Sir, may I say with great respect, that old notions are changing, and every impartial student of comparative religions will have to acknowledge that the notions that we entertained on this and other matters, say, two centuries ago, are not the notions which are influencing our conduct to-day. There would be no meaning in evolution if we stuck fast to all the notions which were acceptable to our forefathers. Progress, Sir, I submit with great confidence, would come to a standstill if this process of transformation was obstructed. What my friends consider today to be a religious observance may not be regarded perhaps after the passing of a century or two in the same light. Now, you know, Sir, that amongst Hindus there is a class—that class happily is growing and increasing very

fast—which believe that you do not lose your religion by taking food out of the hands of a man who does not profess your religion. I hope that my Honourable friend, the President of the Hindu Sabha (Dr. Moonje) at any rate will not contradict me on this point. As you know, a great many Hindus believe that, if they take food, say out of the hands of a Muhammadan or a Christian, they lose their caste or religion. But a class is springing up amongst Hindus (*An Honourable Member*: “What about the leader of your party?”) On these matters I am not prepared to yield unquestioning obedience to any authority. I must exercise my own reason, which you refuse to exercise. Now, what is the position today? If a Hindu, or any man belonging to one faith marries a woman belonging to another faith, for which provision is going to be made in this Bill, what you say to him is this: “Either you become insincere or we will drive you out of the pale of our society”. Is that a reasonable position to take up? (*An Honourable Member*: “What did the Hindu community do on the last occasion?”) I do not know what my Honourable friend is referring to, but I shall accept his hint for the sake of argument. If the Hindu community made a mistake the other day, as he says, let the Muhammadan community learn by the folly of the Hindu community and behave better on the present occasion. Do two wrongs make a right?

I was submitting, Sir, when I was interrupted, that education unfortunately in the Western sense is spreading, and unfortunately, I shall say, people are going out to countries outside India. You find hundreds and hundreds of them scattered all over the world. What is there with the changed vision and outlook to prevent their contracting marriage-relationships with people who do not profess their own faith? I know that the Bill as it stands unfortunately does not cover the case which I have mentioned, but that these marriages will take place, whether we like it or not, is a fact which you cannot deny. Indeed, in India to-day—(if you will kindly not keep up that constant fire of interruptions and whispers, I shall be grateful)—indeed even today in India you find these isolated cases—yes, they are limited and are not general—cases where people of different faiths are married. What is to be their fate? What this Bill says is, “Yes, you may marry, if you like, you may remain in your caste or in your creed, because your religion is a matter between you and your God; it has got nothing to do with these social institutions, social observances and social rules”. Is there, I ask, Sir, anything in this to be frightened at? Is there any injustice, any hardship, any unreasonableness in this idea? Sir, the fact of the matter is this: these marriages are taking place, and, will continue to take place in increasing numbers. Take the case of the Indian Christian community. According to the Indian Christian Marriage Act, a Christian is entitled, has got the right, to marry a non-Christian. According to the law as it stands, we know that such a marriage is not prohibited. What Mr. Jayakar's Bill proposes to do is to extend this freedom to non-Christians. I ask, Sir, in all seriousness, what harm has the Indian Christian Marriage Act produced? The answer in all honesty will have to be that it has produced no harm. We know, Sir, that a distinguished Indian Christian Judge of a certain High Court not very long ago married a lady who was not a Christian and is not a Christian. I have cited this instance to show that such instances will multiply, and it is up to us in this Assembly to make some provision, so that there may be the minimum of hardship or of uncertainty.

**Dr. A. Suhrawardy:** Did that gentleman marry a Mussalman, or a Hindu, or a Jewish or a Parsi lady?

**Munshi Iswar Saran:** I should not like to mention the name . . .

**Dr. A. Suhrawardy:** But you have mentioned it by implication.

**Munshi Iswar Saran:** I do not wish to mention the name of the lady, but the point is that these marriages are taking place and they will continue to take place in spite of obscurantists and of reactionaries.

**Mr. M. K. Acharya:** Why then this Bill?

**Munshi Iswar Saran:** Why then this Bill? My Honourable friend, Mr. Acharya, has put to me a very helpful question. Simply that they may not have to declare that they do not belong to this or that religion.

**Mr. M. K. Acharya:** Let them.

**Munshi Iswar Saran:** I am shocked at this remark of Mr. Acharya—that you should force a man to give a false declaration in regard to his religion is something revolting to me. I declare, Sir, in perfect truth and sincerity that I regard Hinduism as the noblest heritage of my race, but I hold that Hinduism does not consist in marrying this person or that, nor does Hinduism consist in eating this or that out of the hands of this man or that.

**Dr. A. Suhrawardy:** Then what does it consist of?

**Munshi Iswar Saran:** I cannot give a satisfactory answer in a hasty manner. But let me tell you clearly that Hinduism does not consist in eating or drinking or in marrying this or that person.

**Dr. A. Suhrawardy:** Can a Hindu eat beef and remain a Hindu?

**Munshi Iswar Saran:** My Honourable friend wishes to provoke me, but he will fail. He may go on interrupting me till he is blue in the face, but he will not succeed in making me angry.

Sir, if you hold a private conference and if you ask a good many Honourable Members who are opposing this Bill to tell you in confidence what their own personal view is, they would surely tell you, provided give them a guarantee that you will keep their confidence, "My constituency is orthodox; therefore, whatever opinion I may have, I am bound, more particularly in view of the impending election, to oppose this Bill." I say, Sir, election or no election, my speech on this occasion may drive me into the wilderness for the rest of my life, but that will not prevent me from saying what I consider to be in the interest of my country.

**Mr. M. S. Aney:** Bravo!

**Munshi Iswar Saran:** My Honourable friend, Mr. Aney, appreciates my attitude. I hope he will follow me.

**An Honourable Member:** Face the electorate.

**Munshi Iswar Saran:** Mr. Jinnah says, "Face the electorate." I know . . . .

**Mr. M. A. Jinnah** (Bombay City: Muhammadan Urban): I did not say that.

**Munshi Iswar Saran:** I was surprised that such an interruption should have come from him. I made a mistake; I suppose it was a remark for the benefit of my friend, Mr. Aney (*An Honourable Member*: "Quite so."), because I could not for the life of me imagine that a man of the education, culture and broad-mindedness of Mr. Jinnah would make my task difficult.

Sir, there is one word I have got to say to Government.

**Sir Hugh Cocks** (Bombay: European): Go on.

**Munshi Iswar Saran:** Yes, I am doing so. Are you in a hurry? What are they going to do? I understand—I hope sincerely that I am wrong—that they are going to oppose it. If they do—they are the best judges of their own policy and of their own action—they will then be accused by the enlightened section of public opinion as being in a blue funk—I apologise for the expression. Having supported the Sarda Bill, and I suppose having burnt their fingers over it, they say, "No more social reform legislation for us; we shall not go any further now; we are going to oppose blind-folded every beneficent measure, under the plea that the country does not want it and is not prepared for it." I ask you, why do you not, in all fairness, circulate this Bill for eliciting opinion thereon? There would be something in that position, and if any such motion is brought before us, I shall vote for it. But if you do not do that, if you try to kill the Bill at this stage, you cannot escape the charge of being extremely nervous, more nervous than even you ought to be. There is a difference between this Bill and the Sarda Act, a world of difference: the Sarda Act applied to everybody whether he or she agreed with it or not. Is that the case with this Bill? It does not say to my friends on the other side, "For heaven's sake, be sensible and marry sensibly." It introduces no compulsion; it only gives freedom to those who wish to take advantage of this Bill. So I shall ask Government and the Honourable the Law Member who, I suppose, is in charge of this Bill, to bear this distinction in mind before deciding what attitude to take up.

**Mr. Gaya Prasad Singh** (Muzaffarpur *cum* Champaran: Non-Muhamadan): But they have already decided!

**Munshi Iswar Saran:** I should feel very sorry to think that they are not open to reason and persuasion.

It appears to me that this display of fury, of partisanship and of bigotry is a sign of the travail of the birth of a new society and a new India. It does not distress me; this Bill may be rejected today; this Bill may be rejected next year; but take it from me, this Bill is bound to find a place on the Statute-book in the near future. Obscurantism against progress and enlightenment has never succeeded.

**An Honourable Member:** Wish you good luck.

**Munshi Iswar Saran:** I thank you and I hope you will support me.

**Khan Bahadur Sarfaraz Hussain Khan:** Sir, as my friend, the Honourable Maulvi Mohammad Shafee Daoodi, wants to know what is the root cause of the trouble in India, let me say point blank to him—and I hope he will excuse me for putting it bluntly—narrow-minded orthodoxy is the root cause (Hear, hear) that has stood in the way of social progress from time immemorial. Now, what are the Koranic laws? The Koranic

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laws refer to *mushrikas* and *mushriks*. Can you say that those who do not worship idols are *mushriks*? Does the Koran not say that there have been prophets all over the world who have appeared for the good of mankind? Is India not part of the world? Has the Prophet said anything against others who have been prophets in other lands and in other times? Has he said anything against Christ? Has he said anything against Gautama Buddha? Has the Koran said anything against the big men in the Hindu religion? Nothing of the kind. How can you therefore say that they are *mushriks*? How can you say that there have been no other prophets anywhere? That is the Koranic law.

Then, Sir, my friend, Maulvi Shafee Daoodi, takes shelter under the Shariat. The Shariat is human-made law—made by a man, howsoever great. Was it not only some time ago that Ulemas all over India considered that coming into the Councils was *kufir*, and is he not here in spite of that? He will pardon me if I refer here a very slang proverb in Hindi, which means, "That which is sweet eat as quickly as possible and spit the sour as much as you can". When it suited him, he repudiated the law of the Shariat, and when it does not, he takes shelter under it. I hope he will excuse me for saying this. I wish to have my religion respected throughout the world as much as it was in the time of the Prophet or even after that. I do not wish it to be understood that it is chiefly the Muhammadans in the Assembly who are opposed to reform. The impression may spread to England and other places that it is the Muhammadans who oppose reform at every stage. I feel pained to think that we stood in the way of social reform. We all want union; we all want to boast of ourselves as nationalists; and when the time of unification of the different peoples of this country comes, we stand and put on the cloak of religion. That is not right. I do not wish to be long and I am sorry to have to repudiate the remarks which have been made by my friend, Maulvi Shafee Daoodi. Sir, I wholeheartedly support the Bill.

**Dr. A. Suhrawardy:** Sir, it is an irony of fate that I find in the List of Business two motions for amending the Special Marriage Act of 1872, when I find on the same paper several motions for amending the Marriage Restraint Act of 1928. When I came to the House, with the fate of the Hindu Child Marriage Bill fresh in my memory, naturally I was rather anxious to go through the two Special Marriage Act Amendment Bills. When I went through them, I was struck by the identity of language employed by the two authors of the Bill, and I wondered whether this striking coincidence was due to the collaboration of two legal luminaries.

**Mr. M. R. Jayakar:** I stated in my speech that the Bill was drafted originally by Sir Hari Singh Gour. (*An Honourable Member to Dr. Suhrawardy:* "You should resume your seat.")

**Dr. A. Suhrawardy:** I do not wish to give way. If the Honourable Member had allowed me to complete my sentence he would have seen before he interrupted me that I wanted to say that I wondered whether it was the result of collaboration of two legal luminaries or whether it was a case of great minds thinking alike, though working apart, in isolation, in distant places. Curiosity, Sir, led me to read the Statement of Objects and Reasons of the two Bills, and I noticed that from beginning to end



they were identical, word for word, with one distinguishing feature that the first person singular "I" was changed into "Dr. Sir Hari Singh Gour" in the Bill which stands in the name of Mr. Jayakar. Of course, Mr. Jayakar revealed to us the truth that the real author of the Bill was Sir Hari Singh Gour, and that he was not acknowledging the paternity of that Bill, but perhaps he was adopting that child which may prove to be a veritable *enfant terrible*. Sir Hari Singh has further revealed to us the truth by way of interruption that, not content with the joint authorship or with the collaboration of my friend Mr. Jayakar, he had to call in the assistance of two Mussalmans, valiant and virile Honourable Members of this House. He has chosen to give us the name of one gentleman, that of my respected friend Nawab Sarfaraz Hussain Khan, but he has not chosen to reveal the name of the other gentleman. What a pity that there was not a fifth collaborator, who might have saved this offspring of polyandry from the deformity and defect to which my friend Pandit Kunzru has referred, and which might result perhaps in its being stifled or strangled in its cradle.

Now, Sir, before I pass on to deal with the arguments advanced by my friend, Mr. Jayakar, I should pause for a moment to dispose of the remarks of the last speaker, Nawab Sarfaraz Hussain Khan. He had referred to the Koranic law. He had some justification in doing so. When I find that my friend Maulvi Mohammad Shafee Daoodi has also done the same thing, it is not surprising that Mr. Sarfaraz Hussain Khan, who is not a lawyer, should be led into the belief that Koranic law is the law which is applicable to Muslims. The Koran is certainly the fountain-head of Muslim law, but as in the case of the Hindu law, you have got the *Srutis*, the *Smritis* and so on, such is the case with the law of Islam. Muslims are governed by the Shariat and the law applicable to Muslims is the law as expounded by the Shariat. It is no use taking up isolated texts from the Koran and saying this is the Koranic law. It is no use doing that. Every lawyer knows that the decision of the Privy Council is that you cannot refer to isolated texts in the Koran or to the sayings of the Prophet, or to even the decisions of the ancient jurists and attempt to draw from them your own conclusions, because they appear to modern lawyers to be naturally deducible from them. It is such an elementary rule that anybody who will take the trouble of looking up even an elementary handbook on Muslim law like Mulla, will find the principle enunciated there, and it is stated in the case of Anjumanara in 25 All. It is well known to lawyers, that it is no use to cite the Koran in order to support a weak case. The Koran lays down the broad principle that no marriage between a Muslim and *mushrik* is allowed and that marriage with a *Kithabi* is allowed. And what is a *Kithabi*? According to the interpretation of the ancient jurists, the *Kitabi* or *Kithabi* means those who follow the Jewish or the Christian faith. Even the Parsis or the Zoroastrians are not included in that, although the faith of Zarathustra is much older than the faith of the Brahmos and the Aryas. I want to dispose of the misapprehension as to what law is applicable to the Muslims. We are governed by the Muslim law, as interpreted and understood by the ancient jurists, and nobody can claim today, however eminent he may be, to be a *mujtahid*, entitled to make or propound a new code of law for Muslims. My friend, Mr. Sarfaraz Hussain Khan, knows very well that the Shia law is even stricter than the Sunni law in the matter of marriage. The Shia law will not permit, like the Sunni law, the marriage of a Muslim with a non-Muslim. The Shia law goes even further, and it will not

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permit a Muslim to marry even a Christian woman or a Jewish woman according to the orthodox *Asna Ashariya* view except in the form of what is known as the *mufa* marriage, which I may freely render as the mutable or temporary marriage.

My friend Munshi Iswar Saran quoted a Persian line, and he also told the House that there are Mussalmans who would tell him in confidence . . . .

**Munshi Iswar Saran:** I did not say Mussalmans, I said Members opposing this measure.

**Dr. A. Suhrawardy:** He said that there are Members opposing the Bill who would tell him in confidence that they are in entire agreement with him, but because of the elections they have not got the courage to do anything else but to oppose the Bill. Well, in Allahabad and Benares I might also tell him something in confidence. He quoted a Persian line, and I think I might also quote a Persian line for his edification . . . .

“Agar ān Hindu-i Kāfir bā-dāst ārad dil-i mārā.

Ba-chashm-i turk-i fattānash bi-bakhsham din o dunya rā”

**Some Honourable Members:** What does that mean? Translate it.

**Dr. A. Suhrawardy:** It means:

“If that faithless Hindu maiden captivates my Muslim heart,  
For her wicked, cruel eyes, with faith and fortune I shall part.”

That is a different matter. That is an affair of love. Any infatuated youth may be carried away by his ardour and enthusiasm for any maiden, whether she be a Christian or a Hindu. He may even give up his faith and take advantage of the Special Marriage Act of 1872, and declare that he is not a Muslim, or some Hindu maiden may adopt the Muslim faith. But that is another matter.

My friend, Munshi Iswar Saran, said that I missed his point. I don't think I missed his point at all. On the other hand, the point of my remark went home. He has also complained of the tyranny of the majority, and yet he wants, encouraged by the infliction of the tyranny of the majority over the minority on a previous occasion in the shape of the Sarda Act,—encouraged and emboldened by that Act, he appeals to the majority of the Treasury Benches, to repeat that wrong so that he may scare once more by the weight of the majority. He admits that we are in a minority in the House though in the majority outside and he appeals to them to make an alliance with him and lend him the weight and strength of the majority to crush the minority. It does not lie in his mouth to complain of the tyranny of the majority . . . .

**Sir Hari Singh Gour:** How is the minority going to be crushed? By giving more freedom?

**Dr. A. Suhrawardy:** If my friend, Sir Hari Singh Gour, has a little bit of patience, I shall deal with him when I deal with the Bill itself. I wish Sir Hari Singh had come forward and delivered a speech in support of the Bill instead of taking shelter behind the Honourable Mr. Jayakar. Anyway,—I am limited to time I think. (*Some Honourable Members:* “No, no; go on; go on.”) All right, Sir, thank you very much. I had better take Mr. Jayakar first. Mr. Jayakar has told us that he is not the real

author of this Bill. He has also paid a very high compliment to my Honourable friend, Sir Hari Singh Gour. He said that this Bill will immortalise him.

**Mr. M. R. Jayakar:** Not this Bill, the 1923 Bill.

**Dr. A. Suhrawardy:** Very well. The Bill of 1923, which is a similar Bill, has immortalised him and this Bill will immortalise both Mr. Jayakar and Sir Hari Singh Gour, the real father and the adopted father. So long as Sir Hari Singh Gour confines his zeal to going down to posterity as a modern Manu or Yajnavalkya, we have nothing to say. His ambition is now much greater. Returning fresh from Europe, and entertaining all the new ideas to which Munshi Iswar Saran has referred, where he, Munshi Iswar Saran and myself had been wandering in the streets of London and the boulevards of Paris, sometimes alone, perhaps sometimes together, may be under the subtle influence of the new gospel of love, he may very well foresee the day when all this question of polygamy and monogamy and other "gamies" will be solved by the doctrine of free love and free thought.

**Maulvi Muhammad Yakub:** The question is at what hour you were wandering?

**Dr. A. Suhrawardy:** My Honourable friend the Deputy President has not yet had the good fortune of having been to England or France. There the hour makes no difference. In those lands of gaiety and sunshine it is always afternoon.

Now, Sir, as I said, so long as my Honourable friend, Sir Hari Singh Gour, confines his all embracing love to Jains, Sikhs and Buddhists, I have nothing to say. He himself has set an example of that. I do not wish to be personal. Perhaps I would not be allowed by the Chair to be personal. I was going to say that, so long as his zeal is confined to those people whom Mr. Jayakar has described as allied to Hinduism, I have no quarrel with him. But now that his ambition is to go down to posterity as a new Moses with the tablets of the law for the Jews, Christians and Muslims, I as a descendant and follower of the faith of Abraham must protest against it and stand up here to oppose the Bill. And I will oppose not only the introduction of the Bill, but even the amendment suggested by my friend, Munshi Iswar Saran. When I was reading the Statement of Objects and Reasons of the Bill, I was struck by the window dressing here and there and it reminded me of "Gour-ism", if I may coin a word. I found that Sir Henry Maine, that great jurist and Law Member, was mentioned there, but there was absolutely no reference to his distinguished successor, Sir James Fitzjames Stephen and therefore I took the trouble of finding out the exact position of the Act of 1872 by reading the debate on the subject. With your permission, Sir, I will presently place before the House the relevant portions of that debate, which will demolish the clever suggestion of Sir Hari Singh Gour that Sir Henry Maine was in favour of the Bill, and that the Government of the day were in favour of a Bill as framed today by Sir Hari Singh Gour and Mr. Jayakar. But before I do so, I should like to read the list of advantages of marriages under the proposed Act as enumerated in the Statement of Objects and Reasons, because those are the very reasons on account of which I oppose the Bill.

What is latent in the Bill itself has been made patent and clear in the Statement of Objects and Reasons, that it is a blow aimed at the personal

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law of the Mussalmans and it is aimed at the personal law of the Hindus. But I confine myself to the Mussalmans and leave it to my friend, Dr. Moonje, and others to deal with the Bill so far as it affects the Hindus. It makes it clear that the motive underlying this Act is "patriotic" and the object is to "develop national sentiment", "to free people from the thralldom of religious ritual". When reading the sentence about "freeing people from the thralldom of religious ritual", had I not known the personal opinion of Sir Hari Singh Gour, I would certainly have thought that it had been drafted by an emissary from Moscow or a member of the Anti-God movement in Soviet Russia. It makes it clear that this Bill is monogamous in its policy and therefore it would deprive Hindus of their privilege of unrestricted polygamy and also deprive the Mussalmans of their privilege of restricted polygamy. Now, according to Munshi Iswar Saran and other advanced thinkers, the world is tending more towards polygamy than towards monogamy, because when you abolish all "gamies", there will be nothing left but the law of personal affinities and the law of love. This Bill attacks the Muslim law of inheritance. It attacks the Muslim law of divorce. It attacks the Muslim law of dower. If I were to apply my mind closely to the subject, I would be able to show that the Bill attacks the Muslim law in innumerable ways. Although it pretends only to amend a small Bill, it really strikes at the root of one of the most sacred institutions of Islam.

**Sir Hari Singh Gour:** How does it affect Islam at all?

**Dr. A. Suhrawardy:** It affects Islam in this way, that Muslim law is considered part of the Muslim religion. In Islam there is no difference between law and religion.

**Sir Hari Singh Gour:** How will this Bill affect it?

**Dr. A. Suhrawardy:** It is an invasion of the Muslim law of inheritance. Not only is it an invasion of the Muslim law of inheritance, but it is also an invasion of the Muslim law of divorce and dower and various other branches of Muslim law, reference to some of which has already been made by previous speakers and by my Honourable friend, Mr. Abdul Haye. It is nothing but a Sarda Act in disguise. I am referring to the sections restricting the age of marriage. Marriage is only permissible if one of the parties is 16 and the other is 21. I do not remember the sections, but there is not the slightest doubt that, at any rate, it is the Sarda Act in disguise. If Sir Hari Singh Gour and my Honourable friend Mr. Jayakar had been living on earth instead of living in heaven, they would have known the strength of the popular feeling against the Sarda Act and they would have also realised that this was hardly the time to put on the Statute-book another Act touching the most sacred law of the Hindus and of the Mussalmans, or even make an attempt to do so. You give us scant consolation by saying that the enactment, if passed, would be merely optional and leave in tact the personal law which controls the performance of marriages. Need I tell the House that marriage in itself is optional. There is no compulsion for anybody to marry. What consolation do I derive from the fact that it is an optional law? I ask Sir Hari Singh Gour and the other lawyers who support this Bill, "What have you left for us? Tell me what part of Muslim law have you left for us if you introduce this Bill except perhaps the article of faith, and that is not a part of the law in your sense of the word."

Then, it has been said that it will develop the idea of monogamy. How would it do that? At the same time you blow hot and cold. It is optional, it is not compulsory. If it is not compulsory, then how does it help you? You are simply making a clever gesture to my European friends in order to mislead them and to get them on your side. You are holding out a bait towards the Treasury Benches. You are after their votes and you profess to popularise and pretend to admire and exalt the European notion of marriage. That is what you want. Then you say we are going to give women equal status in the matter of divorce. Have you studied the Muslim law carefully on this point? Do you know that, under Muslim law, women have a right of divorce? It is a qualified right, it is true, but that right can become an absolute right if a certain clause is inserted in the marriage deed. The woman may on her own initiative ask for divorce, although that is not done in practice. Why should we have recourse to your Act?

**Sir Hari Singh Gour:** Who wants you to do that? Nobody wants you to do that.

**Dr. A. Suhrawardy:** That is the thin end of the wedge. Mr. Jayakar has already said that the Marriage Act of 1872, which began so far back, is now having its fruition and culmination in the shape of the present Bill, and the name of Sir Hari Singh Gour will go down to posterity and will be immortalised because of the Act of 1923. That was "half a loaf" he said. Now, you are going to give us a full loaf and perhaps a bottle of wine along with it. But I can assure Sir Hari Singh, we are not going to have that. Sir, Sir Hari Singh Gour is a great lawyer and a great author. The number of his books is so great and the volumes so ponderous that not only I, but the whole block of the Central Muslim Party, can be buried under them. Therefore, I ask for shelter. I will not put forward my opinion against the weight of his great opinion. But I will quote, as I said before, the views of Sir James Fitzjames Stephen. Sir Hari Singh asks me to show how this Bill affects our law. I will not answer the question myself. Let the great Law Member answer the question.

To those who have carelessly read this Bill, I will say this: Please read the Bill as originally drafted by Sir Henry Maine, the distinguished Law Member in 1868. That Bill was rejected and the Bill in its amended form was passed in 1872 excluding the Hindus, the Muhammadans, the Jews, the Parsees, the Christians and the Jains and all those communities that are mentioned therein. And the Government of the day did so because they were convinced that it affected the law of the Hindus and the Muhammadans and also because they protested against it. Sir James Fitzjames Stephen, the equally distinguished successor of Sir Henry Maine, after making a distinction in his speech between the territorial and personal law goes on to remark:

"Such being the nature of Indian personal law, it is, I think, self-evident that it ought not to be changed, except in extreme cases. Laws relating to such subjects as marriage have their root in the very deepest feelings, and in the whole history, of a nation; nor is it easy to imagine a more tyrannical or a more presumptuous abuse of superior force than that which would be involved in any attempt to bring the views and the practices of one nation, upon such subjects, into harmony with those of other nations, whose institutions and characters have been cast in a totally different mould. I should feel as little sympathy for an attempt to turn Hindus into Englishmen by Acts of the Legislative Council as for attempts to turn Englishmen into Hindus by Act of Parliament."

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I wish this passage had been read at the time when the Sarda Bill was under discussion. Later on he observes:

"So far, I entirely agree with my Honourable predecessor; but I must own that the manner in which his Bill was framed and the criticisms which have been made upon it have convinced me that it went a step beyond strict justice, and violated, in its turn, the principle which I have attempted to state as to the proper relation of the British Government to Native religions. It appears to me that the Bill introduced by my Honourable friend would, by direct legislation, change very deeply the Native law upon marriage. (*These are not my words.*) It applies to 'Natives of British India not professing the Christian religion, and objecting to be married in accordance with the rites of the Hindu, Muhammadan, Buddhist, Parsi or Jewish religion'. All such marriages are declared to be valid, if they are celebrated according to a certain form provided by the Act, and upon certain conditions. These marriages would, moreover, be monogamous. The Bill, in short, would introduce the European conception of marriage into the Hindu and Muhammadan communities, and give to it, by law, a place amongst Hindu and Muhammadan institutions. I do not think it can be denied that this would be a change, whether for better or for worse. You may change by addition, as well as by other forms of alteration."

Sir, I do not think I need take the time of the House more than I have already done. I have put forward the reasons for my opposing the Bill and also for opposing the amendment if that amendment is allowed by you that the Bill be circulated for eliciting public opinion thereon.

One remark more and I have done. I find the name of my Honourable friend, Nawab Sir Abdul Qaiyum, as a member of the Select Committee. I do not know whether it means his acquiescence in the principle of the Bill or whether he will go there as a Warden of the Marches to protect the interests of the Muslims, so that the Bill may not emerge from the Select Committee, like the Sarda Bill, in a more dangerous form than it is at present.

**Nawab Sir Sahibzada Abdul Qaiyum:** Sir, I do not wish to make a long speech on this occasion. It is only with reference to the mention of my name in connection with the Select Committee that I should like to clear my position. I have consented to serve on the Select Committee, if it is ever formed, and the Bill is allowed by the House to go before that Committee, but it does not mean that I agree entirely with the principle of the Bill. I look at the principle of the Bill from two aspects. The first is the general tendency of non-Muslims introducing Bills affecting the Muslim community and interfering with the religious and social laws of the various communities in the country. The other aspect is the spirit and the actual provisions of the Bill as drafted. As regards the first point, I am still of opinion that it is very dangerous to bring in these social reforms by Bills which are introduced in this House. These reforms had better be threshed out in public through Press and platforms in their different stages. If these social reform workers have really got the spirit of going before the public and convincing them of their personal views on these subjects, they will be justified in introducing these Bills. But if they only come to this small House composed chiefly of people who claim to be educated—I do not know whether they are or are not—but they claim to be educated; people who are ashamed of obstructing a measure of reform for advance, whether social or religious, and are taking advantage of the position of these poor people here, who cannot shut their eyes to these progressive ideas and cannot force the well-set speeches of the reformers characterising them as reactionaries, orthodox or conservatives, they are not justified in introducing such Bills.

As I have just said, if these reformers are ready to go to the country with their ideas and plead the cause of their reforms on platforms in public mass meetings or in other ways, they will be justified in introducing these Bills in this House. But if it is only here in this corner of the House, surrounded by high walls, well protected from public view and the criticisms and remarks of the public, for the time being, yes occasionally exposed to bombs but not on matters like this but only on political matters,—I say if they only talk in this House on social reform matters, well protected as they are, I do not think they are justified in pushing on this measure in this manner.

The second thing is whether Government should readily interfere in these matters or should try to be cautious. I think they should be most careful and need not be more than mere post office in these matters. I do not believe the Government will be justified in supporting one or the other community in carrying through a measure of general application without the consent of the majority of every community. It was not justifiable on the part of the Government, and I said this on the last occasion also, to have made a sort of coalition with a strong party in this House and carried out a measure which was repugnant to the majority of my community, although I am still of the opinion that the measure by itself is not a bad one and does not go against the spirit of my religion, according to my personal opinion. But when we moved a motion for referring back the Bill for the opinion of religious authorities, who had not had a good opportunity to express their opinion on it as stated by the Age of Consent Committee itself, when we made that motion, the Government were in such a hurry that they would not even wait for six months more, *i.e.*, till the next Session . . .

**An Honourable Member:** Only three months.

**Nawab Sir Sahibzada Abdul Qaiyum:** Yes, only three months; and the Government did not give an opportunity to the religious authorities to give their opinion on the measure. They did not realise what trouble and excitement and discontent that measure was likely to create among the Muslims, and also among a large section of the Hindus. Similarly there is no hurry about this Bill either. As stated by my Honourable friend, Maulvi Mohammad Shafee Dacodi, it will not affect even a half per cent. of the population, or except a few lovers or people of that sort who may care to avail themselves of the measure. But if these people are so infatuated with love, then as suggested by my Honourable friend, Dr. Subhawardy, let them give up their religion temporarily and contract marriages, or whatever you may call it under the existing law instead of enacting a new law for the whole country.

It is said that it is only a law which is permissive and does not force people to follow it—but you must remember that, if you allow this loophole for a lover to escape the rigours of the criticisms of his community, you will be only encouraging him to follow it. You protect him from the criticism of his community under the law and help him in escaping the criticism, ridicule and possible excommunications from his community by your law and thus encourage him in the achievement of his object, so much to the detriment of his people and his faith. I have got the same enthusiasm for social reforms as my friend Nawab Sarfaraz Hussain Khan has and really wish that all necessary social reform should be brought about in the country as fast as possible, and if our

[Nawab Sir Sahibzada Abdul Qaiyum.]

Hindu brethren are prepared to avail themselves of their opportunities of introducing those reforms, I should help them rather than stand in their way. But my help can only come forward if I am not affected by that movement. It is because there is a Persian proverb, which says, when translated, "First our own interest and then the interest of the general public". I must see that their activities do not affect me seriously in any way. But I was very much interested to hear from my Honourable friend, Maulvi Mohammad Shafee Daoodi, that a little higher and nobler spirit ought to be introduced in this country before any measure like this is moved. I am not going to refer to it in detail or in any particular way as I do not wish to refer to those obnoxious phrases, communal differences or various other things of the sort. If I may be allowed to express my view in the language of this Bill, I should say that I like a measure to be introduced not necessarily by private Members but rather by the Government themselves, a measure to force a permanent marriage between the two communities! They must force the two communities to marry one another and live as husband and wife in the country—no matter which is the husband and which is the wife! If a law of this magnitude and of this far reaching effect could be introduced, these differences would settle themselves of their own accord and we should feel happier. As suggested by some previous speaker it is only the distrust that has created the gulf between the two communities and assumed such an abnormal condition, with the result that the social and general progress of the country is retarded and the happiness and peace of the whole population are destroyed. Before we introduce these small reforms here and there, I think the first thing is to introduce a measure of the kind mentioned above, whether it is before or after the Simon Commission's Report, it does not matter. The first thing to be done is to introduce some sort of measure by which we should be compelled to settle all disputed matters between the two sections of the population and fix up their respective rights and privileges and then we could attend to these marriage reforms, etc. Nobody will perhaps then care whether a Hindu marries a Muslim girl or a Muslim marries a Hindu girl. There was a time in 1920-21 when the people were so near in their hearts to one another that they could eat from the same dish and drink from the same glass; and so much so that here in this Capital of India, a Hindu social worker and reformer in the person of the late Swami Sradhanand was allowed to get up on a pulpit in the Juma Masjid and preach to the people there. I do not believe that this distrust and this estrangement which has since come in between the two communities is removable by mutual consent; we are too selfish. Let Government come forward and divide this joint property of the loaves and fishes in the country, this bone of contention, between us and if that is followed even by a year or two of trouble and risings, it will not matter much. You will have done the country good. That is the sort of reform that I should like to see introduced, instead of wasting the time of the House on matters like a marriage between a Hindu and a Mussalman and so on.

As one of the Honourable Members pointed out, who could have expected that on the same agenda where there was a Bill for the repeal of a certain enactment passed only four or five months ago, there would be another Bill of the same controversial nature? And no one could



expect that there would be unanimity of opinion about passing this Bill, or referring it to the Select Committee. I think it is quite natural that there should be a more vehement dispute and quarrel over this Bill than in the case of the former Bill now called the Sarda Act.

But, Sir, I only wanted to clear my position, and to say that it will be for the reasons given above that I shall have to oppose the Bill in its first reading. If that fails, then I will support some amendment which may have the effect of circulating it in the country for public opinion. If that also fails and the Bill goes before the Select Committee, then I shall be delighted to serve on that Committee in order to safeguard the interests of the various communities as far as my humble self can help in the matter. But in the first two stages I must make it clear I shall have to act as indicated above—I am not in entire agreement with the general idea of the introduction of the Bill in the present day atmosphere prevailing in the country though I believe the measure is a good one and a bit of advancement towards that nationality to which we are all aspiring. But my personal opinion is that this piecemeal legislation will not do and that a wholesale nationalisation must come by legislation, whether in the shape of a revision of the Government of India Act or anything else; because we are so divided, so selfish and so quarrelsome, that we can never be expected to come to a mutual agreement about even a small matter in this country. That is our bitter experience, and I do not believe that we can agree on any measure of reform by mutual consent, not to speak of this Bill, which really affects the personal law of the Muslims. That, Sir, is all that I have to say.

The Assembly then adjourned till Eleven of the Clock on Monday, the 17th February, 1930.